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Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

THURSDAY, 26 MAY 2005

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Thursday, 26 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, Conroy, Evans, Faulkner, Kirk, Ludwig, Nettle, O'Brien 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 continue its examination of the Immigration and Multicultural and Indigenous Affairs portfolio, proceeding according to the order discussed yesterday evening. The committee will begin with questions on outcome 2 of the department. Today's hearing will be suspended for a lunch break from 1 pm to 2 pm and a dinner break from 6.30 pm to 7.30 pm, and I will endeavour to take these breaks 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 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 particular 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. As agreed last night, we are going to start this morning with outcome 2, which is the citizenship area of the department. We estimate that this part of consideration this morning will conclude at about 10 am or just after, given that we started slightly late.

Senator LUDWIG—I just wanted to deal with the access and equity annual report in a broader sense, not so much the report in detail. In the case of how the report works, it is really

the access and equity which is the progress in implementing the Charter of Public Service in a Culturally Diverse Society. Why don't you give the committee an overview of how it works?

Dr Nguyen-Hoan—If I can go back through history a little bit, about 20 years ago the government introduced the access and equity strategy and over time it has evolved. In about 1996 we tried to refocus the access and equity strategy to map it out not only at the Commonwealth level but also with states, territories and local government. It became the Charter of Public Service in a Culturally Diverse Society. It has been endorsed by three levels of government. It requires, at the Commonwealth level, all departments and agencies to adhere to the principles outlined in the charter.

A few years ago, we developed a performance management framework to put out some indicators so that departments and agencies can have a clearer understanding of where their responsibilities lie. We look at five roles: policy adviser, regulator, service provider, employer and purchaser. Under each role, we develop the performance indicators so that they know that they need to consult with community groups, they need to collect data and they also need to report on their performance.

DIMIA have a leadership role in that we require input from departments and agencies. Based on their input, we coordinate the access and equity annual report. We have tried to look at their input and tried to put some kind of assessment around that. Necessarily, it has to be subjective because we do not have the capacity to check against their reporting. If they give an example under a certain indicator that they have consulted or that they have budgeted for interpreting or translating services, we give them a tick for that—they are meeting the indicator well. If they have another good example of doing that, we say that they are meeting it better. That is how we coordinate that annual report every year to table in parliament.

Senator LUDWIG—Is it the case that, in asking the agencies, they could volunteer a particular case as one example of how they might demonstrate the relevant processes in place within the organisation? They would then preselect one case as a demonstration of how that process is in place. Is that how it works?

Dr Nguyen-Hoan—We have a framework. We outline the seven principles. We put in performance indicators and we allow departments to look at how they should report against those principles or the framework. We leave it up to departments and agencies to provide examples as they see fit and we try to encourage them to meet as well as possible the principles and indicators. Because of our limited resources, we are not able to hold their hands, so to speak. It is really up to departments and agencies. We are hoping to move to a regime where they own their responsibilities and implementation. Hopefully they will be able report in their own annual reports rather than giving us their self-assessment, so to speak, and us putting it in the annual report.

Senator LUDWIG—What would stop an agency selecting a good outcome, saying it does match the relevant principles—it might be a particularly good one-off case—and then submitting that as the demonstration of their agency-wide assessment?

Dr Nguyen-Hoan—We look at their input and if they have client surveys, they hold community consultations or they have budgeted for translating for interpreting services. It really depends on implementing certain roles and looking at the principles and indicators. We

expect that they do certain things and, if they are able to meet those criteria, we say that it is a good example.

Senator LUDWIG—So there is nothing stopping them in that sense in selecting one, providing it to you, saying it meets the criteria and there you have it.

Dr Nguyen-Hoan—I acknowledge that that is the weakness of the system—that it is really up to agencies to select the examples. As I said earlier, it is a subjective assessment. If we can go to a regime where they totally own that responsibility and report in their own annual reports, that would be better.

Senator LUDWIG—So you think there is a better way of doing it than is currently reflected.

Dr Nguyen-Hoan—We are trying to see how we can bridge the gap between, say, a reasonable report and some community feedback saying that some departments are not doing as well as they appear to be on paper. We are trying to get to that continuous improvement and see if there is a way that we can say to departments and agencies that a few good examples may not be sufficient to show that they are doing well across the board and if there is any other way that we can confirm their performance.

Senator LUDWIG—Is that being reflected in community consultations that you have—that there is a perception that the departments are overstating their positions?

Mr Vardos—Could I respond to that. I have just finished a round of community consultations, so I could give you some first-hand examples.

Senator LUDWIG—Perhaps after Dr Nguyen-Hoan finishes.

Dr Nguyen-Hoan—We have been trying to ask FECCA, the Federation of Ethnic Communities Council of Australia, as well as others, to give us community input from their membership. In the settlement services review a few years ago we became aware of certain complaints by the communities about certain departments not doing as well as they should in their access and equity obligations. So we do have a range of input to alert us that there are departments and agencies not doing as well as they appear to be. We are looking at a number of measures. For example, we give feedback to departments when we hear such examples of departments not doing well and we look at their input to the *Access and equity annual report*. If there are some witnesses, we also talk to them and hold face-to-face meetings with them.

Mr Vardos—During April and May, I conducted a round of community consultations in relation to the new settlement grants program. During those discussions issues that have come up before did emerge again. Whilst in DIMIA we speak about mainstreaming of services, the communities are saying, ‘Yes, we understand that should happen,’ but they are still complaining about accessibility to a range of services. They are not saying that the services are not there; they are saying their accessibility, as people from culturally and linguistically diverse communities, is an issue for them. The minister, Mr McGauran, has effectively directed me to open up a dialogue at my level with other service delivery agencies in the Commonwealth to bring these issues to the table, and that is on my agenda.

Senator LUDWIG—How will that be finalised? Will you have a group who will consult and then provide a report to the minister?

Mr Vardos—I would describe my role as advocacy on behalf of the clients we deal with on a day-to-day basis in relation to other Commonwealth service delivery agencies. At the end of the day, though, we have no policing role or leverage. Those agencies themselves have to take proposals forward based on the information that we are providing or other sources of information to perhaps tweak their programs. The line I use is: to treat everybody equally, you might have to treat some people differently. Their existing programs might need modification around the edges to make them more accessible to CALD communities.

Senator LUDWIG—You are aware that of the agencies that do report 50 per cent of them do not actually meet the performance indicators. That is what the report says in terms of the implementation of mainstreaming.

Dr Nguyen-Hoan—Recently we sent letters to those agencies who have not reported to ask them to report for this year.

Senator LUDWIG—There are those agencies that do not report. About 30 per cent of agencies ignore it. Of those agencies that do report, about 50 per cent underreport; in fact, they report they are not meeting the performance measures. That is about the state of the report.

Mr Farmer—We started on the question of evaluation and so on. On that particular point, in addition to the consultations that Mr Vardos has referred to, the minister, Mr McGauran, has asked the department to prepare advice for him on other potential ways of evaluating the performance of agencies in this area of access and equity. We are in the process of preparing that advice for the minister. I think the background to that is that, clearly in terms of reporting on access and equity and highlighting issues, we have come a long way in quite a short period of years. The sorts of questions that are occurring to you have obviously been on our minds and certainly on the minister's mind. He has asked us to, as I said, give him advice on ways in which we can basically look at an evaluation process which will become perhaps more of a driver than we have at the moment.

Senator LUDWIG—The access and equity report as it stands provides good examples. You would expect it to have case examples, and it does, but it only provides good examples. There is not a fair or even a bad example to demonstrate a cross-section, as case studies sometimes do. Why is that? Are good examples the only ones that you get? It just seems an odd way of presenting case studies. Or do you have bad ones that you decide not to put in the report?

Mr Farmer—It is explicable through understanding that this is a case of self-assessment.

Senator LUDWIG—It is a good news report.

Mr Farmer—Yes. That, as I say, is at least an advance on the reporting we used to have, which was pretty feeble. But it does not act as a driver in this area in the way that some other potential means of evaluation and reporting could. It is in that area that the minister has asked for work to be done.

Senator LUDWIG—I will resist commenting. I notice that the states and territories are not reflected in here as well in terms of adding a case study or an outline of how well they are doing. So they are not included. Is it only federal agencies that are part of this process?

Dr Nguyen-Hoan—Only the federal agencies are part of this process, but we thought that because the charter was endorsed by the three levels of government, it would be quite a good idea to ask state and territory governments to provide input, and that we would leave it up to them as to how they report. You can see from the report in the last few years that it is not really about the charter per se but about all their multicultural programs.

Senator LUDWIG—That had already crossed my mind—that if you were going to do an access and equity report across Australia in terms of how we were doing, you would include states and territories in it, because they do have such programs, and local authorities are starting to have multicultural programs of some significance. Is there an intention to start looking at this as an issue?

Dr Nguyen-Hoan—You would have noticed that in the 2004 report we included some local councils as well. Our intention is, if you like, to refresh the access and equity strategy a bit further, to see how we can improve the performance across the board at the federal level, and also to map out reporting practices at the state, territory and local government level that we would like to include in our future reports.

Senator LUDWIG—With respect to the bodies supplying services under the Adult Migrant English Program, which is clearly targeted towards non-English-speaking migrants, do they form part of this report?

Ms Ellis—I am not sure that I understand the question.

Senator LUDWIG—Are they part of the assessment? In terms of progress towards implementing the charter, do those bodies that provide English lessons for non-English-speaking migrants also form part of the assessment? You look at federal agencies; what about the actual suppliers?

Ms Ellis—They are service providers to the department and, as such, would be covered by the department's assessment of performance.

Senator LUDWIG—Are any of those organisations reflected in the previous couple of studies, as case studies or as examples of how well they are performing? I cannot recollect any.

Ms Ellis—We would need to take that on notice and check.

Senator LUDWIG—The charter applies not only to mainstream services but also to services funded by government and provided by community based organisations. Is there a way of determining which sectors are then assessed as part of that? Are the departments required to assess all of their service providers or is there a cut-off?

Dr Nguyen-Hoan—Not only do departments and agencies providing services need to adhere to the principles of the charter; this also applies to services provided by a third party. We leave it up to Commonwealth departments and agencies to make sure that services delivered by third parties also fulfil the obligations under the charter principles.

Senator LUDWIG—Are there any case studies that you have done in respect of some of those service providers?

Dr Nguyen-Hoan—I cannot give you the detail. I need to take it on notice.

Senator LUDWIG—In terms of where we are at, there is the work of determining how the charter is going to be implemented effectively in delivering programs and, by and large, it is dealt with by external agencies. The various departments have to provide the services for the multicultural community and that sector. That is the way it is being driven. I think they refer more broadly to the word ‘mainstreaming’ as a euphemism for it. If that is the case this is the only check to see whether that is being accomplished. Are there any other indicators that would help us understand what level of performance the agencies are achieving?

Mr Vardos—Agencies may deal with the delivery of services to culturally and linguistically diverse communities through their annual reporting but, to my knowledge, the access and equity report is the only coordinated and systematic approach to dealing with this issue.

Dr Nguyen-Hoan—In the multicultural policy for the three years from 2003 to 2006 we have five areas of focus. We dedicated attention to rural and regional, local youth, business and the media, so we work closely with the office of local government to make sure that the local councils understand the principles of the charter and work better. Similarly, we work with the youth affairs bureau, so specific attention is being paid to the five focus areas that we set for ourselves for the three years finishing in June 2006.

Senator LUDWIG—At the moment there is no independent reporting mechanism to determine whether agencies are providing mainstream services to the community, is there?

Dr Nguyen-Hoan—There is no formal independent mechanism at this stage. As our secretary said earlier, it may be that under this review we need to look at how we can verify reporting by agencies.

Senator LUDWIG—Will that form part of the review?

Dr Nguyen-Hoan—Yes.

Senator LUDWIG—Are there terms of reference for the review?

Dr Nguyen-Hoan—Yes. The minister approved the terms of reference for the review a few months ago, and we are progressing that review now. It is not just for access and equity but across the board of multicultural policy and programs.

Senator LUDWIG—Are those terms of reference available to the committee?

Dr Nguyen-Hoan—They can be made available.

Senator LUDWIG—Where are we up to with that? Is there a program in place to start preparing a report with community consultation?

Mr Vardos—I chair a steering committee. The steering committee consists of agencies other than DIMIA plus two representative of the Council for Multicultural Australia. The process will include the use of the CMA, the Council for Multicultural Australia, as an external reference group. The minister also intends to engage with FECCA, and there is a possibility of roundtable discussions around the country as part of this process. As my colleague Dr Nguyen-Hoan said, it includes not just access and equity but the range of programs that sit under the broad banner of multicultural policy and programs.

Senator LUDWIG—Does that include settlement services?

Mr Vardos—Settlement services is separate. We are talking specifically access and equity, the Diversity Works program and Living in Harmony.

Senator LUDWIG—So is citizenship separate again?

Mr Vardos—Yes.

Senator LUDWIG—Is there a time line for completion of this?

Dr Nguyen-Hoan—There will be three products from the evaluation, or review. The first one will be an evaluation report looking at the appropriateness, effectiveness and efficiency of multicultural policy and programs, what some of gaps and efficiencies there are and what the future directions will be. We hope to finish that report around late September or early October. Then we will prepare a new policy proposal by October-December. The third product will be a new policy document to be released about May next year.

Senator LUDWIG—I will now turn to the settlement services program. It appears that DIMIA has chosen not to provide separate social support services. Which federal agency for multicultural affairs looks after this particular area?

Mr Vardos—I do not think I understand the question. We chose not to provide what social services in what area?

Senator LUDWIG—Separate social support services.

Mr Vardos—Under the settlement grants program?

Senator LUDWIG—Yes.

Mr Vardos—The final make-up of services to be delivered under the new settlement grants program, as it will be called—you may recall from last estimates we still did not have a title for it—has a menu of suggested items that will be funded under the SGP from 1 July next year. Part of the consultation process that I mentioned earlier was to get a reaction from the community about those sorts of things—what should or should not be funded. One of the issues that did come up was for, to put a generic name on it, non-specialist counselling services to be put back in the mix. We are in the process of preparing a submission to the minister which brings together the various issues that emerged from those consultations. One of the issues that he will need to consider is what will form part of the menu of services that will be funded under the SGP and what will stay out. At the moment, it has not been finalised. Yes, the discussion paper that we circulated, and which you have a copy of, suggested that those services would not be funded, but I think it would be fair to say that one of the issues that did come up in the consultations was that, in some quarters, there would be a preference for them to be put back in.

Senator LUDWIG—What is the process from here? Have you started a round of consultative meetings and the like?

Mr Vardos—I conducted consultations in every state and territory capital. The dates were 19 April in Canberra, 20 April in Perth, 26 April in Brisbane, 27 April in Darwin, 28 April in Adelaide, 3 May in Sydney, 4 May in Hobart and 5 May in Melbourne. There were two sessions each in both Sydney and Melbourne. In excess of 400 people attended from a range of service delivery agencies, local government and state government to discuss the discussion

paper that had been circulated. Approximately a thousand invitations had been sent out prior to that by our state and territory offices. That was the principal form of engagement over the draft discussion paper. Now that we have harvested all the views from those consultations, as I said, that will be put in a report to the minister for his contemplation as to what the final make-up of the SGP will look like. So there is a contemplative process still to go through. The intention is that the government will call for submissions for funding in about October this year for the commencement of the new settlement grants program on 1 July 2006 for the 2006-07 financial year. There is still a body of work to be done to settle on the final make-up of the SGP. The minister will be releasing a final policy document that will reflect the outcome of the contemplation. But there will be no further face-to-face consultations from this point on.

Senator LUDWIG—Is there a time line for the release of that policy document?

Ms Samcewicz—Yes. We are expecting that paper to be available in August this year, so a couple of months prior to the commencement of the round.

Senator LUDWIG—Will that be sent out to the relevant community groups and put on the web site?

Ms Samcewicz—That is right. Through all of those avenues.

Senator LUDWIG—Where was the model reflected in the discussion paper from? Was that an in-house developed model for how the funding will be used and the types of services that will be reflected in the funding?

Mr Vardos—The paper itself was developed in house but the content was informed by the review process itself and the Refugee Resettlement Advisory Council as an external reference group. It was a representation of what emerged from those processes. But, as I said, the next iteration may vary subject to the minister's views on what emerged from the most recent consultations.

Senator LUDWIG—Is there a view about what an established community is?

Mr Vardos—Definitions in this area are quite difficult but, in general terms, established communities are generally regarded as those that came to Australia in the post World War II era up to, say, the sixties. There are arguments as to where you draw the line but I think the popular definition of an established community would be those, as I said, that came post World War II up to the sixties. You have different eras. There was the immediate post World War II arrivals. Then you had the seventies, which had a different wave of arrivals, then into the eighties and nineties and so forth. The direct answer to your question is that the established communities are generally those that came in large numbers post World War II up into the sixties.

Senator LUDWIG—Do you have an assessment mechanism to determine that or is that simply based on time lines?

Mr Vardos—There is no scientific formula. It is based on time lines—the length of time communities have been in Australia, the extent to which they have established their own infrastructure and fabric as a community and the extent to which they have engaged with the broader Australian community. The most stark example is perhaps the Greek and Italian

communities and the role they play in the larger Australian society today and, at the other end of the spectrum, the newly arrived refugees from Africa. That is the spectrum.

Senator LUDWIG—Is there a determination as to what point a smaller community no longer requires ethno specifically targeted assistance?

Mr Vardos—Again, this is a very difficult question to answer—

Senator LUDWIG—That is why I asked it, I suspect.

Mr Vardos—and there is no scientific way of addressing that. We do not subscribe to the view, for example, that migrants do not have settlement issues for their whole life. Yes, they do. Whether they arrived in 1948 or 2005, they will continue to have issues that are particular to the fact that they are migrants and their first language is not English. I guess the issue is whether DIMIA is the agency providing the services that they need or whether, going back to the earlier discussion, other agencies really need to pick up—for example, dealing with the ethnic aged issues the country faces at the moment. The ethnic aged have particular issues as a consequence of being migrants and their first language not being English. But it is not for DIMIA to deal with those issues.

Senator LUDWIG—So who should deal with them?

Mr Vardos—The agencies that deal with social policy in that area—whether it is Family and Community Services or Health and Ageing or, in other areas, Education or Employment. It is the whole range of service delivery agencies that deliver services to the full spectrum of Australian society.

Senator LUDWIG—So do I understand that your view is that you should defund those types of organisations that supply that which you have given an example of? What area should you then come back to?

Mr Vardos—The focus of settlement services, which has been articulated effectively since the review report was tabled, is permanent residents who arrived in the previous five years as humanitarian entrants or family stream migrants with low levels of English proficiency. That is the target group for DIMIA settlement services. That is not to say that other groups cannot put their hand up for services, but it is a question of priorities. Some communities would feature further down the priority list than the target group that I just articulated.

Senator LUDWIG—So where do target groups like the Spanish community or the Ukrainian or Croatian communities fit into this?

Mr Vardos—The expectation is that general services available to the entire Australian community should be servicing their needs as well. You could describe some Ukrainians as well-established communities that came post World War II. Spanish speaking communities could be either people from Spain or people from South America or Central American who have arrived more recently.

Senator LUDWIG—That is right. But it seems that you are going to defund the Spanish community.

Mr Vardos—It is a question of priorities. I have to come back to priorities: what is the highest need cohort within that very extensive client base that you could say is DIMIA's client

base, where is the need and where should the resources go? The government has identified the recently arrived as being its primary target for settlement services.

Senator LUDWIG—All right.

Ms Samcewicz—We are also saying that, while that is the primary focus group, it is not exclusive. We anticipate that there will be a small percentage of services provided to people outside of the target group. So we are not saying that you cannot assist anyone. But the major service types—case work, capacity building in communities—we would expect to focus on those groups that have arrived in the last five years.

Senator LUDWIG—In relation to the review of settlement services and the mental health status of the humanitarian cohort, it seems to be—at least it is my understanding from reading the report and the various longitudinal studies that have been done—that symptoms of psychological distress are more than three times as prevalent in the new immigration stream than in the general population. That seems to be what the statistics and the research on your web site and others suggest. What extra resources have you decided to steer towards or give to the numbers of persons with mental health issues that are immigrating as part of the migration program?

Mr Vardos—Our focus is on the refugee humanitarian program. In addition to the settlement grants program there is of course the integrated humanitarian settlement strategy, IHSS, which is specifically and exclusively targeted to the refugee and humanitarian program post arrival for the first six to 12 months. One of the elements of service provision under the IHSS is torture and trauma counselling and an early health assessment component as well. That is the mechanism by which we provide services for the sorts of issues you have just addressed.

Senator LUDWIG—What is the budgeted amount for that per annum?

Mr Vardos—I cannot disaggregate the torture and trauma and EHAI component from IHSS, but the program itself is in the order of, I think, \$40 million. The total IHSS program on an annual basis is about \$40 million to \$50 million. My colleague may have a more accurate figure. In fact it is buried somewhere in the extensive brief we have with us.

Senator LUDWIG—I am happy for you to take that on notice. I understand that there are a lot of figures and statistics around. What I was particularly interested in was in relation to those cohorts of immigrants who are both in the humanitarian stream and in other streams where the statistics do seem to indicate there is high need in terms of mental health issues. If you can provide a disaggregated amount of the types of services you provide and the funding that you direct and where it is targeted—

Mr Vardos—We will provide you with a disaggregation of the entire IHSS budget and focus specifically on the counselling and medical components.

Senator LUDWIG—That would be helpful. Thank you very much. The DIMIA web site, particularly Mr McGauran's web site, has a National Party web link on the bottom, so when you go into the web site you then have a National Party web link. If you click on it, it does not say, 'We're leaving the web page.' It simply goes straight to the National Party's web site. I know this is one of those issues where senators have an entitlement to have a web page and

they have links on their personal sites to their various party affiliations, but this is a ministerial site. It seems a bit novel to me to have a National Party web link on it. Who maintains that link? Is that maintained within the department?

Mr Farmer—You started off by talking about the DIMIA web site.

Senator LUDWIG—It is the DIMIA web site. You go in and have choices to click on Senator Vanstone or Mr McGauran.

Mr Farmer—I see. But the link is from Mr McGauran's page?

Senator LUDWIG—Yes. I just wanted to identify where the link was—you can go to media, to the good senator or to Mr McGauran.

Mr Farmer—We will get some advice for you on that.

Senator LUDWIG—I am happy for you to take this on notice. Who put it up? How is it maintained? Is it maintained by the department? Has the department turned its mind to whether it fits in with APS guidelines? The guidelines state:

... APS employees should not engage in party political activities such as distributing political material, nor should they use office facilities or resources to provide support of a party political nature such as producing political publications or conducting market research unrelated to program responsibilities.

That is the broad area of *APS Values and Code of Conduct in Practice* on page 21. Page 71 also says:

APS employees participating in political campaigns, or associated fund raising and canvassing must not use office facilities or equipment ...

If you click on the link, you then go to the National Party web site. I will not give you a general description of the National Party web site, but you can donate and it has the information and those sorts of issues that are associated with it. I am curious to find out whether it was an initiative by the department or whether the minister requested that link. What is the department's view about that as a consequence? Did they look at those issues and whether this accords with the ministerial code of conduct as well? I am happy for you to take that on notice.

Mr Farmer—We will get some advice on that.

Senator LUDWIG—Thank you. I turn now to citizenship in the short time I am allowed.

CHAIR—Yes, it is not long, Senator.

Senator LUDWIG—There is no negotiation?

CHAIR—None.

Senator LUDWIG—It seems I did my dash yesterday, Senator Vanstone.

Senator Vanstone—I am not going there.

Senator LUDWIG—There is a budget initiative of an additional \$1 million.

Mr Vardos—Yes. In the recent federal budget a further \$1 million was allocated to our existing budget for the national citizenship promotion campaign.

Senator LUDWIG—Are there programs already put in place as to how that will run?

Mr Vardos—I will ask my colleague Ms Ellis to respond to that.

Ms Ellis—There were already plans being developed to expend the \$1 million that was already in the budget. The additional \$1 million will enable us to have greater extent of television advertising than would otherwise have been the case.

Senator LUDWIG—Is it to provide advertisements? Is there a program where you are going to advertise changes to the legislation that are coming up? Is that what its main use is?

Ms Ellis—No. The funding will use what is described as ‘the creative’ that has been used in television advertising over the past several years. The tagline is, ‘There has never been a better time to become an Australian citizen.’ It is simply a matter of additional advertising time. Some tracking research that we had received indicated that lower levels of frequency across an extended period were much more effective than the occasional burst of advertising, and the additional funding will enable us to continue a similar level of intensity of advertising as we had in 2004.

Senator LUDWIG—Is it for print media, television media and radio media?

Ms Ellis—There is some print media, principally in magazines. The large part of it is for television advertising. Some may be spent on internet advertising. We are particularly trying to focus on developing strategies for UK- and NZ-born long-term residents. There may be some pay TV advertising in there as well.

Senator LUDWIG—Are the citizenship ceremonies and those types of programs that you have run in the past and, I suspect, will continue to run going to be funded out of your ordinary budget, or will they come out of this additional promotional material money as well?

Ms Ellis—It is much more likely that we will need to find that funding within the departmental allocation.

Senator LUDWIG—Are there any significant programs in terms of ceremonies and the like that have been scheduled for the next three to six months?

Ms Ellis—In terms of special ceremonies?

Senator LUDWIG—Yes.

Ms Ellis—We are looking at what special ceremonies might be held around Citizenship Day, which is in September. There are some special ceremonies that are also being looked at as part of marking World Refugee Day on 20 June. There are times when special ceremonies are developed at fairly short notice as a result of an opportunity that arises because of the nature or profile of a person who has applied to become a citizen. But at the moment our plans are focused on World Refugee Day and ceremonies that will feature around Citizenship Day in September.

Senator LUDWIG—I have a couple more questions on the settlement grants program. Has the consultative phase now finished?

Mr Vardos—The deadline is this Friday for written submissions to the exercise. The face-to-face consultations have finished, but we are still receiving written submissions and thus far we have got about 100.

Senator LUDWIG—The 100 submissions—

Mr Vardos—Written submissions.

Senator LUDWIG—are they going to be published or made available on the web?

Mr Vardos—I would need to refer that to the minister.

Senator LUDWIG—If you would not mind—I could ask for them, but it is a question of how you want to handle them and whether you would want to de-identify them. If we could put the request in more broadly from the committee, we would like those. It would depend on how they were given to you.

Mr Vardos—It would depend on whether or not the writers thought that they were submitting them on a confidential basis, but we will take that on notice and raise it with the minister.

Senator LUDWIG—If there are any that can be made available then that would be helpful. You might be able to check with the submitters themselves, depending on the nature of the submission and the time it might take. If you could take that on notice, that would be helpful.

Mr Vardos—We will.

Ms Samcewicz—If I could just add to that, a number of them, a high percentage of them, are pro forma submissions, so there is—

Senator LUDWIG—Yes, I suspect that is sometimes the case with these sorts of things. Is the face-to-face consultative process finalised now?

Mr Vardos—That is finalised now. That is the one I undertook. That was the last element of the face-to-face process.

Senator LUDWIG—Might there be a further round, depending on the outcome?

Mr Vardos—It is highly unlikely. There are no further face-to-face consultations factored into our timetable. The next process will be the minister's release of the final policy document, which will be informed by the written submissions and the face-to-face consultations that I conducted.

Senator LUDWIG—I see. And you have given me the date by which that is likely to occur, so that is helpful. Thank you.

CHAIR—We will take a five-minute break and then go back to outcome 1. Mr Vardos, can I thank you and your officers. I believe that means you can spend the rest of your day productively!

Mr Vardos—Thank you.

Proceedings suspended from 9.53 am to 10.01 am

Migration Agents Registration Authority

Senator BARTLETT—The figures in your report suggests a reasonably moderate increase in the overall number of registered agents. Does the authority have a view about an ultimate preferred level of the number of agents you would like? I presume you are not wanting to have more and more forever and ever, much as agents are wonderful things. Is

there any particular aim, or are you seeing where it goes and dealing with the applications as they come in? Is there any expectation, I suppose, that it will level off sometime soon?

Mr Holt—I do not believe we have a number that we could settle on. Certainly our preferred stance would be that there is an increased level of competence and an increased level of ability in the agent community regardless of what size that ends up being.

Senator BARTLETT—Obviously your main goal is to ensure that whoever is registered is competent at the job, but do you have any general expectation or predictions of where that might trend in the next few years? Or do you just take it as it comes?

Mr Holt—Certainly at the moment we are experiencing a slight downturn in the overall numbers of registered agents. The numbers are down by about 100 over this time last year. I suppose in the short term we would probably expect that that trend might continue, probably more so in response to the increased entry-level requirements of the profession. I would imagine, though, that at some point there would be a plateau. There is also the largely imponderable aspect of it in terms of what might happen with overseas agents, and as time goes by we will get a better grip on what that may mean to numbers. But at this point in time the numbers are decreasing slightly.

Senator BARTLETT—The issue of integrity measures is one that has been a focus of legislative change as well as of interest to the migration agents in general and the authority. Do you have any view of how the bedding down of the new integrity measures regime is playing out, particularly from the point of view of the authority and whether it is making the achievement of your overall goals and functions more feasible?

Mr Holt—I may ask the secretariat to respond. It is an operational type question.

Ms Moser—In response to the question regarding the integrity measures bill: at this point in time we have had no referrals from the department of immigration or the minister regarding vexatious activity of migration agents or former registered migration agents. There was the capacity to refer from January, so at this point of time it is untested from our perspective. However, we have allocated resources to ensuring that we have processes in place to handle any referrals that we do receive.

Senator BARTLETT—So is the lack of referrals to date an indication of the low level of problematic vexatious activity? Is everybody doing the right thing?

Mr Holt—We cannot say at this stage. Certainly there has been no referral at this point.

Senator BARTLETT—That is basically driven, or initiated, by the department.

Mr Holt—Yes.

Senator BARTLETT—You just do tasks if you are given them.

Mr Holt—Yes.

Senator BARTLETT—One of your tasks as an authority is to monitor the adequacy of the code of conduct for agents. Do you think it is adequate?

Mr Holt—The code is under continual review. The MARA makes recommendations and submissions to the minister where we believe that there are elements of it that need to be

tightened up or where, with the passing of time, perhaps some elements of it have become redundant. But certainly it is an area that we spent quite a bit of time looking at.

Senator BARTLETT—So have you made recent submissions about that to the minister or are there areas where you are hoping to see action happening or you have concerns about lack of action?

Mr Holt—Yes. In fact we will be making a number of recommendations to the minister by the end of this month.

Senator BARTLETT—Can you give me some sort of indication of what aspects you are focusing on? I am not necessarily requiring you to publish it in full if you do not want to.

Mr Holt—Certainly. Largely they are areas where there is some ambiguity and we wanted to make certain that there was a lot more clarity. What I would need to do, though, is take that on notice and provide that advice.

Senator BARTLETT—Thank you for that. I note that, unlike some codes of conduct, it is legally binding, according to your annual report. What actually happens if people are found to have breached it? What are the range of things that could happen?

Mr Holt—I will ask Venie to respond.

Ms Moser—The range of actions with regard to when a breach is found against an agent varies depending on the gravity of the breach and the number of breaches. So they can vary from no further action being taken on the matter, with a warning letter being sent to the agent, up to the extent of a sanction of cancellation of the agent's registration. In between those types of activities are a caution of the agent and a suspension—and cautions and suspensions can have conditions attached to them. Also, if a former agent is found to have breached the code of conduct whilst they were a registered agent, we can actually bar the agent for a period of up to five years from applying for registration.

Senator BARTLETT—In your annual report you say that 36 repeat registrations and 12 initial registrations of agents were refused by the authority. It is you guys that make that decision to refuse people, I presume.

Ms Moser—That is correct.

Senator BARTLETT—Without going into personal details, can you give me an indication of what sorts of reasons might have been behind some of those refusals?

Ms Moser—The reasons vary, obviously. Some are for breaches of the code of conduct. We refuse registrations on that basis. Those are where the agent fails to respond to our assertions to them regarding various matters and failure to meet CPD, continuing professional development, requirements. Failure to meet the integrity and fit and proper person requirements are reasons for refusal as well.

Senator BARTLETT—You mention in your annual report that just under 25 per cent of the registered agents have a practising certificate. Can you clarify for me the distinction between having a practising certificate as opposed to just being a registered agent?

Ms Moser—The difference is that a practising certificate is a qualification for repeat registrations. In initial registration there is a difference in how the individual applies for

registration in terms of what requirements they need to meet. The alternatives are to have passed the prescribed examination and prescribed course or to have a practising certificate as a solicitor in Australia.

Senator BARTLETT—You mention in your report in relation to different types of practices some issues where some agents do not understand the structure of the business and cannot report it to the authority appropriately. How does that issue potentially impair your overall tasks?

Mr Holt—We have sought to address that issue insofar as putting in place a regime whereby all agents are required to perform a mandatory continuing professional development activity relating to business management. That will bring in elements of the accounting side, the business side—the usual regulatory requirements that are required to be met by somebody in practice as an agent.

Senator BARTLETT—I am trying to get a sense of why that is specifically important. It does not necessarily go to people's competence as agents and the advice they provide.

Mr Holt—It is not so much an issue of their integrity; it is more an issue that from time to time we see, as a consequence perhaps of the complaint process, that somebody has an obvious weakness in the business management aspects of their day-to-day existence as an agent. We took the view that there was a requirement for us to ensure wherever possible that we put in place systems for those things to be identified. The simple mechanism was for us to determine that it was a mandatory requirement for all registered agents rather than one that we just picked up on an ad hoc basis. We believe that there are significant aspects of this that are attributable to any agent's activity. We believe that an agent undertaking a continuing professional development activity in business management will learn from it.

Senator BARTLETT—There has been talk for a while about requiring all agents to have some form of insurance—I think it was indemnity insurance or something. What is the situation with that now? Is that still an idea that is being pursued or is that definitely going to happen?

Ms Moser—Yes, professional indemnity insurance as far as we are aware is on the cards to be in the next round of regulations for migration agents and be mandatory on 1 July.

Senator BARTLETT—So you are expecting it to come in from 1 July?

Ms Moser—Yes. It will be a requirement as part of the repeat registration application process and initial registration application process that you must indicate that you have complied with that requirement.

Mr Holt—It is perhaps appropriate to remind senators that we have always been of the view that professional indemnity insurance should be in place, and we support that.

Senator BARTLETT—One of the functions of the authority is to refer any complaints about lawyers relating to the provision of immigration legal assistance. Can you give me an indication of whether you have needed to do that in the last year or so, on how many occasions that has happened and what the outcome has been?

Ms Moser—There are very few that we do refer in terms of immigration legal assistance. It does occur on occasion. We also refer matters where there is immigration assistance

involved but where it may be more appropriate for the body regulating solicitors in that state to handle the matter because it can be resolved more effectively for the consumer. In terms of numbers, we referred 11 complaints in the last financial year. I do not have the statistics for this financial year to date at this point.

Senator BARTLETT—Can I get a sense of your overall funding situation? I know it is a bit of an unusual arrangement that the authority is in. All of your funding comes from registration fees and renewals for migration agents. Is the authority comfortable that the level of fee is able to adequately fund the reasonably wide ranging tasks that you have? I am trying to get a sense of whether you need to maintain a certain level of agents just to maintain your viability.

Ms Moser—We are expecting that there will be an increase in the repeat registration application fee on 1 July because we have a number of activities as a result of that 2001 review that we want to implement and, in order to fund those activities, we require increased funding. So we are doing it through that process.

Senator BARTLETT—An increase beyond just the CPI adjustment?

Ms Moser—That is correct.

Senator BARTLETT—Is that going to be for non-commercial agents as well?

Ms Moser—No, the fee for the non-commercial sector will remain at the same level and the fee for initial applicants, both commercial and not-for-profit, is also remaining at the existing level. It is only the repeat registration application fee for commercial agents that is planned to be increased.

Senator BARTLETT—Can I get an indication of the extent of regular consultation you have with the department, given that you are technically separate from the department but obviously play a critical legislative role. To some extent you are guided by departmental priorities. Is there a set level of regular consultations in place with departmental officials?

Mr Holt—At varying levels, Senator. At secretariat level, I would think it would be daily, if not hourly. In terms of the board, quite regularly—certainly whenever the board meets we are in contact with the department. On quite regular occasions an officer or two from the department come down to talk to members of the board or are linked in by phone. Certainly there is quite regular discussion going backwards and forwards between the secretariat and members of the board in relation to the outcomes and requirements of the deed, in terms of our reporting et cetera. So the contact is quite regular.

Senator BARTLETT—Beyond the day-to-day and regular discussions about specific things that occur, are there more formal consultation procedures in place for the broader, going forward type of focus that bodies like yours would have?

Mr Holt—Separate to those that I have explained in terms of the secretariat, the board and those relating to the workings of the deed, the professional association—the Migration Institute of Australia—has regular meetings with the department operationally and in relation to some crossover aspects of the deed. Those are conducted on a quite regular basis as well, formally in Canberra and informally over the phone.

Senator BARTLETT—I appreciate that the role of the migration institute is somewhat separate, but I am just curious about a mention in the annual report by the former chairman. It gives a figure indicating that around 35 per cent, on very rough maths, of agents are members of the MIA. Is there any general indicator I could take from that, such as the higher the percentage of agents that are part of the MIA the better the MARA is able to do its job? Or is it a totally separate issue?

Ms Chao—From the profession's point of view, it would be beneficial for registered migration agents to become members of the professional body. It would complement the MARA's goal of increasing professionalism, competency and the like. Ultimately, it would marry up with the voluntary self-regulation aim of the organisation.

Senator BARTLETT—Could I ask one question of the minister while we are on this area. My understanding is that, before the last election, Mr Hardgrave was the other portfolio minister—I know you do not like the term 'junior minister'—and that you now cover this area rather than Mr McGauran; is that right?

Senator Vanstone—Yes, that is right.

Senator BARTLETT—Could I ask you a general question, in that case, about your satisfaction or otherwise with how this area of activity is going with the development of oversight of migration agents and the like?

Senator Vanstone—I think that there is no area of activity of any department that cannot be improved. Once you approach it on the basis that everything is hunky-dory, you may as well go and get another job. Everything can be improved. I have noticed some cases where I look and think, 'That took a long time for that decision to come,' but I am also acutely aware of intervening factors that can happen that delay information becoming available. I am anxious with respect to a couple of matters, but I do not think that they relate primarily to the tribunal's work.

As to MARA, I think we have made some improvements there. We have got prosecutions under way. I think that sends a clear message. I think that the changes we have made have sent a very clear message, and that needs to be sent. Some of the agents do a tremendous job. I understand they are partly advocates as well but they are entitled to have that as well as their professional job. Some of them do not, in my own view. They cruel their nest by putting up the same old arguments in relation to a wide range of people that clearly have different circumstances, and that is not evident from the material that comes forward. I think you can look at the success rate of the department across the board in this litigation in terms of interventions and see that some people, through a range of professionals, get bad advice. That means that their hopes and aspirations are unfairly lifted.

Senator BARTLETT—I accept the obvious case that there is always room for improvement and the need to strive so. I am just trying to get a sense of whether you are broadly happy with the general direction of how the MARA is performing and the work that it is doing.

Senator VANSTONE—I am happy with the changes that we have made. We have not fully seen the fruit of them yet, but I think you have to give time to see that and I am pleased we made them. I think things are looking better. But I do not say that if anyone has got a

bright idea we would not look at it, because we would. The migration agents' work very directly affects a lot of people. They charge a fee—these people have not all got a lot of money—and my personal view is that they are obliged, as frankly a lawyer or an accountant or anyone else is, to do a very professional job.

If, for example, they have a bulk practice, you cannot honestly say that each case is given the individual attention it should be given, and I do not have a lot of time for them. I think the more the agents can build a professional reputation by doing a good job and really caring about their individual clients and are not in it just for a business, the better. They have to make money. They are not the Salvation Army. I accept that. It is an occupation. But so is being a lawyer and a brain surgeon. There is nothing wrong with wanting to make a living, but they should make a living in a way that brings credit to them and does good service to the people they advise.

Senator KIRK—I have some questions in relation to the examinations that MARA conducts of students. Is there a minimum number of candidates who enrol in or who are eligible for the examination in a particular city before the examination will be held?

Ms Moser—Yes, there are minimum numbers.

Senator KIRK—How do you work that out? Is there a specified number for each city or is it the same across the board?

Ms Moser—There are specified numbers for each of the capital cities. They are actually specified by ACER, the Australian Council for Educational Research, who conduct the examinations on our behalf.

Senator KIRK—Could you provide the committee—perhaps you need to take this on notice—with the specified number in each capital city for us?

Ms Moser—Yes. We will take that on notice.

Senator KIRK—You also may need to take this on notice. How many participants or candidates sat the examinations last year, in 2004, and also this year?

Ms Moser—I will have to take that on notice too, to give you an exact number.

Senator KIRK—How many have passed the examination and how many have failed?

Ms Moser—I will take that on notice as well.

Senator KIRK—Is it common for a paper that has been failed to be re-marked?

Ms Moser—I am sorry; I had a voice going in my ear. Are you able to repeat the question for me?

Senator KIRK—Is it common for a student who has failed the examination to ask for a re-mark and is there a procedure in place for the re-marking of papers?

Ms Moser—It is not common; however, it does occur on a regular basis. There is a procedure in place, which ACER manages, for the re-mark process. We can give you a copy of the procedure if you would like a copy.

Senator KIRK—That would be helpful. I understand that the precise detail is something that you need to take on notice, but what percentage of students would pass or fail the examinations?

Ms Moser—Approximately 30 per cent pass the examination.

Senator KIRK—Only 30 per cent?

Ms Moser—It is a very small percentage.

Senator KIRK—It is indeed. Is that fairly consistent across all of the states?

Ms Moser—Yes.

Senator KIRK—I notice that migration agents who intend to sit the exam are expected to have knowledge of the law, but it is specified that it is the law as of six months before the exam rather than at the time of the exam. Can you explain that to me? That seems extremely odd to me. Normally, students who are sitting law exams need to know the up-to-date law, not the law six months ago.

Ms Moser—It was a procedure put in place when the examination was first put together, to ensure that the questions were accurate at the time of the generation of the instrument—that it allowed the course providers to educate their students to a particular point in time and give them sufficient time to prepare for the exam. It is our view that we should reduce that time frame, down from six months, and we are working hard to achieve that outcome, given the feedback that we have received from the course providers saying that they can actually reduce it and from students saying that it would be better if it were a shorter time frame, as well as feedback from the Senate.

Senator KIRK—So what is the obstacle there? What is it that causes the course providers to feel obliged to provide questions or even material that is potentially six months old? In university courses there is not that problem; the course is up to date, the law is up to date and the students are expected to know the law at that point in time. Is this a cost issue or a resources issue—what is the rationale behind this?

Ms Moser—With regard to the examination and the course providers, it is our understanding that the complexity of immigration law and the pace of change with regard to legislation under the immigration portfolio mean that the course providers need to be able to set their materials for the examination at a particular point in time. Our initial indication was that six months was what was desired. We are looking at pulling it down to around three or four months, which gives the providers sufficient time to start their courses and start educating students about what is happening. It is difficult to know, because I am not a course provider, but from my perspective what they might be thinking is that, if they have completed one topic in the first month of the course and they get down to the fifth month and the legislation changes, they would then have to go back to that topic and reteach the elements that have altered, which interferes with their teaching program. That would be my guess as to what might be going on.

Senator KIRK—But you can also see, I would have thought, that if the nature of this area of law is that it is changing rapidly then there is an argument that it must be up to date, in the sense that if these students sit the exam and pass the exam and then go out on day one to

begin practice of the law they could potentially give clients the wrong advice. If it is this type of area, which it appears that it is, then the arguments are even stronger for ensuring that the students are up to date. I notice that on your web site and in your annual report you list SCALEplus as a source for immigration acts and regulations.

Ms Moser—Yes.

Senator KIRK—Are you aware of the fact that SCALEplus is no longer being updated?

Ms Moser—Yes, I am aware that it has altered. That particular section of the web site does need to be updated.

Senator KIRK—If students are going to be kept up to date with the law, it would certainly assist if they had access to the most up-to-date databases, one would have thought.

Ms Moser—One thing I might say in response is that it is important for the providers as part of their teaching—and I know they do this as they communicate it to us—to teach students how to locate legislation, how to read legislation and how to look for updates so that they can actually do those crossover tasks which are extremely important in giving immigration assistance.

Senator KIRK—You mentioned earlier that there have been some moves afoot or some suggestion that the six-month delay, if I can call it that, may be reduced to three months or even less with a bit of luck. How is that going to come about? Is there an agreement that you have with the course provider that is reviewed every year or six months? Can you explain for us how it is that that takes place and how you come to an agreement with the course provider on matters such as this?

Ms Moser—We have two mechanisms that we have to go through in terms of changing the time frame on the legislation that is used as the basis for the examination. One of those is negotiation with ACER to ensure that they are willing and able to change the time period. The other negotiation is with the education providers that are delivering the preparatory courses for students. The negotiations with ACER are ongoing. We negotiate with them all the time. We are talking to them all the time with the course providers. There is a consultation mechanism where we have general updates that are sent to them on a regular basis regarding the MAPKE. In those processes, we consult with them as to what the ideal time frames would be for them and then we get feedback and then negotiate with ACER on that basis.

Senator KIRK—Is it your intention at the next round of negotiations to suggest that this time delay be reduced to three months or less?

Ms Moser—We are already in the process of discussing that time frame with them.

Senator KIRK—Perhaps you can explain to us the rationale behind the structure of the exam. As I understand it, it is a series of multiple choice questions rather than setting out scenarios where the candidate may have to look at a fact situation and make a determination as to what advice he or she would give to a client in those circumstances. Why on earth would you have a multiple choice type structure? Could you explain that for us?

Ms Moser—The decision to go down the path of choosing a multiple choice style examination as opposed to an extended-response type examination was based on a number of factors. We consulted with educationalists on the merits of the different approaches. We also

obviously considered the cost implications of going down the path of multiple choice versus extended response versus a combination.

Senator KIRK—In other words, it is much cheaper to do multiple choice because it is a lot easier to mark.

Ms Moser—That is one of the considerations, yes. There is less contention in terms of the responses as well. There are arguments obviously against using multiple choice questions in this environment. The examination is structured around a concept of balancing speed and power in terms of testing individuals' knowledge.

Senator KIRK—What happens if a student has made his or her own inquiries and actually got their knowledge of the law up to date and then answers a multiple choice question in accordance with the current law as opposed to what it was six months ago? Do they fail that answer?

Ms Moser—If the correct answer is there for the new legislation, it is difficult to know because the correct answer might not be there.

Senator KIRK—There might be two correct answers.

Ms Moser—Yes, there may be two correct answers.

Senator KIRK—Extraordinary.

Ms Moser—One thing I might add to the questioning around the examination is that the examination is viewed as part of a staged process in moving towards other factors which will actually be a more inclusive approach to ensuring that an individual when they enter the profession has all the requisite skills and knowledge in order to better advise clients.

Senator KIRK—Only 30 per cent get through, and I take it that if you do not get through the exam you do not go to the next stage. Is that right?

Ms Moser—Maybe I did not explain the stage process too well. The exam itself is one element. The other elements are not in place at this point in time. So it is one stage in the development of a more rounded approach to the testing of knowledge and skill.

Senator KIRK—Is it possible for you to provide the committee with a copy of the most recent exam?

Mr Mawson—We have concerns about releasing copies of a previous exam because of the cost of developing the questions. If they go into the public arena, we basically are left with a huge bill to rewrite a number of questions. The questions are reused and psychometrically balanced throughout the exam. If the Senate required us to give that information over, we would. However, that would be a significant cost to the authority.

Senator KIRK—Why is that?

Mr Mawson—We would have to throw out all the questions and start again.

Senator KIRK—But wouldn't you have to do that quite regularly anyway, given that the law is changing so fast?

Mr Mawson—The question pool does change on a regular basis. It is reviewed and checked. But not all the questions in the pool are used in each exam. There are also a number

of other elements to the construction of the exam which we would like to retain to maintain the integrity of the exam. Certainly we could hand over the questions, but that then means we have to go into a major development phase to replace those questions and that is a significant cost to the authority. So we are quite happy to do it but there is a cost.

Senator KIRK—Do students have their exams returned to them?

Mr Mawson—No, the examination result is a single page which is called an OCM sheet, which is simply a series of pencil marks. No, they are not handed back that information. We actually take significant steps to ensure that the integrity of the exam is maintained. We have quite tight security processes around the person sitting the exam. We have quite tight processes around the generation of the questions and the way the questions are handled within our organisation. We have quite tight security around preventing students taking questions away from the exam. We also do not allow them to get their examination sheets back.

Senator KIRK—So how do students know whether or not they might be entitled to a re-mark? Unless you see your paper and look at it and see that you get a cross alongside a question that you thought you answered correctly, especially when it is multiple choice and you know the current law and you are working on a six months ago law—as we said, there could be two possible right answers—how does a student make an assessment as to whether or not they are entitled to a re-mark in that multiple-choice situation?

Mr Mawson—Normally what happens is that when they receive their results the students look at their results and, if their results are such that they are close to the line—the passing schema is a two-stage passing schema—the student would then ask for the examination to be re-marked at that point in time. Normally students look at whether they have made it across the line. That is their determining factor.

Senator KIRK—Is there an entitlement to an automatic re-mark?

Mr Mawson—There is not an automatic re-mark. The student requests the re-mark.

Senator KIRK—That is what I mean. If a student got only 10 per cent on the exam, for example, can they come to the examiners and say, ‘I wish to have my paper re-marked’?

Mr Mawson—They may have their paper re-marked regardless. Even if they pass the exam, they can actually ask for a re-mark.

Senator KIRK—What sort of percentage of students ask for a re-mark?

Mr Mawson—I am sorry; we do not have that information available. We could certainly get that to you.

Senator KIRK—Approximately?

Mr Mawson—Just as an indicator, in response to some of your earlier questions as well: the current run rate on the exam is approximately 600 people a year going through the examination. Of those, we have had approximately 10 people per exam request a re-mark. So it would be a total of 30 people, approximately. We would need to go and—

Senator KIRK—Approximately 30 asked for a re-mark?

Mr Mawson—Thirty over a 12-month period. But again we would have to go and get that specific information for you. We are just going purely on memory at this point in time.

Senator KIRK—I also have some questions in relation to your TV advertisements. I understand that there have been TV advertisements warning clients about the dangers of, can we say, ‘dodgy’ migration agents. Could you inform the committee why the advertising campaign was launched.

Ms Moser—One of the recommendations of the 2001 review was that we increase public awareness of our functions and what we do. With the last fee increase that was implemented, part of that explanatory memorandum indicated that we needed to spend \$120,000 on consumer awareness advertising. When that fee increase was implemented on 1 July 2003, we commenced the allocation of spending to advertising campaigns such as the ones on SBS.

Senator KIRK—So did the 2001 review suggest that perhaps there might be some uncertainty in the community or some lack of knowledge in this area that then led to the recommendation that there should be a public awareness campaign?

Ms Moser—I believe that the indicator was that we needed to be more proactive than we were. I suppose the campaign is more around that someone should use a registered migration agent and not use someone that is unregistered and not licensed to give immigration assistance.

Senator KIRK—What is the cost of the advertising campaign? Is it the \$120,000 that you mentioned?

Ms Moser—That is correct.

Senator KIRK—How long has it been running for and what is its intended time frame?

Ms Moser—It is an ongoing program. It commenced on 1 July 2003 with the expenditure on the campaign. It continues.

Senator KIRK—So the full \$120,000 has been spent?

Ms Moser—Every year we spend that amount of money.

Senator KIRK—I have to say I have not actually seen one of these advertisements, so I am wondering on which stations they are being shown and at what times.

Ms Moser—The TV advertisements are on SBS. They are shown in a number of foreign languages. I believe they are in nine languages. They are during the news programs. We also expend money on newspaper advertising in foreign language publications, where consumers are seen to be the ones that are most needing the awareness of using a registered migration agent.

Senator KIRK—Could you provide us with a copy of the newspaper advertisement? You might need to take it on notice.

Ms Moser—Yes, certainly.

Senator KIRK—Who was the advertising company that was employed to do this?

Mr Mawson—We do not know that immediately off the top of our heads, but that information was provided in a question on notice in the last few days, I believe.

CHAIR—Yes. I think that has been answered.

Senator KIRK—Avviso, I believe it was.

Mr Mawson—Yes, that is right. Avviso are the key organisation who have assisted us with most of that work.

Senator KIRK—What I was interested in was whether or not there was a tender process.

Mr Mawson—No, Senator, there was not. Much of the work was looked at from within our own staff resources and, because we are focusing on trying to maximise the return on the spend that we have, with such a small budget—\$120,000 is not very much, unfortunately—we went out and discussed it with Avviso. They were able to organise getting us some government footage to include in the advertisement. We took an approach, from our experience, of targeting those people we perceived as being the most vulnerable in the whole scheme. The advertisements on SBS are not in English. It was intended to maximise the amount of return we could get from the dollars spent, so we did not go out to a tender process because a tender process, for an organisation of our size, is quite an expensive exercise.

Ms Moser—The advertisements are actually on our web site, so you can view the TV ones there.

CHAIR—That concludes questions for MARA. I apologise that we were unable to reach consideration of your estimates at the appointed time last night, and we do understand that you had to reorganise your schedules. We are grateful that you were able to do that. Thank you for your assistance today.

[10.51 am]

Migration Review Tribunal

Refugee Review Tribunal

CHAIR—Welcome, Mr Karas. I apologise that we were unable to reach consideration of your estimates at the scheduled time last night. We appreciate your presence here this morning and your assistance to the committee.

Senator KIRK—In the estimates hearings in February we were told about a plan to amalgamate the operations between MRT and RRT—in particular, a joint case management system to be developed by Volante. How far down the track are you with the case management system?

Mr Lynch—We have made quite considerable progress, I am pleased to advise, with the development of the joint case management system. It is being undertaken by a company named Volante. At the moment they are conducting workshops with staff and members of both tribunals in order to develop the new case management system for the tribunals. The joint management board of the tribunals approved their hiring for the development of the full program of the case management system. The proof of concept stage was in embryonic form when we last spoke to you, and it has now developed apace. We are hopeful that a realistic time frame for its introduction is at the latest early next year, but quite possibly in the latter months of this year.

Senator KIRK—So the proof of concept phase has been completed?

Mr Lynch—Yes, very satisfactorily.

Senator KIRK—On what date was that completed?

Mr Jones—It was completed on 17 March.

Senator KIRK—In relation to the tender by Volante, have they provided any reviews or reports on their work so far?

Mr Lynch—The tender committee did examine their track record quite closely. The board was convinced that, with their proof of concept phase, they had the necessary skills. We spoke the last time about developing a relationship of confidence with them and in the time that we have had with them they have established sufficient awareness of our business needs and, through their IT acumen, they have convinced us that they have the product for the tribunals. Through the tender committee, we did look closely at their antecedents. They are a well-established company, and I believe the IT skills of the committee were sufficient to guarantee us the best client for this program at the end of the day. As I said, they are progressing very satisfactorily. The board has been briefed on their system. Everybody from senior members to junior staff has had a role in the development and that is unfolding as we speak. As I said, the workshopping is continuing as we go.

Senator KIRK—So they have not provided anything in writing?

Mr Lynch—I will pass this question to the deputy registrar, who is more familiar with the tender committee process on that.

Mr Jones—I am not sure exactly what you mean. There has been lots of paperwork as part of the process—

Senator KIRK—But no sort of interim report of progress or such.

Mr Jones—There was an agreed set of documents that was prepared for the board at the end of the proof of concept phase. We have talked about the deliverables, the progress and the achievements during the proof of concept phase.

Senator KIRK—Can you give us an update as to the extent, if this has occurred, to which this system is going to be integrated with the DIMIA databases?

Mr Lynch—We are exploring that at the moment. We have had discussions, which we have initiated in the last few weeks, with DIMIA IT people as well as their program areas and we propose to continue a meeting program in the next few weeks to more closely identify their data needs and ours as well. Each agency has statutory obligations to share information, and we are looking to embed that in a system that is going to provide instant access to that information for both tribunals and for the department.

Senator KIRK—With regard to the tender with Volante, are payments being made progressively to them for the work being done there? If so, how much has been paid out to date?

Mr Lynch—The total cost for this next phase is about \$300,000, if I am not mistaken. I may need to take on notice the actual scheduling of those payments and what invoicing arrangements have taken place to date.

Senator KIRK—If you could. How much has been paid out to date, or are you unaware of the total?

Mr Lynch—We need to take that on notice.

Senator KIRK—Do you have a quote for the cost of the entire joint case management system?

Mr Lynch—We anticipated that the original pricing would be anywhere between \$3 million and \$5 million. With the staged development, it is going to come at a considerably smaller amount than that. It is a case management system that will allow for further development, so the initial phase is going to be a \$300,000 amount, but we have made provision for a larger sum. I will ask the deputy registrar if he can give a clearer picture on the outlying months ahead.

Mr Jones—With regard to the overall expected cost, at the moment we are making provision for \$2.2 million of capital expenditure in the portfolio budget statements, which is tied up in both hardware and software development costs.

Senator KIRK—That is quite a lot less, then, than the \$3 million to \$5 million you originally budgeted for.

Mr Lynch—That is right. We think that by not plumbing for one of the high-cost tenderers at the outset we have made very considerable savings. We have engaged in the development of the system in a far bigger way than would have been possible if we had gone with one of the other tenderers.

Senator KIRK—When we were here last time you told us that there was a plan to move the two tribunals into the one premises, the co-location in Clarence Street. Has that occurred?

Mr Lynch—It has indeed.

Senator KIRK—When did that take place?

Mr Lynch—We are very happily ensconced in the new premises. That happened the weekend at the end of April and we were ready for business by midday on Monday, 2 May. It was a very successful relocation and we are very pleased with the effort our construction and design people put into the program of relocation. All staff and members played a hand in one form or another. We were successfully put into four floors at 83 Clarence Street, Sydney. We reduced our space requirement down to 4,300 square metres from an anticipated 5,100 square metres. We were under budget for the total fit-out costs.

Senator KIRK—What is the cost of the lease?

Mr Lynch—It is a 10-year lease with a five-year renewal. The total cost is \$1,200 per square metre with 4,300 square metres. That has brought in for us an effective annual saving of \$736,387. We have a rent-free amount of \$1.176 million arising out of the reduced cost of the fit-out. We had anticipated the fit-out would cost us up to \$5.1 million and it came in at \$4.03 million.

Senator KIRK—I will have to come and visit sometime. Finally, what is the status of the staff structure negotiations?

Mr Lynch—We have been very pleased with the results. In Sydney, we have a new single-registry structure for both tribunals. As you might expect, in bedding down new work practices, there is a lot of cross-training and cross skilling of staff and a lot to learn. So, the next few months are going to be a period of rapid learning, calming nerves and attempting to

ensure that the business of the tribunals is delivered as seamlessly as possible. That has been a success story in Sydney. I believe Melbourne's single-registry structure, which we settled in August last year, is equally as successful. So staff are well-placed in new structures now.

I have been reminded that we had a very favourable comment from the community groups we met with recently in Melbourne. The liaison committee response from the industry was very favourable for that registry's performance over the last nine months, since it was married into a single structure. Equally, in Sydney, with that work practice change of bringing the two tribunals' staff together, we are on a program of downsizing. You will see from our budgets and our operational activity that we are in a process of reducing down our staff size, which reflects the reduction in case load and the reduction in member numbers overall. We are positioning ourselves for a reduction in the MRT's compactus over the next 12 to 18 months to a degree which is similar to the RRT compactus holdings at the moment.

Senator KIRK—So are staff going to be lost as a consequence of this downsizing?

Mr Lynch—Yes. We have had discussions with the staff and two unions—the CPSU and the POAV. We are, I think, at a stage where there is a high level of understanding that staff have to leave in sufficient numbers to meet the case load requirements and the member service requirements.

Senator KIRK—Are there going to be voluntary losses?

Mr Lynch—This is natural attrition in the main. We are hoping that natural attrition will reduce our staff over the next six to 12 months to meet our funding agreement requirements with the Department of Finance and Administration.

Senator KIRK—And if not there will have to be dismissals?

Mr Lynch—Very reluctantly as a last resort we have advised the staff and the union that we will be making declarations of excess officers. But we anticipate, with positive encouragement for transfer, as all staff are employees of the secretary of DIMIA, that, if there are opportunities within DIMIA, they will take them. We are actually supporting that at my level as well to encourage transfer.

Senator KIRK—How many people?

Mr Lynch—We are also strongly supporting promotions to other agencies as well. We have a very good professional development program which is lifting the skills and increasing career opportunities for particular staff who may wish to leave.

Senator KIRK—So how many will have to leave?

Mr Lynch—We have not given a precise figure across the tribunal. We think possibly up to 25 per cent over the next two to three years of our certified agreement, which we are actually negotiating right now. There will be a reduction across both tribunals of that order.

Senator KIRK—What is the total staff of both tribunals?

Mr Lynch—We have a total staff at the moment of 316. There are 145 on the MRT and 171 on the RRT. We anticipate seeing reductions across both tribunals. We are in a very considerable work practice change. Workplace reform is high. It has been the case for the last two years. In particular, in the MRT we have just introduced—from 1 July—a new way of

doing business for staff and members of the MRT. We will see that the taxpayer will actually win quite handsomely through some careful adjustment to, in particular, member work practices.

Senator KIRK—Thank you.

CHAIR—Senator Bartlett, do you have any further questions in that area?

Senator BARTLETT—Are there any updated figures you can provide on both tribunals on the number of cases at hand? You probably recall the questions I asked a few times before about refusal rates. Have there been any significant trend changes? On notice, can you provide updated figures of the various tables that are in the annual reports.

Mr Karas—I can start with the Migration Review Tribunal first, Senator.

Senator BARTLETT—Sure.

Mr Karas—From 1 July 2004 to 20 May 2005 there were 7,021 cases lodged with the Migration Review Tribunal, which is down about 123 or 1.7 per cent for the same period last year. Of the 7,113 cases that have been finalised, 3,318 or 46.6 per cent were set aside. Of the cases finalised, 2,793 were affirmed, which is a little over 39 per cent; 546 were withdrawn; and 456 were otherwise finalised. We still have 5,074 cases on hand, which is down some 857 or almost 14.5 per cent for the same period last year. Would you like me to go on to the RRT?

Senator BARTLETT—Yes, thank you.

Mr Karas—For the same period on the Refugee Review Tribunal, from 1 July 2004 to 20 May 2005, there were 2,567 cases lodged, which is down 421 or a little over 14 per cent for the same period last year. There have been 2,634 cases finalised, of which 843 or about 32 per cent were set aside; 1,683 were affirmed, which is almost 64 per cent; 63 were withdrawn; and 45 were otherwise finalised. As at 20 May, there were 1,178 cases on hand, which again is down some 100 for the same period for the number of cases on hand for the last year.

Senator BARTLETT—The set aside percentage you put there is 32 per cent, I think you said.

Mr Karas—Set aside on the Refugee Review Tribunal, yes.

Senator BARTLETT—That is since 1 July.

Mr Karas—Since 1 July 2004 to 20 May 2005.

Senator BARTLETT—That is a fairly large leap on averages over the last few years. Is there any particular reason for that?

Mr Karas—There would have been a percentage of further protection visa cases, but I will hand over to Mr Blount, Deputy Principal Member of the RRT, to explain it in more detail.

Mr Blount—It is largely not so much changes within any particular case load but the proportions of particular case loads with high set aside rates within the overall number of cases. Increasingly over the last 12 months or so, as the number of further protection visa cases from Afghanistan and Iraq, in particular, has been significant within a lower case load, the impacts of higher set aside rates in those areas have affected more generally. There is also the factor that more complex and problematic cases generally, which tend to have higher set

aside rates because there are more problematic issues about which people can differ, have become a more significant proportion of the overall case load. I think we discussed on the last occasion the extent to which the proportion of the, if you like, patently unmeritorious cases had fallen, and that continues to be the case. That has a significant impact on set aside rates. So it is the changing composition of the case load rather than any significant shifts for any particular country.

Senator BARTLETT—Changing composition of the case load—you mean the factors about fewer blatantly unmeritorious cases.

Mr Blount—Yes, there is a higher proportion of particular countries that have had higher set aside rates. In relation to the unmeritorious cases, from a country like China, for example, we get quite a spread of cases from the more complex and problematic, but it has always been a country for which there has been a significant component of patently unmeritorious cases that come in with exactly the same two-paragraph typed statements of their personal experiences and so on. It is that latter element which has dropped off very significantly as a result, I think, of a range of things, including the very much shortened time lines both in the department and with the tribunal for those kinds of cases over the last couple of years. No doubt the broader measures that have been taken to monitor agents and to discourage unmeritorious cases by quicker process through the courts and so on have had some impact as well.

Senator BARTLETT—Whilst I hear what you said about it not necessarily being related to one or two countries, I note in the annual report through to end of 2004 that there was almost 90 per cent set aside rates for Afghanistan and for all the other countries there was none else above 15 per cent. Even though there are fluctuations from year to year, for the three preceding years the set aside rate overall was between six per cent and 13 per cent. To go up to 32 per cent is quite large. In some respects perhaps that is a good thing, depending on your frame of reference, but surely some component of that would still be due to Afghanistan and Iraq in particular. Iraq is not mentioned at all in the country breakdown in your annual reports.

Mr Blount—There were very few Iraqi FPV cases the previous financial year. They have come through largely this financial year, particularly over the last six months or so. They have largely replaced the Afghanistan FPVs in the case load over that period.

Senator BARTLETT—What proportion of your case load in this current financial year are FPV appeals?

Mr Blount—The Iraqi cases represent a significant proportion now—for example, in the last two or three months, where we had total lodgments of the order of about 280, the Iraqi FPVs would have been about 70 of those in each month. So on a current basis they are running at about 25 per cent of the lodgments. To give you an indication, we have had to date 360 Iraqi FPVs lodged—which would have been lodged, I think, entirely in this financial year—and we have had a total of something a little over 2,343 lodgments to the end of April. There have been a couple of hundred more since then. So you can see that it is a significant proportion of the total, and we can provide those exact figures for you.

Mr Karas—The total number of FPVs for the period we are talking about was 630—so they have been received so far this financial year—of which that proportion just given by the deputy principal member was the Iraqi case load.

Senator BARTLETT—There are some questions arising out of this that might be more appropriate for the department. Perhaps to save time you could provide on notice any updated figures of the sort of tables you have in your annual report rather than me waiting for the next one. That would be appreciated.

Senator NETTLE—I want to ask about the appointment process for individuals on the Refugee Review Tribunal, particularly in light of the recent article published by Professor Mirko Bagaric about his views on torture and there not being enough official torture in the world. How thorough is that appointment process? What views of appointments are probed? Was it known to the RRT prior to Professor Bagaric's appointment what his views on torture were?

Mr Karas—I would like to start off by saying that, in relation to the gentleman of whom you are speaking, we are aware of his public statements but we believe they have been made in a private capacity in his academic role. They do not in any way reflect the views of the tribunal; they are just his personal views, as I have indicated. He is still a member of the Refugee Review Tribunal, even though it was indicated to him in about December of last year that, because of case load and other considerations, he would be moving—as with a number of other cross-appointed members—to carry out work on the Migration Review Tribunal, where there is a higher case load. As a result of that, he is presently on leave pursuing his academic career. I think he is due back in August.

Mr Blount—Yes, he took six months off from the beginning of February.

Mr Karas—The expectation is that on his return he will be working on Migration Review Tribunal cases. To go back to your question in relation to the recruitment process, that is of course a matter for government and all appointments are statutory appointments made by the Governor-General. However, the department has a role in relation to the recruitment of members to the Migration Review Tribunal. Usually in the past there has been an advisory committee set up to look to look through the applications made for the positions. That is usually chaired by Mr Storer. I have been a member of that particular committee.

The process usually is that we conduct interviews with a number of candidates who are short-listed from the written applications as addressing the requirements for the position and that we believe should be interviewed. At interview a number of questions are asked of the applicants. Recommendations are then made and they go through the process. I think the minister then takes them to cabinet, there is a cabinet decision and then they are forwarded on to the Governor-General for appropriate appointment. I do not know whether Mr Storer has anything to add in relation to that.

Mr Storer—Nothing much more, but I just want to emphasise the point that Mr Karas was making. Over the period of time that I have been involved in this, in order to systematise the many thousands of applications from people for positions as members of tribunals and to give the tribunals some guidance, the government has set up a selection advisory committee, which I have been chairing over that period of time, to work through a systematic, common set of

questions—getting references and the usual sorts of things—to give to government as part of their consideration of who they might recommend to the Governor-General that he appoint.

Senator NETTLE—Mr Karas, you said that you were aware of Professor Bagaric's views on torture. At what point did you become aware of those views?

Mr Karas—When I saw them in the newspaper. I was not aware of them prior to that. The person in question had not contacted me or any other member of the executive, so to speak, of the tribunal to indicate that this was about to happen. As I said, I think it is part of his academic role. It has not been done in any way with my consent on behalf of the tribunal, and we only became aware of it when we saw the newspaper article.

Senator NETTLE—So the process for appointment does not probe the views of interviewees on such issues.

Mr Karas—Not to the degree that I think you are looking for.

Senator Vanstone—At least you discovered that in advance.

Mr Karas—Yes. There was nothing in relation to this person's application or the questions that were asked of him at the interview that would have given an impression that that was the case in his situation.

Senator Vanstone—If I may, I do not know this man and I do not know any more than what Mr Karas has told you, but I did notice in passing a letter to the editor—I think from somebody at the University of New South Wales or the University of Sydney law school—praising his work on the tribunal. I predetermined that I would have a closer look at that when I had some free space. I have not done that, but I will find the letter and send you a copy, just as a matter of interest. I am not endorsing the views, because I did not read them except to see that there was some positive comment.

Senator NETTLE—I would imagine that people who are appearing before the tribunal may well be people who have had experience of torture in the countries that they have come from or may be from countries in which torture is a procedure that is seen as acceptable. Do you think it is appropriate for somebody sitting in determination about those individuals' future to hold the views that Professor Bagaric holds?

Mr Karas—We do conduct training for new members joining the tribunal, and ongoing training, and part of that training does include the involvement of the organisations for torture and trauma, including in New South Wales and in Victoria. We do have a close association with them. I do see Paris Aristotle, who is the head of the Victorian torture and trauma organisation, and also Dr Kaplan from that organisation. She often addresses the tribunal members as well. As part of the training—both at induction stage and ongoing—we do provide outside lectures in relation to how members should conduct themselves, because, as you have rightly identified, we do get some cases where torture is alleged or, as you have also indicated, where the person comes from one of those countries where torture might be practised. The member is to bring a fair mind, because we are there to provide a mechanism of review that is fair, just, economical, informal and quick. I think it would be true to say that we have confidence in the membership of the tribunal to bring a fair mind to the decisions and the applications that are before them.

Senator NETTLE—I do not think I share the confidence that you have, but it would not appear that the STARTTS training has had an influence on the views of the tribunal member that we are talking about—in light of the publications that he has on the boil. Were you aware that Professor Bagaric's views on torture were broadcast on ABC Radio National's *Life Matters* program in 2004?

Mr Karas—No. Again, it has only recently come to my attention that he has held the view, perhaps since August 2004. I think I received or saw an extract which was downloaded from the internet which indicated that, as at August 2004, he and, I think, the other person involved in the article may have been formulating or coming to views that subsequently we are now aware of.

Senator NETTLE—When was he appointed to the Refugee Review Tribunal?

Mr Karas—I think he was originally appointed in 2002, and he was reappointed on 30 June 2004 for a further period of three years. But he was cross-appointed at that time to both tribunals as a part-time member.

Senator NETTLE—You were explaining before that he will return to service on the Migration Review Tribunal. Do his views on torture in any way have a bearing on the decision for him not to sit on the Refugee Review Tribunal?

Mr Karas—It was made well before we were aware of his views, and generally in relation to this position and situation, we are taking legal advice as to whether there may have been a breach of the members code of conduct in relation to the public statements which we are talking about now.

Senator NETTLE—If a breach had occurred, would it be required of the RRT to look back on decisions that Professor Bagaric had made—negative decisions that had been made—and review those decisions?

Mr Karas—We have already looked at the decisions that he has made. I think were some 140-odd during the time that he was on the tribunal, and I think it would be correct to say that the review of those decisions has found that torture and trauma situations did not constitute the reason for the decision outcome.

Mr Blount—I think he set aside or overturned 24 per cent of the delegates' decisions of those 144, and in none of the 144 cases does it appear that there was a claim of torture or serious mistreatment which he did not accept amounted to serious harm or persecution. I should say that the legality of torture in a particular country does not make any difference to whether there has been torture; physical torture of itself will invariably amount to serious harm. One would then be looking for the convention reason to see if it amounted to persecution under the convention.

The fact that torture might be legal in a particular country would not of itself make any difference to the outcome of a refugee determination. Indeed, for convention reasons, the fact that torture was legal in a particular country would be a fairly significant factor underpinning a favourable decision, I would have thought.

Senator NETTLE—What prompted that review of the decisions made by Professor Bagaric?

Mr Karas—We were just concerned, given the fact that it came out in the public arena that he held these views—because, as I said, the members are there to make fair and just decisions—that there might be a situation where those views had impinged on decisions that he had already made while with the tribunals. It had also come to my notice—again, I think, it was something I read in the newspapers—that there was a suggestion on the part of a lawyer that, given that he had now stated those views, his decisions perhaps should be looked at to see whether in fact the reasons for or the determination of particular decision outcomes might have been based on his views.

Senator NETTLE—So did you prompt that review, or did Mr Farmer or the minister?

Mr Karas—The tribunal internally prompted that review of his decisions, yes.

Senator NETTLE—Is there a view within the tribunal that it is possible there are failings in the process that allowed Professor Bagaric to be appointed—not his case, but is his case a reason why it may be necessary to make changes to the processes through which somebody is appointed?

Mr Karas—No, that has not come up. There was nothing to indicate that. His CV, his application and his conduct at the interview were such that, as I say, he was recommended for appointment, and I do not think there was anything there which would have sent up the antennas, to use an expression, as to what his views might be. I think he has expressed those views, as I said, in his personal academic role, because it is well known he is now the dean of the law school at Deakin University and, as I think you or the minister referred to, other academics have said that it is an academic's role to engage in these sorts of discussions. However, in relation to his role as a member of the tribunals, it is a novel occurrence for us and one, as I said, that reflects his views and not those of the tribunals. As Principal Member of both tribunals I would be very concerned about any action or conduct by a member that would bring the tribunals into disrepute.

Senator NETTLE—Does the review process look at public comments that people may have made? I do not know when during 2004 he discussed his views on torture on ABC radio—I do not know whether or not that was before his reappointment process in 2004. But would that reappointment process involve looking at public statements that people had made and whether those statements were potentially in conflict with their role?

Mr Karas—You have indicated—and I also think, from that note that I had seen—that there is a possibility those statements were made in August 2004, whereas his reappointment was in June 2004. So the tribunal would not have been aware of his views or that he was forming those views. As I say, he is an academic. He was only working, at the time—John, was it two days a week?

Mr Blount—Yes. For most of the period in which he has been a part-time member of the tribunal he has been working two days a week.

Senator NETTLE—Are there any processes for the removal of tribunal members? If there were a subsequent appointment and a legal opinion provided that the views of that person were incoherent or inconsistent with their responsibilities, can you explain what the process would be?

Mr Karas—Under section 468 of the act it is only the Governor-General who can remove a member, for proved misbehaviour. The bar is set quite high for that, from what I understand, because there is the question of people's livelihoods and that sort of thing. I think in a conversation once it was said that there had been a decision to the effect that mere incompetence was not 'proved misbehaviour' in those circumstances.

Senator NETTLE—You were talking before about getting legal advice about any breach of the code of conduct.

Mr Karas—Yes.

Senator NETTLE—Would that constitute—

Mr Karas—We are seeking legal advice on that.

Senator NETTLE—About whether a breach of that would constitute the Governor-General making a decision?

Mr Karas—Yes.

Senator NETTLE—Do you have a time frame for that?

Mr Karas—We anticipate receiving the advice shortly. We have asked AGS as a matter of urgency to advise us in relation to that. We had hoped the advice might have been available before the end of this week but I am not sure if it will be. As I have indicated, it is a novel occurrence for the tribunal. It is the first time it has happened, to my knowledge, in this way. We have given all the information which we were able to to the Australian Government Solicitor and we are now waiting on advice from them.

Senator NETTLE—When you get that advice, will that be public?

Mr Karas—I would not think so, no.

Senator NETTLE—If the advice is not public, will any decision subsequently made regarding whether there is a recommendation to the Governor-General or not be made public?

Mr Karas—In due course the outcome would become known. I do not think media releases are issued or anything of that sort. We would have to take legal advice in relation to that as well, I would think. There are privacy considerations and those sorts of things. I am not too sure if they would impinge in these circumstances.

Senator NETTLE—Has any thought been given to there being multimember panels on the Refugee Review Tribunal—that that might remove the need for the review you have done of these cases or this kind of circumstance if it occurred again or that it might ameliorate the impact?

Mr Karas—The law only provides for single-member panels in relation to the Refugee Review Tribunal.

CHAIR—It would be a matter of policy, I think, which would be better directed elsewhere. There being no further questions for the tribunals, Mr Karas and officers, thank you very much for your assistance today.

[11.37 am]

CHAIR—We will move back to outcome 1—Contributing to Australia’s society and its economic advancement through the lawful and orderly entry and stay of people. We will probably start with some general questions before we go to specific outputs. We will proceed through the outputs from 1.1 after Senator Faulkner’s questions.

Senator FAULKNER—I have some general output questions, Mr Farmer. I would like to ask some questions relating to the resourcing of the Palmer inquiry. Could you indicate, apart from Mr Palmer himself, who obviously is based in another department, how much of the administrative support for Mr Palmer’s inquiry is internal to DIMIA?

Mr Farmer—To the extent that I am aware of it, the answer is that we have nominated two DIMIA officers to be contact points for the Palmer inquiry. They are not attached to Mr Palmer’s staff; they are contact points within DIMIA. If the inquiry has questions or matters that it wants to pursue with the other department, it will make contact with those two people.

Senator FAULKNER—Are these officers at SES level?

Mr Farmer—No.

Senator FAULKNER—Are they more junior officers?

Mr Farmer—Yes.

Senator FAULKNER—You can say the levels if you like.

Mr Farmer—One is an executive level 2 officer and the other I think is an EL1 or an APS6.

Senator FAULKNER—Are you able to indicate to the committee who is effectively providing the secretariat for the Palmer inquiry?

Mr Farmer—That is being taken care of, as I understand it, by Mr Palmer. He has taken steps to engage people to work on his inquiry.

Senator FAULKNER—He may be taking care of it, but who is paying for it and who is resourcing it? Are these costs borne by DIMIA, in other words?

Mr Farmer—As to the costs of the secretariat, I will have to ask one of my colleagues to answer that particular question.

Senator FAULKNER—Fine. I just thought you would know that.

Mr Farmer—I personally have not been involved in any discussions about costs for the secretariat or other functions relating to Mr Palmer’s inquiry. I have been involved in the process following the minister’s decision to appoint Mr Palmer to do up a contract for Mr Palmer and subsequently for Mr Comrie.

Senator FAULKNER—I might come back to those contract issues in a moment. If you could ask your officer to assist us on that substantive issue, I would appreciate it.

Mr Moorhouse—Sorry, Senator, I missed some of the question.

Senator FAULKNER—What, if any, departmental—by this I mean DIMIA—resourcing is provided for Mr Palmer’s inquiry or is it completely independent of the department. I would have assumed it would be, but I want to be clear on that.

Mr Moorhouse—We have two departmental staff who are working with the inquiry in order to provide a point of liaison with the department to facilitate their contact with the department, to assist in providing technical information and to provide any sort of other assistance that we can provide. We have made it clear to the inquiry that we are keen to ensure that we are facilitating their work and doing whatever we can to support their work. We have two staff who are providing that liaison at the present time. The other staffing resources are resources that have been recruited by the inquiry themselves.

Senator FAULKNER—Thank you for that. Are the administrative costs of the inquiry borne by DIMIA? I assume they are borne by DIMIA, given it is appointed by your minister. Can you assist me with that? In other words, who is paying bills for this?

Mr Farmer—Some of the costs are being borne elsewhere. For example, the inquiry is located in the department of transport; it is physically located in an office there. It was located there because I made an arrangement with the secretary of transport early on, and that was provided without any charge. I am not sure about their current location. I have not visited them at all.

Mr Moorhouse—If I could just add to that: as the secretary has pointed out, the department of transport has been of assistance by allowing Mr Palmer in the first instance to remain in his accommodation. We have indicated to the department of transport that, if there are additional costs that they incur as a consequence of the conduct of the inquiry, we will be responsible for those additional costs. Where there have been no additional costs for Transport they have been very generous and supportive, but where there are additional costs we will pick them up. With the extension of the inquiry, it has been necessary for us to find alternative accommodation so that it does not impede the operations of the department of transport, and we have been in the process of doing that. We have assisted them to find and to set up an alternative location in the past couple of weeks. I think they should have moved in this week, but I am not absolutely certain about that.

Senator FAULKNER—We will move to that in a moment, but just so I am clear: are the two DIMIA officers that you refer to—I think they are best described as liaison officers, given your and Mr Farmer's description of their role; I think that is a fair description—the two liaison officers, also located in the department of transport or do they remain just contact persons, which I assume they would, in your own department?

Mr Moorhouse—That is right. They are contact and support persons located within our department.

Senator FAULKNER—So at this stage the intention is for DIMIA to pick up the tab for this, but you do not know what these costs might be?

Mr Moorhouse—It is difficult for us to quantify the total costs of the inquiry at this stage. We have indicated that we will be responsible for those costs.

Senator FAULKNER—Do you know how many staff Mr Palmer has engaged for the purposes of his inquiry?

Mr Moorhouse—Personally, I do not. I am not sure whether others will have that information, but there have been—

Senator FAULKNER—Does the department have that information?

Mr Moorhouse—We can obtain that information easily. I am aware, through the liaison officers, of the intention to ensure that there is sufficient investigative capacity within the inquiry. I had heard that they wish to recruit a further three staff to assist them in the conduct of the inquiry, given the extension. But I am not able to tell you, at the moment, the total number of staff that are working on behalf of Mr Palmer.

Mr Farmer—Senator, we could make a phone inquiry and get that information to the best of—

Senator FAULKNER—Thank you. I would appreciate that. Do you know if the staff are officers of the Commonwealth or whether people have been engaged from outside the Public Service?

Mr Farmer—In some respects the answer to that is ‘outside’, because Mr Palmer has sought the assistance of, I think it is, the director-general of mental health in New Zealand as an adviser on mental health issues.

Senator Vanstone—And some investigators he has worked with in the past—in conversations he has indicated to me—teams of people he has worked with that he has been able to secure. While I have not said to him, ‘You mean they are not public servants?’ the clear inference of the discussion is that they are people outside, working now privately.

Mr Farmer—And of course former Commissioner Comrie is not an Australian public servant.

Senator FAULKNER—So what you are saying, Minister, which is I think what I would expect, is that Mr Palmer has engaged additional consultants—I think that is the best description.

Senator Vanstone—That is right.

Senator FAULKNER—Additional consultants to assist him in his—

Senator Vanstone—Yes. To the best of my belief, knowledge and understanding, we have lived up to every inch of what we said, which was that he could have such resources as he needed. We have not sought to interfere in that in any way. That is why, as you rightly identify, the two liaison officers are not placed with him. We want to avoid not only, obviously, the substance—we have avoided the substance—of any interference; we want to avoid the appearance of any interference as well.

Senator FAULKNER—So do we have any idea at this stage of, first of all, what the nature is and, secondly, what the dollar value is of the consultancies that Mr Palmer has engaged in order to assist him with his functions?

Senator Vanstone—We can get you the details of that. Someone has tried to add it up on a six-monthly, nine-monthly or annual basis, but we can certainly get you that information.

Senator FAULKNER—Mr Farmer, that might be able to be provided after the lunch break, to give your officials some time. What is still unclear to me, and I hope you or Mr Moorhouse can assist me in this, is who pays for those consultancies. In other words, which department wears the cost of these consultancies? I assume it is yours.

Mr Moorhouse—I apologise if I was not clear in that regard. We, the Department of Immigration and Multicultural and Indigenous Affairs, are picking up the tab for the cost of the inquiry and we have indicated that to Mr Palmer. There is no doubt about that.

Senator FAULKNER—Are you saying, Minister, that as far as you are concerned in relation to these consultancies it is effectively a blank cheque for Mr Palmer? If he believes there is a requirement or need for a certain consultant to be engaged, that consultant will be engaged.

Senator Vanstone—I do not think any government ever says, ‘Look, there’s a blank cheque,’ but we have predetermined a path to ensure that Mr Palmer is satisfied with the resources he has and I am not aware of him having asked for anything that has been considered unreasonable. He might come in tomorrow and ask for someone at \$1 million a day, and of course we would say, ‘That’s ridiculous.’

Senator FAULKNER—If there is an indication that he has not asked for anything that is unreasonable—

Senator Vanstone—I am not aware of anything.

Senator FAULKNER—What I am interested in is whether there is a checking mechanism. You are saying you are not aware of him asking for anything that is unreasonable. Is there a checking mechanism within the department about this because it is not a blank cheque?

Mr Farmer—There is not a checking mechanism in that I or any other departmental officer is saying, ‘That’s an interesting proposal, Mr Palmer. We will decide whether you should or should not have it.’ The minister has said that our approach overall is to facilitate the provision to Mr Palmer of the resources he considers are necessary for the conduct of his inquiry, and he is best placed to judge that.

Senator FAULKNER—Let us move to Mr Palmer himself. Could you explain to the committee the nature of his engagement? The minister has made public statements, I think including in the parliament, that this is time limited, that Mr Palmer’s involvement or role, as I understand it—no doubt you will quickly correct me if this is not right—will end in about four weeks, let us say by the end of June. That is accurate, isn’t it?

Senator Vanstone—No, that is not accurate. I can refer you to yesterday’s *Hansard* but I will try and give you the answer again. Mr Palmer took this on when all of us imagined that the Rau case was the one thing that he would be doing. He anticipated that might be able to be finished by the end of March and we said so at the time. He had a small personal matter to be attended to which took a couple of weeks and that got it a bit delayed. Then of course the Alvarez matter surfaced and we passed over the cases we had at that point; we had been going back in time looking at these things. Bear with me while I repeat that these are all the cases where someone had subsequently been found lawful. It bears repeating because you were not here yesterday and other people have made this mistake today in reporting on this matter. That does not mean that all those cases at all were unlawfully detained. It certainly does not mean anything like that. But I want to make sure that we go back as far as possible and get all of that category out, and then they are being passed over. That is where the inquiry is now going. I have had discussions with Mr Palmer. He indicated in his press release of 20 May—your people have got that—that he would report within four weeks and he would report on the Rau

matter. I do not think I have got a copy of that with me; someone here might have it. But he said at the time—and we do have it here:

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.

I can elaborate on that, without wanting to put words into Mr Palmer's mouth; I am elaborating on my understanding. Mr Palmer has taken the lead role in the Rau inquiry and Mr Comrie has done so in the Alvarez one. It seems to be a sensible division of labour between them. Obviously, Mr Palmer is fully cognisant of what has been going on in the Alvarez matter, and Mr Palmer and Mr Comrie are working closely together.

What I understand is going to happen is that, within four weeks of this date, Mr Palmer will report, will close off on the Rau matter and, because of the fact that it is the Palmer inquiry, and despite the fact that Mr Comrie has taken the lead role in the Alvarez matter, Mr Palmer having been intricately involved in that, or least having been fully cognisant of the matters therein—he has indicated that in his press release—the report that I am expecting by the end of June will deal not only with the Rau matter but with such aspects of the Alvarez matter as Mr Palmer feels are appropriate to deal with at the time. He is saying there that some of the issues that he has concerns about that he thinks have, I presume, contributed in some way to the situation of Ms Rau being as long in detention as she was without being identified are the same issues that contributed to an Australian citizen being deported, and he is going to comment on those.

He then has other duties to go on to, but he is not, from my understanding, simply going to walk away. We have had discussions with him about this. He is going to recommend in that report what we should do with whatever is left unfinished—how to handle the remainder of the caseload. It is quite obvious that an inquiry into one person or two people is fundamentally different from one where you are then told, 'We want you to check all of these files, go through and see whatever else wrong you can find, and see if whatever else wrong you find mirrors problems you found in those two cases or whether there are other problems, because we want this cleaned up.' That is a much, much bigger task.

Mr Palmer will make recommendations on that in his report at the end of June. I have had discussions with him. As I indicated on radio this morning—and I am obviously not prepared to outline those discussions—I am prepared to say that from the discussions I have had with him thus far I am in complete agreement with where I understand his thinking to be going. But he has not asked to make a final decision on that at this point. Who knows what other views he might form over the next couple of weeks. I hope he discusses them with me but he may not. I can only tell you that we have had discussions and I am in agreement with what I understand to be his views at this time. I can clearly see that an inquiry, as I say, looking into 200 files that may or may not have anything wrong with them is fundamentally different from a specific, set task in relation to one person or two people. On receipt of his report we will make a decision as to what should happen.

Your colleague Senator Evans asks, 'Does that mean Mr Palmer decides what happens; that the government in a sense has no interest?' I say, 'No, it doesn't mean that at all.' It means that, given the knowledge he has, having looked so intricately at the Rau matter, having regard to the discussions he has had with people involved, and given the understanding he has

of the Alvarez matter, I think he is in a perfect position to make recommendations to us. We will take responsibility for what decisions we make. That is why I chose to make it clear this morning that my understanding thus far of his thinking is that it is *ad idem* with mine.

Senator FAULKNER—But my specific question—you were correcting me in terms of dates—

Senator Vanstone—What I trying to say—I know what your specific—

Senator FAULKNER—I thought I was saying the end of June, and I think you are saying the end of June.

Senator Vanstone—Not necessarily, because I do not know what he is going to say at the end of June with respect to the other case load. I could add this though: not everything is clear and in concrete. It is clear that he has other duties and he needs to get to them—that is clear. But what is also clear is that he is not the sort of person to leave a job in what he regards in any way as unfinished. So whatever he recommends will ensure that his stamp and his direction are covered in the conclusion of the matter. I cannot help you more without actually going into options that might be available, but I do not think it is true to say that Mr Palmer will necessarily completely cut off at the end of June. He will have a significantly lesser involvement—yes, that is true—because he has other duties to go on to.

Senator FAULKNER—But what we can say is that, be it a first report, a preliminary report or possibly a final report, you will definitely have a substantive report in your hands by the end of June from Mr Palmer, which I think was the point of the question I was asking.

Senator Vanstone—Yes, that is the case. My understanding of what Mr Palmer has said and how I therefore read those words about the issues being the same is that—he has, I think, some pretty clear ideas of some changes that need to be made—he thinks those changes would reflect on the other files as well. He is not saying they definitely will, because he has not looked at all of them yet, but that is his view.

Senator FAULKNER—Do you think it is appropriate that the department of immigration's involvement in terms of support for the inquiry is limited to just liaison officers? Do you think that is an appropriate way of interface, if you like, between the conduct of Mr Palmer's investigations and the department?

Senator Vanstone—There were a range of options available. Mr Palmer could have chosen to ask for some experienced staff who might not be working in those areas at the moment but who in the past worked in those areas and therefore had insight into them to be seconded to his inquiry. He chose not to do that. What he wanted was to be completely independent—that is his decision—and not to have to ring a variety of different people but to obviously have people who are familiar with him, familiar with his team and therefore could work as good liaison officers for any information that he required, so that is what we provided.

Senator FAULKNER—But given the nature of the matters that he is investigating, do you think it is reasonable—and I think you are saying you do—to limit departmental involvement to liaison officers who can assist when asked and required?

Senator Vanstone—It is not a question for me. I do not see that as something for me in this sense, because the government decided that we would give Mr Palmer the job and we would take his advice as to the support services that he needed. I was very, very conscious of the need to ensure that in any inquiry like this, whether it was simply one matter, two matters or then saying, ‘Look at all the files,’ the immigration department was not seen to be, in a sense, looking at itself. That is just my view. Mr Farmer might have something to add. If you can be clearer about what option you think might have been considered that we might have had a view about, I can help you.

Senator FAULKNER—I am merely asking whether you considered it appropriate.

Mr Farmer—To add to the minister’s answer, clearly the inquiry has needed and will need to have contact with departmental officers, access to departmental records and so on. So I have issued instructions under the Public Service Act to DIMIA officers to render all assistance necessary as requested by the Palmer inquiry. That is a lawful instruction to officers. Secondly, our liaison officers are engaged in facilitating contact between the inquiry and the department, either in terms of access to people, to files or to other matters.

Senator FAULKNER—How long has the inquiry now been in place?

Senator Vanstone—It was set up in I think February.

Senator FAULKNER—Around four months or perhaps a little more.

Senator Vanstone—I do not have the exact date but around that time.

Senator FAULKNER—Maybe three or four months. Let us say three months because I do not have a precise date either. In that time, Mr Farmer, have you been called by Mr Palmer to provide evidence or information?

Mr Farmer—Mr Palmer has not asked me at all about the matters relating to Rau and Alvarez. He has had a number of contacts with me. At the beginning of the process, we were talking about arrangements of the sort that we are discussing now for his inquiry and the sorts of things he would want the department to do. Since then, if I remember correctly, Mr Palmer has come to see me twice—generally at around the same time as he has been to see the minister, although he has seen the minister more often than me. She appointed him; I did not. He has given me an indication of his thinking about the future of the inquiry. The first time, if I remember correctly, was just after the inquiry was broadened to take into account the Alvarez and other matters.

Senator FAULKNER—So there has been contact between yourself and Mr Palmer. Do you also have a broad understand—the minister has certainly indicated she has a broad understanding—of how the inquiry is progressing and the directions in which it is moving?

Senator Vanstone—With respect, I did not say how it is progressing, although I do have some understanding of that. I have not asked Mr Palmer to give me details of what he is going to recommend. I have asked him questions about what he thinks we could do to help us here or there. He has raised a couple of issues but I have not sought to get an ongoing follow-up on where it is going and what is what. If I were running an inquiry, that would drive me mental. It is frustrating, and I would love to know, but I have not asked for that. Issues have come up, clearly, and we have discussed some that it is important to discuss, but I am not expecting that

what I know now is a full understanding of what will be in the report—not at all. What I do have a clear idea of and what I was indicating—where I ad idem on—is his views about where the inquiry should go once his report is finalised. That is what I have a clear understanding of.

Senator FAULKNER—Do you have a similar understanding, Mr Farmer?

Mr Farmer—Mr Palmer, in talking to me, has made it very clear that he is in the process of forming views. He has said that they are at a very preliminary stage. He has discussed with me issues of departmental approaches to a number of issues. I imagine that that is some sort of background to his developing thinking in this area.

Senator FAULKNER—Isn't there an issue for you, Minister, in ensuring that, given the amount of contact you have had with Mr Palmer, the independence of the inquiry maintained? How, if you have got such a clear understanding of where this is all going, could you assure a committee like this that Mr Palmer, in terms of his findings and report, will be independent?

Senator VANSTONE—I have just answered that question. I do not think you were trying to verbal me; I think you simply misunderstood what I had said earlier when I said I have got a clear understanding. That is why I picked you up straightaway to make sure there was no misunderstanding. I indicated to you just a couple of minute ago that I do not have a clear view of what is happening in his report. I made it very clear that if I was running an inquiry it would drive me mental if someone wanted to know what was going on. I do not see that as being my place at all and I indicated to you that I do not believe that I have at this point a clear idea of what is going to be in his report. I do have a view about a couple of matters where a couple of those matters have been raised with me. But it is a couple, and it certainly does not cover anything like the gamut of what he is looking at.

There are some things that he may have felt in order to clarify his views on or to see if I had the same view about something that might relate to culture or timeliness or something like that that he would discuss. The meetings I have had with him have not been very long. The only thing that I do have, as I said, is a clear understanding about what his current thinking is—and I stress current—and, as I have indicated earlier today, that could change. As to what he might recommend as to the future direction of whatever is remaining when he makes his report in June, I would love to know what Mr Palmer is going to say but I do not.

Senator FAULKNER—But if you are having meetings with Mr Palmer amongst other things to see if you have the same view as he might about issues relating to the culture in the department, how could anyone seriously argue that the inquiry has any independence? How could that be argued with any credibility? Let me ask this: how many meetings have you had with Mr Palmer?

Senator VANSTONE—I will take some advice on that, but the purpose of the meetings has not been for the purpose of discussing the content of what he is going to say. We had a number of discussions, for example, in relation to the need for him to have additional assistance of the level and calibre of Mr Comrie—any number of meetings that have related to that.

Senator FAULKNER—What is 'any number of meetings' about Mr Comrie's calibre? How many meetings have you had with Mr Palmer?

Senator Vanstone—I said I will get you some advice on that. I have not come with a list of the dates on which I have either spoken to him by phone or my chief of staff might have spoken to him by phone. We are not talking about long meetings in relation to that matter.

Senator FAULKNER—I am sorry, you just told the committee literally a moment ago that you have had any number of meetings with Mr Palmer.

Senator Vanstone—Any number to mean I cannot give you the number now, not any number to be interpreted as a countless number.

Senator FAULKNER—Any number of meetings in that sort of use of language, as you would appreciate I think, Minister, is normally interpreted as a significant number of meetings.

Senator Vanstone—I understand what you are saying, and that is why I corrected it.

Senator FAULKNER—Let us be specific. How many meetings have you had with Mr Palmer about, to use your words, the level and calibre of Mr Comrie?

Senator Vanstone—I did not say about the level and calibre of Mr Comrie.

Senator FAULKNER—I think that was what it was, wasn't it?

Senator Vanstone—I said about the need for him to have the assistance of someone of the level and calibre of Mr Comrie.

Senator FAULKNER—How many meetings with Mr Palmer have you had about that issue?

Senator Vanstone—I will have to check the record and see if there was more than one. There may have been some telephone conversations. There certainly would have been conversations with Mr Comrie to see if he was available—not many.

Senator FAULKNER—Perhaps, again, this matter is best dealt with—I will try to be reasonable about this—by taking another issue on notice. You might be able to come back to us after the luncheon break. It might require a small amount of work in your office to check the diary.

Senator VANSTONE—If I can get you the answer to that by that time I will. If I cannot I will take it on notice.

Senator FAULKNER—Have you had any meetings with Mr Comrie at all?

Senator Vanstone—There have been two meetings that I recall but I will check that have been with Mr Palmer where Mr Comrie has been with him. I have not, to my best recollection, met with Mr Comrie separately.

Senator FAULKNER—Were those two meetings recent?

Senator Vanstone—I think there has been one meeting since I have returned from overseas, which was 6 or 7 May, with both gentlemen; a subsequent one with Mr Palmer alone; and an extremely brief meeting at the airport before I left. It was intended to be only a 15-minute meeting but it was even shorter because the Comcar had a minor collision on the way to the airport.

Senator FAULKNER—I assume that these meetings you have been having with Mr Palmer have been at Mr Palmer's request, or were they at your request?

Senator Vanstone—Let me check that, but my recollection is that each of them have been at Mr Palmer's request, although the one just this week may well have been at mine. I will check that.

Senator FAULKNER—If the one this week was at your request, I suppose you could tell us why you requested it.

Senator Vanstone—I will give consideration to whether I am prepared to discuss that. The purpose for which I wanted to speak to Mr Palmer did not relate to any substantive content. I think that is the issue you are interested in as opposed to the further conduct of the inquiry.

Senator FAULKNER—I am unable to make a judgment. No-one could make such a judgment without more information available. I think it is a reasonable request. If you are able, check your diary at the lunchbreak, which is between 1 and 2 pm, about those meetings that took place. I am sure the administrative capacity in your office is such that you can. That is a very reasonable time frame. You might also provide an indication in relation to each of those meetings as to who initiated them, whether it was Mr Palmer or you. If you are able to indicate the reason why, I think that would be appreciated.

Senator Vanstone—I will take that question on notice and, to the extent that I am able to give you an answer in the time frame, I will. But, as I have said, I may want to give consideration to the full aspect of your question.

Senator FAULKNER—Mr Farmer, with your interaction with Mr Palmer, have you had uppermost in your mind the need to ensure the independence of Mr Palmer's inquiry? Some, by the way, would argue that it is not independent. I do not want to get into that debate; I am just talking about the broad principle. I would not want it to be interpreted that I am suggesting it is independent. I am asking you about the principle.

Senator Vanstone—It is the old 'do you beat your wife' question.

Senator FAULKNER—No, I do not think that is fair.

Senator Vanstone—It is like saying, 'I do not assert that you do; I just ask if you do.'

Senator FAULKNER—I do not think it is that type of question, Minister. I think it is a fair question, given that you have been making public claims in relation to the Palmer inquiry in the media, in the parliament and at this committee. These are very reasonable questions, and claims have been made about the independence of the inquiry. I think it is a reasonable question to put to Mr Farmer, I put it reasonably and it is reasonable to expect an answer. I do not think it is an 'are you still beating your wife' type question at all.

Mr Farmer—I would say Mr Palmer has made it extremely clear in all his interactions with me that he is totally intent on maintaining his independence. Let me give you an example of this. At the beginning of the process, when I said to Mr Palmer that I had discussed with the secretary of the Department of Transport and Regional Services the idea of office accommodation there—that it was convenient; it was available—Mr Palmer reacted positively to that. At the same meeting I said that, if he wanted us to, we were ready to attach DIMIA officers to the inquiry to provide secretarial, liaison or other support. Mr Palmer considered

that and said that he did not want that; he wanted to maintain distance between the inquiry and the department. His preference was to have the arrangement that we did put into place—namely, to have those two contact or liaison points in the department. In other words, they were quite distinct from the inquiry and its secretariat or other officers. Mr Palmer's demeanour since then to me has been quite overtly that of someone who is maintaining his position as an independent inquirer. In other words, I have no doubt whatsoever about Mr Palmer's view of his role.

Senator FAULKNER—Tell me this, Minister: was the decision to appoint Mr Palmer yours?

Senator Vanstone—There were a number of names considered. They were discussed with the Prime Minister's office and my office, and Mr Palmer was agreed upon as the appropriate candidate.

Senator FAULKNER—Are you saying it was a joint decision between you and the Prime Minister?

Senator Vanstone—You have been a minister; you understand. I know that, apart from the *Yes, Minister* program, most other people think that ministers are powerful and can do entirely as they please, until they have the experience of working in government, when they realise that government is a group approach where people are given individual tasks. The Prime Minister is the Prime Minister. That means he rightly has an oversight of, in a sense, each portfolio. It is just a folly to assume that you can get a job as a minister and go off and do what you like and not consult with others. That is a recipe for disaster.

Senator FAULKNER—Mr Farmer, I can only ask you this as far as DIMIA is concerned: was your department involved in preparing a possible list of candidates to fulfil this function? Were you tasked to do that?

Mr Farmer—Right at the beginning of the process, when the question of an inquiry came up, I spoke with the secretary of the Department of the Prime Minister and Cabinet and said to him that this would be an issue that would need to be considered. After that, in terms of drawing up lists and so on, no, we were not involved.

Senator FAULKNER—Minister, are you able to say to us then where the names were generated? It sounds like they were generated within your office and the Prime Minister's office. Are you able to say that?

Senator Vanstone—I did not ask the Prime Minister's office who they consulted. They can consult whomever they like. I cannot help you with that.

Senator FAULKNER—When I say 'generated', I do not mean who they consulted. Were names forthcoming from either your own or the Prime Minister's office?

Senator Vanstone—All I can indicate to you is that there were a group of names considered. I know what I put forward but where the Prime Minister's office got the other names from is for them to answer. But the decision was made as I have outlined in my earlier answer to you.

Senator FAULKNER—But Mr Comrie's name came forward from Mr Palmer?

Senator Vanstone—Yes.

Senator FAULKNER—There was no consideration of other names—that was Mr Palmer’s recommendation?

Senator Vanstone—No, there was not; that was a direct request for assistance at a particular level and a recommendation that Mr Comrie was the person who could fit that requirement. I then had a discussion with the Prime Minister’s office. We cleared that and the appointment was made.

Senator FAULKNER—Mr Palmer is an officer of the Commonwealth, as I understand it, Mr Farmer, in another agency in another department, isn’t he?

Mr Farmer—I do not know the answer to that.

Senator FAULKNER—Doesn’t he have an association with DOTARS?

Senator Vanstone—He has some task, but I do not know the full nature of that. We will take that on notice and get that information for you.

Senator FAULKNER—I was going to ask whether you were aware if Mr Comrie has any current association with the Commonwealth apart from the one that obviously he has just been tasked with in relation to the investigation.

Mr Farmer—I am not aware of any.

Senator Vanstone—No, I am not aware of any.

Senator FAULKNER—How long has Mr Comrie been engaged to fulfil his functions?

Senator Vanstone—I did not involve myself in that contract. There might be someone here who did.

Mr Farmer—We have been through a process of extending arrangements for Mr Palmer and Mr Comrie. We had an initial arrangement with Mr Palmer and that has been extended. I do not have it in my head whether, because Mr Comrie’s appointment was later—as you will understand—

Senator FAULKNER—I do understand that.

Mr Farmer—I do not know whether we are still on a first contract with Mr Comrie or whether we have extended that. In view of the developments that the minister outlined yesterday, we have draft contracts for the extension of the periods for both Mr Palmer and Mr Comrie. Those have not yet come to me in any form that Mr Palmer and Mr Comrie have seen, so I do not know what their views are about the period of an extension.

Senator FAULKNER—But you are saying that there is an existing contract that you are aware of with Mr Palmer?

Mr Farmer—Yes.

Senator FAULKNER—And there is a second contract to extend his engagement with the department. So his contract is with the department?

Mr Farmer—Yes, that is right.

Senator FAULKNER—And then there is what you think is an initial contract with Mr Comrie—or are you not sure?

Mr Farmer—It is a first or a second contract, I just cannot recall.

Senator FAULKNER—Are you able to indicate to the committee what the nature of Mr Palmer's first contract is? For example, what is the dollar value and period of that contract?

Mr Farmer—In terms of the period of the first contract and the period of the second, we can get that information.

Senator FAULKNER—You are going to provide for me the subsidiary consultancies, which I appreciate. Could you provide the information that you have in relation to Mr Palmer and also Mr Comrie. It is not entirely clear to me, but I think you are saying there is a question as to whether it is a first or second contract for Mr Comrie.

Mr Farmer—That is right. It is just a question of fact.

Senator FAULKNER—That is right. If you could provide that detail, that would be useful—again, I think it would be reasonable to leave that until after the lunchbreak.

CHAIR—Senator Faulkner, we have officers here who have been waiting to discuss the outputs, which we indicated we would be doing at the end of the tribunals. We did spend all day on and around these issues yesterday. I am very keen to deal with the outputs, and other senators are here to do that as well.

Senator FAULKNER—I am hoping to get to them as quickly as possible. I do not intend to be too much longer—there will perhaps be some issues to come back to after lunch. I just wanted to, if I could, ask a couple more general questions, mainly of Mr Farmer. I am afraid I was in another estimates committee yesterday, Mr Farmer—

Mr Farmer—We missed you, Senator!

Senator FAULKNER—I doubt that. I rarely attend this committee, as you know, but it is always a pleasure to do so. I did not have an opportunity until this morning to read the opening statement that you made to the committee yesterday. I note that it contains words like 'profound regret', 'deeply sorry', 'deep sorrow', 'do whatever is necessary to avoid a recurrence of circumstances', 'the department has made mistakes', 'it is unacceptable that individuals should be disadvantaged by shortcomings in the entering of records', and the like. I think you would agree that is unusual in terms of an opening statement for a secretary to make before a committee. I don't think that is an unfair thing for me to say. That is very unusual language to use. I noted that last night, in a television interview, the minister was asked whether you had offered your resignation over these matters. Senator Vanstone indicated very clearly that you had not, and I accept that as factual. Mr Farmer, have you given consideration to offering your resignation and have you discussed that matter with any senior members of the Public Service?

Mr Farmer—My private thoughts in any matter are matters for me. I have no intention of talking about my private thoughts about anything. It might lead to some unparliamentary language, for one thing. I have not discussed this matter with any other person. I have not discussed it with any member of the Public Service.

Senator FAULKNER—But it is true that you have not offered your resignation?

Mr Farmer—That is true.

Senator Vanstone—Madam Chair, I think the secretary has made very clear his view on a question that I nearly stopped him answering but thought, ‘It’s a question that goes directly to him and if I stop him answering it, it might not be as helpful as I would intend it to be.’ But I do regard that as a question that goes to someone’s personal employment, not one that is a function of this committee. As I said, I nearly intervened. The question was answered. The point was made by me, as the senator indicates, in the media. He graciously indicated he accepted that as being the case. He then asked Mr Farmer the question, he got the same answer and then he sought to ask it again. I, for one, think that is unreasonable and I am asking you to protect a public servant from badgering.

CHAIR—I was going to indicate to you, Senator Faulkner, that I do believe Mr Farmer had answered your question. I think you should ask a new question.

Senator FAULKNER—I would ask Mr Farmer whether he is aware of similar questions I can recall being asked of Dr Allan Hawke, the former Secretary of the Department of Defence.

Senator Vanstone—With respect, that does not relate to this portfolio. I don’t know what Mr Farmer knows about other estimates; I can assure you I have been—

Senator FAULKNER—I think he might know a bit about those ones, Minister, because he was also a witness there.

Senator Vanstone—He might well have been. What we know about things outside our portfolio, frankly, might be of interest but it is not the subject of these estimates.

CHAIR—Indeed, Minister.

Senator FAULKNER—Let me then ask you, Mr Farmer, a question in relation to performance pay. Can you outline to the committee where we are up to in the process of performance pay for this round and what the outcome was of the two most recent rounds of performance pay.

Senator Vanstone—For whom?

Senator FAULKNER—For all secretaries, but in this case I am just referring to your own department’s secretary. The broad processes, as you would appreciate, Minister, apply beyond just the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs. In this instance I am asking in relation to your own department because I am at the table asking questions of your secretary.

Mr Farmer—The process of assessing performance pay for secretaries is, in general, as follows. The secretary and the portfolio minister agree, in terms that are up to them, at the beginning of each year on some expectations of the minister in relation to the secretary’s conduct of the business of the department during the year ahead. Then, generally speaking, in May of each year—this happened a couple of weeks ago this year, in accordance with the normal procedure—the Secretary of the Department of the Prime Minister and Cabinet and

the Public Service Commissioner write jointly to each secretary asking them to begin the assessment process.

The process goes as follows. The secretary does a brief self-assessment of what he or she considers to have been their performance during the financial year. That is then discussed with the portfolio minister, who may or may not wish to express views on the self-assessment. The secretary may elect to take those views into account. The self-assessment is then forwarded to the Public Service Commissioner. The Public Service Commissioner and the Secretary of the Department of the Prime Minister and Cabinet then have a meeting with the portfolio minister where they discuss the secretary's self-assessment and seek the portfolio minister's views on the secretary's performance. The Secretary of the Department of the Prime Minister and Cabinet and the Public Service Commissioner then do a report to the Prime Minister on that secretary, as indeed they do on the other secretaries. I do not know exactly what happens within that process. I imagine they make recommendations or report the views of the portfolio minister. In any event, they provide some sort of advice to the Prime Minister, who makes a determination on whether a secretary will receive performance pay and, if so, at what level. That is the normal process. As I said, that process has begun this year with the dispatch by those two senior officers of the letters to secretaries asking for the self-assessment and other processes to begin.

Senator FAULKNER—I do not want you to think for one moment—I do not think for one moment—that the buck stops with the secretary of the department. On the sorts of issues that are being discussed here, it stops with the current minister and the former minister, Mr Ruddock. But I think everyone accepts—I know you do; I have heard you say this—that secretaries of departments have heavy responsibilities.

Mr Farmer—That is right.

Senator FAULKNER—I know you accept that. You have said that on previous occasions. Were you paid performance pay last year and the year before?

Mr Farmer—I would like to take advice on whether I should be answering that question. In general terms, it has been practice—as I understand it; I might be wrong—not to discuss, in committee or other hearings, the details of matters which are the subject of contracts. In other words, questions about certified agreements, for example, which are public documents, are discussed. I have not been called upon to answer questions about Australian workplace agreements—that is, contracts between me and individual officers in my department. I am not a master of the theology on this point. So, in the absence of that knowledge, I do not think that I am in a position to answer that question.

Senator FAULKNER—The reason I ask, as I have said, and I have qualified it, is in the context of the opening statement that you made yesterday to this committee which I think you have accepted was quite exceptional in its nature given the use of language and the points that you made about failures and shortcomings.

Mr Farmer—I do not shirk from saying what I think and what I said yesterday is what I think.

Senator FAULKNER—But you are not willing to answer a question about whether performance pay has been granted in the circumstances. Though, to be absolutely fair, you have taken that question on notice and it may be answered after consideration.

Mr Farmer—Yes.

Senator FAULKNER—You have talked about, and I think very fairly outlined to this committee, the processes that are involved and the way the performance pay system works. I thought it was a fair and thorough statement of that to the committee. You talked about the expectations that are established. Do you believe you have met those expectations?

Mr Farmer—I think that a judgment will be made in terms of the particular things that I have added to or subtracted from the department's performance. A judgment will be made in the first instance by me and in the second instance by the minister and the Prime Minister. There is a process for going about that. The process looks not intently at the whole departmental performance; it looks at the particular role of the secretary. That process will be gone through and, as I say, judgments will be formed.

Senator FAULKNER—Has the Secretary of the Department of the Prime Minister and Cabinet raised issues with you about the administration of the department that you head?

Senator Vanstone—With respect, if I may, there are internal workings of government that relate to individuals. I just do not think it is appropriate for those questions to be put and expect anyone to give off-the-cuff consideration as to whether they are appropriate to answer. I am happy for Senator Faulkner to put whatever questions he likes on notice. I think that is perfectly fair. I think the nature of the questions he is going to are inappropriate—he may not and I might be wrong. If I give it some consideration over a period, I might conclude that these questions are very fair; so might Mr Farmer. Because of their nature, I think it is perfectly fair for both Mr Farmer and myself to have time to consider whether in fact they are appropriate questions for this estimates committee.

Senator FAULKNER—Minister, I do not shy away from the fact that primary responsibility for these issues lies with you.

Senator Vanstone—I was not suggesting that.

Senator FAULKNER—I know that and I hope you and your predecessor, Mr Ruddock, would not. In relation to questions of the Senate estimates, I do think the question I have just asked is a perfectly reasonable one about contact between the secretary of PM&C and the secretary of this department. In fact, I think it is a pretty standard sort of question that I would expect an answer to, because we are dealing with the very issues that are core business of this committee.

CHAIR—Senator Faulkner, I do not think anybody has indicated to you it is an unreasonable question. The minister has said that she and Mr Farmer wish to consider the matter and they will take it on notice, and that has been done.

Senator FAULKNER—I am going further and saying it is a reasonable question. It is reasonable to expect an answer because I think an answer could be provided—

Senator Vanstone—We will take it on notice.

Senator FAULKNER—by Mr Farmer, who is a first party to any such—

CHAIR—I understand that is your view. The response you have received is that the question has been taken on notice.

Senator Vanstone—I have indicated to you that on reflection it may be that that is a perfectly reasonable question for you to put. But it may not be. I am asking to take it on notice and agreeing to take it on notice on the basis that it may not be.

Senator FAULKNER—I just indicate that it is core business of the committee to ask such questions and to expect an answer. I consider the failure—which I do not lay at Mr Farmer’s door—to answer this, a decision by the minister, to be grossly inadequate in these circumstances. In relation to Mr Comrie’s engagement, I think the situation with Mr Comrie is that there are 201 additional cases plus the Solon case, making 202, as I understand it, that primarily he will have carriage of in terms of his responsibilities. I think those figures are correct. I have heard a lot of different figures. I think the figure of 203 includes the Rau issue, doesn’t it? So it is 201 plus Solon—

Senator Vanstone—Apparently 201 includes Rau and Alvarez.

Mr Farmer—No, just Rau.

Senator FAULKNER—Let us get those numbers clear because a lot of different numbers have been used. I thought it was 201 plus one plus one, but it is 200 plus one, is it?

Ms Godwin—The 201 includes Ms Rau because it is a set of records from our computer system which includes the record of Ms Rau’s release from detention as not unlawful.

Senator FAULKNER—It does not include the Ms Solon case though.

Ms Godwin—No, it does not.

Senator FAULKNER—Is it a fact then that Mr Comrie will have 200 cases plus Ms Solon’s case before him? Can I just ask this—

Senator Vanstone—I actually did not answer your question.

Senator FAULKNER—I am just establishing what the numbers are.

Senator Vanstone—So you only wanted the numbers. You did say ‘have it before him’. We are sure that is the case until the end of June when Mr Palmer reports, but at that point we will get Mr Palmer’s considered and concluded view as to what should happen with the remainder of the cases.

Senator FAULKNER—Are you able to say whether any of the 200 have taken or concluded legal action, or whether any of those cases might have sought or received compensation? I do not want to go into details; I just wonder if any of those cases—

Senator Vanstone—There are some, and I think Ms Godwin can give you some advice on that.

Ms Godwin—I think there are some but I do not have the details at the moment. I just have not looked at the list from that perspective. I understand that at least one of them is the subject of current litigation. I do not think we have compared the list against records of previous litigation.

Senator FAULKNER—It seems to me that they would be in a very different situation if legal processes had been finalised.

Senator Vanstone—I will answer you this way: if someone's legal action has been finalised, it is finalised. It does not mean that the government cannot learn something from having someone like Mr Comrie or Mr Palmer look at their case—not so much from the perspective of the applicant, although obviously your clients are meant to be your foremost consideration, but from the perspective of what we could learn from that case. So I would not exclude cases for that reason.

Subsequently, if there are other people who have not initiated proceedings, if it turns out that it is appropriate—and that goes back to the point I made earlier: we are sending all of these cases to be looked at—they will be able to pursue their matter. And I do not have a view with respect to what proportion might come under that category.

Senator FAULKNER—Are you able to give the committee any indication at all when Mr Comrie might be expected to finish his task?

Senator Vanstone—No, I cannot, because that is a matter that will be dealt with by Mr Palmer. You have rightly identified that, until the end of June, Mr Comrie will have major conduct of the Alvarez matter—I will not repeat what I have already said in respect of that—and he is looking at the other cases with the caveat that, at the end of June, Mr Palmer will make recommendations to the government as to how the remainder of the case load should be concluded.

Senator FAULKNER—Mr Farmer, when you return with information about the length of contract, that might give us some sort of indication, I suppose.

Mr Farmer—I do not believe so, Senator. As I said, we have had, in relation to both Mr Palmer and Mr Comrie, contracts or a contract that take their period of appointment to a particular date. As I have already said, we are preparing for what might well be an extension of those contracts, but we are not in a position to say how far they might be extended, because those are matters for Mr Palmer and Mr Comrie to form a view on. I tried to outline that earlier to the committee.

Senator FAULKNER—I will await the answers to the questions on notice that will be provided, I hope, after the lunch break, and indicate that I will be dealing with the issue of a Chinese-born Australian who was detained by Immigration officials and held at Villawood. I think that might be best dealt with in the outputs.

CHAIR—That would be output 1.3, Senator.

Senator FAULKNER—Yes.

CHAIR—Senator Nettle has some questions in relation to the Palmer inquiry. We will conclude at 1 pm and we will commence at 2 pm with output 1.1.

Senator NETTLE—In relation to the Palmer inquiry, Cornelia Rau this week described treatment that she had received by a guard in Baxter when she was in Red 1. Subsequently her family, in their submission to the Palmer inquiry, raised the question about whether there should be recommendations about criminal prosecutions. I am wondering whether the Palmer inquiry has the capacity to make recommendations in relation to criminal prosecutions.

Senator Vanstone—It has got the capacity to refer matters to Mr Farmer, obviously—because there might be some Public Service disciplinary measures that might be appropriate—or any other appropriate body. That would include a whole range of people. It might include the ombudsman, it might include the DPP, it might include the Federal Police. We have tried to give Mr Palmer the broadest possible capacity. Because of his experience as a policeman, a lawyer and a very successful manager of the Australian Federal Police—you would have been here yesterday and heard what I said about the nature of the Federal Police when he took it over and what it was when he finished—and his interaction with state and Commonwealth agencies, he is in a perfect position to understand the options that are available in each of those areas. We quite specifically did not limit to whom he could refer things, we said it was to any other agency, so that he would have complete freedom. This is, as I indicated yesterday, the full fix.

Senator NETTLE—Thank you. The other question is about people who have declined to appear before the Palmer inquiry. I understand there are a number of Queensland corrections officers who have expressed concern about the lack of legal protection for them in appearing before the Palmer inquiry. I understand that similar concerns have been expressed by detainees and former detainees at the Baxter detention centre. Could you explain what, if any, legal protections exist for those people to enable them to give evidence in the Palmer inquiry as it is currently constituted?

Senator Vanstone—I will ask Mr Palmer if he wants to comment with respect to that. One form of protection is that people were asked, for example, as they have been in other inquiries, to give evidence by way of statutory declaration. It might not be obvious to you—I do not know if it is—why that is a protection. The reason it is a protection is that if someone wants to make a false accusation against someone then they have got to put their name to it. So that is a protection for people in that sense.

Senator NETTLE—I know that you were asked questions on 8 February when you announced the Palmer inquiry about the issue of what capacity people would have. In particular, the question I remember related to former detainees or detainees and their capacity to appear before the Palmer inquiry. I would have thought that in the intervening period between 8 February and now you would have a view as to the capacity of those people to appear before the inquiry.

Senator Vanstone—Mr Palmer can talk to whomsoever he chooses. There is absolutely no limit on Mr Palmer's capacity. As to formal legal advice in terms of what position someone might be in, I will get that for you.

Senator NETTLE—I understand what you are saying about you are not putting—

Senator Vanstone—I do not know if he has, incidentally. I have not asked who he has spoken to. The only occasion on which I have asked him—not me, my chief of staff—whether he had spoken to them was, as I indicated yesterday, to put a qualifier on us not wanting to squizzy into what he was doing. I did want to know: would it be at any time appropriate for us and if not would it be appropriate for someone else to speak to the people whom the paper record shows in all probability did conclude that Vivian Alvarez was Vivian Solon Young. It is clear that they did make that connection. That was outlined yesterday. They might be sitting

there—I am not sure if you were here at that time—thinking, ‘Heavens above. There’s this terrible fuss, and we knew,’ and be quite stressed. Equally, Senator Ludwig put the proposition that they may well have, in addition to being quite open with the Queensland police and the television documentary, I think it was on Channel 9, told a senior person, who did what with it we are not sure, whether they could have counselling. That is the only, to the best of my knowledge, belief and understanding, context in which anyone from my office or associated in any way has asked Mr Palmer: is it appropriate? What we wanted to know was: ‘We don’t want to speak to them before you do. What can we do?’ And that was resolved.

Senator NETTLE—I accept that you have not put any limits on Mr Palmer about to whom he can speak to.

Senator Vanstone—Your question goes to the legal position someone might feel they are in.

Senator NETTLE—Yes.

Senator Vanstone—I will get you some advice on that.

Senator NETTLE—You have mentioned the idea of a statutory declaration. I would be interested to hear if you think that is an adequate form of legal protection for somebody who wanted to provide evidence to the inquiry.

Senator Vanstone—I make the point that there have been countless, in this case, any number—for Senator Faulkner’s benefit; I misused that description earlier today—of inquiries the Commonwealth has run, not all of which have been royal commissions. There are methods for handling evidence. People may or may not be happy with them. There will be a debate about that, but I will get you some advice.

Proceedings suspended from 12.59 pm to 2.01 pm

CHAIR—Good afternoon, ladies and gentlemen. We are resuming in outcome 1, output 1.1—non-humanitarian entry and stay. We will start with questions from Senator Kirk.

Senator FAULKNER—Before we do that, Chair, would you mind if I checked if there are any responses to some of those matters that were placed on notice prior to the break?

CHAIR—Minister?

Senator Vanstone—I do not know about the questions Mr Farmer took on notice; he may have some answers. The questions you asked me to take on notice—no, I have not been able to progress those. I have had a quick lunch and a meeting to try to resolve—or assist in resolving, I hope—one of the long-term detention cases, so I simply have not had a minute to put to it. But you will get your answer. There is no question of not being willing to answer you, Senator; it is just a question of timing.

Senator FAULKNER—If you do not mind, the committee can obviously let me know when Minister Vanstone comes back with her responses. I will be in another committee. And we might check with Mr Farmer, when he is available, as to whether he has any responses.

CHAIR—Mr Farmer, Senator Faulkner was just inquiring as to whether you had any response to give to the matters we were discussing that you took on notice before lunch. The minister has just advised she will be coming back to the committee in due course.

Mr Moorhouse—Senator, before lunch you asked for a range of information about the inquiry. I have some of that information, if I can put that forward now.

CHAIR—Yes, although I would say, Senator Faulkner, even if those answers are supplied, I am particularly keen to start discussing the outputs of the matter we have been trying to get to for some hours now. So, if you wanted to pursue these in detail now, I am not keen to do that, and we can come to another arrangement about doing that at some time later in the day.

Mr Moorhouse—I can table them relatively quickly.

CHAIR—Thanks, Mr Moorhouse; go ahead.

Mr Moorhouse—The total staff currently with the inquiry consists of Mr Palmer, Mr Comrie and five others. We were asked whether any of these people were Commonwealth public servants: two of those five others are Commonwealth public servants. One was recruited from Comcare and one was recruited from DEWR. We were asked about expenditure to date. Expenditure recorded to 26 May is a total of \$450,622. Expenditure on consultants and contracts, which includes the value of the contracts for Mr Palmer and Mr Comrie, was \$332,268.

Senator FAULKNER—Is that included in the \$450,000?

Mr Moorhouse—It is, yes.

Senator FAULKNER—And that is the value of the contracts for whom?

Mr Moorhouse—That is the total expenditure on the contracts. It includes the contracts for Mr Palmer and Mr Comrie. I think that is the extent of it at this stage.

Senator FAULKNER—So it is \$332,000 for those two contracts?

Mr Moorhouse—That is correct. That is expenditure on contracts.

Senator FAULKNER—Are you able to disaggregate that into the two figures—one for Mr Palmer and one for Mr Comrie?

Mr Moorhouse—Not at this stage, but you also asked for details of the contracts for Mr Palmer and Mr Comrie. The initial contract for Mr Palmer was from 8 February to 7 April. There was a variation to that contract, extending it to 13 May. For Mr Comrie, the initial contract was from 28 February to 7 April and there was a variation extending that to 13 May. You asked for the dollar value of those contracts. Mr Palmer's contract is based on a per diem rate of \$2,750 including GST and the per diem rate for Mr Comrie is \$2,500 including GST.

Senator FAULKNER—So how do we end up with a—

Mr Moorhouse—That is a per diem rate. It does not indicate that they work every day on this.

Senator FAULKNER—I appreciate that, but the \$332,268 would comprise multiples of the per diem rate, wouldn't it?

Mr Farmer—Not necessarily because, if my understanding is correct, it would include other consultancy costs.

Senator FAULKNER—That is not the evidence that was given.

Mr Farmer—My understanding might be incorrect.

Senator FAULKNER—Mr Farmer, the evidence that Mr Moorhouse gave is that Mr Palmer and Mr Comrie's total payments, until 26 May, were \$332,268. That is a proportion of \$450,622.

Mr Moorhouse—That information that I have is that the total expenditure on contracts and consultancies was the number that I gave you: \$332,268.

Senator Vanstone—That is all contracts and all consultancies?

Mr Moorhouse—As far as I am aware, the two contracts that are contributing to that are the two I mentioned.

Senator FAULKNER—But only the two.

Mr Farmer—I think what Mr Moorhouse is saying is that that is the only line for contracts and consultancies. In other words, it would include the other consultancies—for example, the New Zealand Director-General of Medical Services, if there are costs and so on involved with that.

Senator FAULKNER—Are you able to assist us further today by disaggregating that amount?

Mr Moorhouse—I can seek to disaggregate it further for you.

Senator FAULKNER—I would very much appreciate that because I think you have taken on notice the cost of the other consultancies. Just to save time, are you saying that Mr Palmer and Mr Comrie's consultancies are included in the \$332? You are. Are there any other consultancy costs from other consultants in there or is that just both of them?

Mr Moorhouse—That is the information I am unable to provide you with at the present time.

Senator FAULKNER—Could you provide that information at a later stage today and disaggregate those amounts if you are able so we know who the other consultants are, which I think you are working on—I think you have taken that on notice—and what the costs of those consultancies are.

CHAIR—If there is nothing further in that area, we will go to output 1.1.

[2.09 pm]

Senator KIRK—My first set of questions is in relation to people who have been detected without work rights—illegal workers.

CHAIR—That is 1.3.

Senator KIRK—I beg your pardon.

Senator Vanstone—I will provide some interesting babble while you find your place. I would like to find another name for non-humanitarian entry and stay—

CHAIR—Not nearly as much as I want to find another name for internal product.

Senator Vanstone—You almost leave me speechless, Madam Chair. Still, non-humanitarian entry and stay is not a proper description of it. This covers everything in the

migration program other than the specific humanitarian and refugee program. I have not yet found some words for it but I can guarantee that by the next budget estimates we will have different words to describe that. Its particular feature is not that it is humanitarian, but it is not properly described as non-humanitarian. Has that been of assistance? Have you found your place while I have been talking?

Senator KIRK—No, because I was trying to listen to you.

Senator BARTLETT—What is the current status of the skilled component of the migration program? There has been a fair bit of public debate, as you would all know, about the size of that and what it might be increased to. What is the plan now for the size of that program for the next year?

Mr Rizvi—For next year the skilled stream comprises essentially six sets of categories. The first is employer sponsored. The plan for next year is to deliver around 15,000 employer-sponsored visas.

Senator BARTLETT—When you are listing these visas, can you indicate what the difference is from the existing year and whether there is an increase or not?

Mr Rizvi—Yes, I can provide the expected outcome for this year as well as the planning level for next year. The expected outcome for employer-sponsored migration for this year is around 11,900 and for next year we are hoping to get that up to 15,000. For skilled independent migration the expected outcome this year is around 43,000 and we hope to get that up to around 49,000 next year. For cases that are sponsored by state governments or regional authorities we are looking at a figure of around 3,000 to 3½ thousand this year and we hope to get that up to 10,000 next year. For the skilled Australian-sponsored category, that is the category where a skilled migrant is sponsored by a relative in Australia, we are looking to deliver around 14½ thousand this year and we hope to get that up to about 17½ thousand next year. For distinguished talent visas, we are looking at around 160 this year and we hope to get that up to about 200 next year. For business skills visas we are looking at around 4,800 this year and next year around 5,400. All up, that gives a skilled stream in 2005-06 of around 97,500.

Senator BARTLETT—What is the total for this year expected to be?

Mr Rizvi—For this year we are looking at an outcome of around 77,500 or perhaps a bit higher.

Senator BARTLETT—So there will be an increase of around about 20,000 next year?

Mr Rizvi—That is right.

Senator BARTLETT—Even this year's amount of 77,000 or so is a pretty big jump on the last few years, isn't it?

Mr Rizvi—Yes.

Senator BARTLETT—Mr Ruddock made some comments six years ago when the stream was about 35,000, when he said that if it was significantly increased—he was using the example of increasing it to 50,000—this would only be possible by 'significantly diluting selection criteria' and that this would 'irreparably undermine the significant economic

budgetary and employment benefits of skilled migration'. Obviously you have found a way of increasing it well beyond that—double that—without having those sorts of impacts. How are you having such huge increases—20,000 in one year—without diluting selection criteria or undermining the overall benefits of skilled migration?

Senator Vanstone—Mr Rizvi is a specialist in this area. This is, if you like, his baby—I am not sure that he likes to have it referred to in that way. He has worked on this program for a very long time and, if I may say so, has done an excellent job. I would like to contribute something more generally first before he has something to say.

I do not have in front of me what Mr Ruddock said five years or half a decade ago. As I said, things change a lot in five years. But the content of what he said, which you read, immediately sits comfortably with me. You do have to have an immigration program that has broad support in the community. It is very important for new migrants to be welcomed to Australia. When you have tremendously high unemployment, high inflation and people worried about their jobs, it is generally the lower skilled, less educated people who are the first to lose their jobs; they are the first to be worried and the most vulnerable.

If you will forgive me for making a slight politicisation, if you look at the Hawke-Keating years, you can see exactly who is hurt first by a weak economy. It is undoubtedly the vulnerable people, and they are the last to get repicked-up in an upswing. So it is very, very important not only for migrants coming in but for vulnerable people to make sure that you have the level of your intake matched to what your conditions are at the time.

We have now entered the 10th year of government. It has been an unprecedented period of economic growth for Australia as a whole, for the economy as a whole, but for certain sectors in particular. We have record low unemployment, so we do not have what we had when we came into government, and we have progressively brought the rate down. We have much better circumstances in terms of vulnerable people feeling comfortable. With the unemployment rate being what it is now, we have quite the opposite situation. Instead of people being desperate to get work, we now have employers facing a smaller pool of unemployed than they had before. Frankly, when the economic conditions were bad and there were a lot of people unemployed, employers could be very picky and very choosy, and it is a new experience for them to be facing a situation where lots of people who want a job can get a job and employees can be a bit more picky and choosy.

So we really have the perfect conditions to bring in more skilled migrants and help Australia grow yet again. We have conditions where people who might be vulnerable in bad economic times don't feel vulnerable because the economic times are good, and that means we can welcome more people. So I am especially pleased—and it is a whole-of-government achievement to be able to do this, in my view. It is obviously something I argued for, but it is not something I would be able to argue for if every other minister had not made the hard decisions that have to be made to keep the country growing economically. I regard this big jump as an achievement for the whole government. That is why we are able to do it—because we have had such a long period of good economic growth and low unemployment.

You asked about standards in particular. What we have tried to do is not have a policy that said: 'Let's have a number. Let's have as many as we can have. Any people will do, so long as

they've got some skills. Let's just drag them in.' We have a much more targeted policy than that. What we want to do is bring in the people that Australia needs. We think that in this increase we should be trying to see over and above the number for last year, which was in the 70,000s. We want to make sure that, as much as we can, this increase is fed firstly by an increase in the take-up of employer sponsorships, because nobody knows better than the employer the skills and the type of person that they want, so that is best.

Of course, not all employers have human resources departments and not all employers are in a position to be sponsoring, so the next increase we want to focus on is the regional and state sponsored migration schemes, because the regions and the states are the next closest to knowing what you need in an area. That is where we have given a points advantage in order to attract people to go to the regions and live and work there for a couple of years with a new two-stage visa that we introduced; I am pleased to say I do not think there is a Premier—and Mr Rizvi can correct me if I am wrong—that has criticised it. Most of them treat it as sort of *creme des chats* because it means that they have got some say and some control and, where they can see that they need particular skills, they can set about attracting those skills to their state, and they have some advantages in attracting them in terms of the points.

The points are offset in a sense. I am thinking now of the skilled independent regional visa. Yes, there is a points advantage for staying in the regional area, but you pay a price for that: you have to live and work in the regional area. So we get something for that. We have not just given something away; we have exchanged it for something. That is helping the state and regional areas get the skills in that they need. I think that is much better than having the skills intake planned entirely in Canberra on the basis of Mr Rizvi—as informed as he is—licking his finger, putting it up to the wind and saying, 'What do you reckon,' and filling in the form on a busy day. We are much more sophisticated than that. We are trying to work directly with employers and directly with the states and regions. Of course, the last focus will be on the general skilled migration pool, because there will be small businesses who, frankly, have got neither the time nor the inclination to be doing employer sponsorships and finding people from overseas. They are looking to an increased pool of skilled people available. That is how we are able to do it. Mr Rizvi, do you want to add to that?

CHAIR—I am not sure what there is possibly left that Mr Rizvi could say.

Senator Vanstone—You might gather that I am quite passionate about this increase. I am very pleased about it.

Senator BARTLETT—Stoked, maybe?

Senator Vanstone—I am very stoked about it.

Senator BARTLETT—Good to hear. I am glad to give you the opportunity to do a good news story, but the thing I want to ascertain about how you have been able to make this increase is that, back in 1999, the intake was about 35,000 people. The business community was pushing for it to be about 50,000, which the minister said it would not be possible to do without significantly diluting the selection criteria. I take your point about the economic circumstances and the opportunities that are there. Nonetheless, how have you been able to go from 35,000 to 100,000 in that period of time without significantly diluting selection criteria?

Mr Rizvi—When Mr Ruddock made those comments, we were struggling to deliver the numbers of skilled migrants that the government had set for us. There had been some increases and each year we were struggling to get up to those numbers. Since then, a number of things have changed which have enabled us to grow the skill stream and, indeed, will enable us to grow it further next year. The minister has pointed out the issue of economic growth. That is certainly feeding into increased numbers of employers sponsoring people from overseas, and that is contributing partly to the growth.

Secondly, the government changed the rules in respect of overseas students. Policy in respect of overseas students ever since we started our overseas students program was that overseas students should come to Australia, they should study and then they should depart. In 1999, I think Australia was the first government around the world to make that shift, to explicitly say to students, ‘When you have finished your degree, we’d welcome you staying on, if that’s what you’d wish to do.’ And what that has resulted in—

Senator BARTLETT—Sorry to interrupt. That is just in particular areas of study?

Mr Rizvi—It gives advantage to certain areas of study, certainly, and it certainly gives advantage to students who have studied in certain parts of the country, but it also gives advantages to all overseas students irrespective of where they study. So even students from, say, Sydney or Melbourne uni have advantages over anyone who has studied in any other university in the world in terms of the points test. That has led to some very significant growth. Last year I think we delivered something like over 13,000 skilled stream visas to overseas students who had successfully completed study in Australia. I do not have a precise number for this year but it will be larger than that, and I suspect it will be larger again the year after.

The third big change was to introduce a much greater role for states and regions in sponsoring people, and that has been steadily growing in conjunction with the promotional work those states are doing. Many of the states now spend a lot of time travelling the world recruiting skilled migrants, and that is contributing to growth.

The fourth factor is that, with the much wider range of skills shortages that are evident in Australia’s economy, a much wider range of occupations have been able to be placed on the migration occupations in demand list. That gives people who have those occupations a big advantage over others when they apply for a points-tested visa. So, for example, we now have civil engineers on the migration occupations in demand list. That means those people get at least a 15-point boost in the points test because of Australia’s shortage of civil engineers. That is helping to grow the numbers as well.

Finally, the government have announced that in 2005-06 they want DIMIA to take a much more proactive role, working with employer bodies in promoting skilled migration around the world. That is actually putting the message out there that Australia wants more skilled migrants and that we have the appropriate visa categories and visa processing arrangements and the right opportunities here for those people.

Senator BARTLETT—How are you managing, with such a dramatic increase—from 78,000 to 98,000 in one year and double again what it was a few years earlier—the continual dilemma of recognition of overseas qualifications? Obviously one particular area that is

specifically concerning people in Queensland at the moment is overseas trained doctors because of the controversy with one or two there. An underlying fear with such a huge increase would be that people who are not really as skilled as they claim to be are slipping through in a whole range of areas.

Mr Rizvi—In respect of skills recognition, the actual selection processes, particularly through general skilled migration, will not change. Our approach is that before you apply for general skilled migration you must go to the gazetted skills assessing body, get yourself assessed by them and, if you meet Australia's skill standards, then you may apply for general skilled migration. That is, doctors would have to go to the relevant state medical boards, get themselves assessed and, if they meet Australia's standards according to those state medical boards or the Australian Medical Council, then they would proceed to general skilled migration. We see no reason, in the increase that has been announced, for those skills-assessing bodies to alter their standards. I acknowledge some of them may have problems in their assessment processes, and that is something that they will have to deal with, but in terms of assessment standards nothing has actually changed in our processes.

There are a couple of other things that we have done or are doing. The government announced that we are going to develop a web portal for how skills assessment is done in Australia for different occupations. As you can imagine, at the moment a potential skilled migrant is faced with an array of processes which are quite confusing. If we can develop a process by which they can readily work out what they need to do, what they need to achieve to get up to Australian standards, that will make it a lot easier for them and will make Australia a lot more attractive. That does not mean lowering standards; it merely means making the information much more accessible.

Senator BARTLETT—As part of deciding to make this large increase, what consideration was given to the impact it would have on labour market opportunities for Australians? It is not just aimed at areas of skills shortages, as I understand it. What impact would it have on those broader long-term issues of improving the skills base of people who are existing residents of Australia?

Mr Rizvi—Whilst it is true there are certain occupations where there are significant shortages, if you have a look at the labour market situation in Australia for skilled people generally, relative to unskilled people, you see a very polarised labour market. You see a situation where unskilled Australians have unemployment rates of around eight per cent, sometimes nine per cent—well above the national average—whereas the unemployment rates for almost all skilled occupations are well below the national average and are generally around two per cent. Two per cent really does reflect a very tight labour market. So the entry of almost any skilled person in that context is going to be helpful to Australia's economy.

The second point I would make is that much of the research, particularly some research that Professor Ross Garnaut has done for us, highlights that the entry of skilled migrants has a significantly beneficial impact, not just in terms of the economy generally, through the taxes they pay and the economic growth they provide for, but in terms of the flow-on benefits of job creation for unskilled people. Indeed, he argues that a highly skilled migration program is actually an extraordinarily egalitarian thing to do from the perspective of Australia's economy

and Australia's unskilled population in that it increases competition for jobs for skilled people but creates more jobs and opportunities for unskilled people.

Senator BARTLETT—Just with the unskilled area: in the last annual report, the working holiday maker visas were getting close to 100,000. I do not know if you are anticipating that they will increase. The figure in the annual report was 93,845. Is that expected to increase as well?

Mr Rizvi—We would expect to deliver over 100,000 this year. We hope to deliver probably in excess of 110,000 the year after.

Senator BARTLETT—Would it be fair to say that the majority of those people that do actually engage in work work in unskilled areas?

Mr Rizvi—It would be fair to say that many of them do work in unskilled areas. We know from the research that Melbourne university did for us that many of them do a great deal of seasonal harvest work, and that is an area where Australia does experience considerable difficulties in attracting the mobile unskilled labour we need during intense peak harvest periods. They do help Australia a great deal in that regard. The second thing the research shows with working holiday makers is that most of them go home with no money—that is, whatever money they make here they spend here.

Senator BARTLETT—That is probably a good thing—except for them, maybe. Does that research explore, or is there other research that explores, the issue of the impact that 100,000-plus working holiday maker visa holders working mainly in unskilled areas have on employment opportunities for unskilled Australians? I have certainly had the concern raised with me—not so much with the seasonal work but in areas like general labouring, unskilled labour work in the cities, building sites and the like—that, firstly, the employment opportunities and, secondly, the pay rates are significantly impacted by working holiday maker visa holders. Have you got research about that?

Mr Rizvi—I could not quote anything beyond the Melbourne university research. We can certainly provide you with a copy of that work. It talks about the economic impact of working holiday makers and indeed the flow-on job creation impacts that they have. My understanding of the economic theory is that it is certainly true that where working holiday makers are competing directly with Aussies for jobs some Australians may miss out on jobs. But it has to be said that Australian employers tend to favour hiring Australians rather than people from overseas. However, if you look at it in a wider sense, at the aggregate economic impact and the wider job creation impacts they have, the net impact would probably be that they create more jobs than they take.

Senator BARTLETT—I guess where the jobs are that they create is one of the question marks. I think a slightly different type of working holiday visa was opened up a couple of years ago for people from Iran. Are you able to tell me how many of those have been granted?

Ms Samcewicz—I will have to take that on notice. I do not have that information with me.

Senator BARTLETT—That is fine. A general goal that is often talked about and, I think, widely supported is to encourage a greater proportion of migrants, both permanent and

temporary, into regional areas—not counting Melbourne, in my definition. How is that progressing? Is the general trend improving in that area?

Mr Rizvi—I will refer to two sets of data on that. The first is settler arrival data. That is data on migrants arriving in Australia from overseas rather than those who have had a change of status onshore. That data shows that the percentage of settler arrivals in New South Wales is now at its lowest level since the early eighties.

Senator BUCKLAND—I do not have a dictionary. What is settler arrival? Have I missed something?

Mr Rizvi—It is a very quaint, old-fashioned term still used by the Australian Bureau of Statistics. I think they must have developed it in the early years of Australia's migration experience.

CHAIR—About 1770.

Senator BUCKLAND—I thought something like that would have been familiar to me.

Mr Rizvi—So the percentage going to New South Wales is now at a very low level and the percentage going to all other states is, relative to the last 15 or so years, at quite a high level. In that sense, I think that data shows that we are starting to have some impact. The percentage of visas we are issuing where a state government or regional authority has had some sort of role in the selection process or in the design of the visa is certainly going up very strongly. Admittedly that includes Melbourne but, even if you put Melbourne to one side, that percentage is going up quite strongly. From all the feedback we are getting from state governments, it will go up even further next year.

Senator BARTLETT—One of the changes that has happened recently, as I understand it, with skilled visas is an increase in the points threshold for students from 115 to 120 points. I do not want to argue about whether or not that was a good thing to do, but my understanding is that it basically affects students that were already here and had already started study under the previous arrangements. Has the department received any expressions of concern from students who feel they have been unfairly affected by that midstream change, and is any thought being given to addressing those concerns?

Mr Rizvi—That change was announced more than 12 months before it took effect. It took effect in April 2005 but I think the minister announced it before or around April 2004. It only affects new applications made after April 2005. I think pretty fair warning was given that the change was going to take place, so people would have known what was coming up. The second point is that, in announcing that pass mark increase for independent skilled migrants, at the same time the government announced the introduction of the skilled independent regional visa, which has a pass mark of only 110. In other words, if a student is prepared to settle in regional Australia—not including Melbourne but including a very wide part of Australia—and get state government sponsorship, they can obtain a skilled migration outcome. So what it did was encourage more students to think about settling in regional Australia.

Senator BARTLETT—What is the definition of 'regional' in that context? Is it just everywhere other than Melbourne, Sydney, greater Sydney and south-east Queensland?

Mr Rizvi—It is essentially everywhere other than Melbourne, the ACT, Wollongong, Sydney, Newcastle, the Gold Coast, Brisbane and Perth.

Senator BARTLETT—More broadly in the area of student visas, do you have the anticipated figures for next year for the total number of student visas and how that compares with how you think it will play out this year?

Mr Rizvi—This is people applying for student visas, not students going to skilled migration?

Senator BARTLETT—Yes.

Ms Keski-Nummi—This year, to the end of March, we have granted 132,000 overseas student visas. It is a slight decline from last year—about a 1.1 per cent decline on the same period last year. Overall last year we issued just on 170,000 visas and we will probably see that slight decline for this year as well—around one per cent.

Senator BARTLETT—Do you have any estimates for next year?

Ms Keski-Nummi—I really do not have any predictions for next year.

Senator BARTLETT—Was that slight decline anticipated?

Ms Keski-Nummi—I think it is due to a combination of factors, but yes. We are seeing many more in-country educational programs, particularly in the secondary sector, so we are finding that students are staying for a period in their own home country before they actually apply for visas to Australia for further study.

Senator BARTLETT—My next topic is the contributory aged parent visa. I am jumping around a bit, but I am just trying to get in as much as I can, given the time pressures and regular glances across at me.

Mr Rizvi—Were you after the pipeline numbers?

Senator BARTLETT—Yes. How is that progressing?

Mr Rizvi—For contributory parents or for the other parent visas?

Senator BARTLETT—The contributory and non-contributory aged parent visas.

Mr Rizvi—Both of them?

Senator BARTLETT—Yes.

Mr Rizvi—In terms of the contributory parent visas, to the end of April 2005 we granted 3,249 persons contributory parent visas, and the pipeline of applications at that time was 3,200 persons. In the non-contributory parent visa categories, we were very close to reaching the 1,000 parent place cap. I think at the end of April we were just a little over 50 persons short of the 1,000 cap. In terms of the queue for offshore parent applicants it was 14,700 and for onshore it was 5,500—that was at the end of April 2005.

Senator BARTLETT—Do the 14,000 and the 5,000 both squeeze into the 1,000 cap?

Mr Rizvi—Yes.

Senator BARTLETT—With regard to the change that was announced late last year enabling people on TPVs to apply for other visas, can you give me an indication of how many people have taken up that option?

Mr Rizvi—At this stage, the numbers who have taken up that option remain relatively small. I may have to take the specific numbers on notice, but so far there would be fewer than 50 who have taken that up. My understanding is that most people are taking the option to fully play out all of their protection visa options before they go down the mainstream visa route. They have considerable time yet before they have to make those decisions, so we are probably not expecting a big increase in those numbers in the short term.

Senator BARTLETT—I asked about SSASSL in February. What has happened with that now?

Mr Rizvi—We took your advice and regulations have been introduced to put SSASSL into the regulations rather than implementing it using a gazette notice. So all persons applying after the regulation was introduced would have the limiting impact of SSASSL applied to them. We have held off making decisions on the applications of all persons who applied prior to that date pending the outcome of a Federal Court case which we should know the outcome of fairly soon. In respect of that group, we will follow the directions of the Federal Court.

Senator KIRK—I have some questions in relation to student visas and cancellations. Last time around you provided us with some information about the number of student visa cancellations, and I would like to have those numbers updated if I could. You may need to take that on notice. What I am most interested in is whether or not you have discerned any trends or patterns in your analysis of visa cancellations as to whether or not there are particular institutions where there is a higher number of student visa cancellations than others.

Mr Rizvi—We do have some patterns of those sorts emerging. You need to be careful about those patterns because they do not necessarily reflect negatively on any particular institution—it can; but it does not always. Some institutions are simply very rigorous, for example, about reporting to us when a student leaves the country having completed their course—and that visa is then cancelled because the person has left the country. There is nothing wrong with that and no negative view should be taken of that. On the other hand there are other providers who do experience a significant number of students who are not attending courses and not meeting course requirements who are reported to us. Their student visas are then subject to an assessment of cancellation. It is against that background that I think any examination of those patterns needs to be very carefully considered. We can provide you with some statistics on those cancellation trends, but I think it might be best to take that on notice because it is quite a detailed table.

Senator KIRK—Certainly. Last time there were a number of institutions that stood out as having a high number of cancellations—for example, QUT, Central Queensland University, James Cook University and Murdoch University. I wonder whether or not those universities are still up there on the list of those who are reporting student visa cancellations.

Ms Keski-Nummi—Some of those universities remain there but, again, as Mr Rizvi pointed out, we have to be very careful with some of the cancellation data because it does not

just show the bad cancellations; there are students who have completed their courses early. If you wanted a full report on all of that, we would have to take that on notice.

Senator KIRK—If you could. I wonder also whether or not amongst your answers you can provide that breakdown of the reasons for the cancellation. That would be helpful. The Bridge Business College was one that came up last year. Has there been any compliance action carried out in relation to that institution?

Ms Keski-Nummi—I understand that there has been a monitoring visit there. Both DEST and DIMIA went out late last year. They were scheduled to go again either this week or next week, but I am not quite sure if that has occurred yet. DEST are clearly the ones who are leading this, but we have asked that our officers accompany them on the monitoring visits to the Bridge Business College.

Senator KIRK—You said there has already been one visit.

Ms Keski-Nummi—That was late last year.

Senator KIRK—What was the outcome of that?

Ms Keski-Nummi—They were counselled about their attendance records and asked to put their books in order, I guess, in relation to that.

Senator KIRK—The attendance records are something that the institution has to provide to DIMIA—is that correct?

Ms Keski-Nummi—We can put in a production notice and request that we be given all the attendance records.

Senator KIRK—Is there any requirement that they produce attendance records and forward them to DIMIA?

Ms Keski-Nummi—No. They are required, however, to report to us any non-attendance of students.

Senator KIRK—Do most of the institutions comply with the reporting of non-attendance?

Ms Keski-Nummi—I think the vast majority of institutions would comply with that. There are some, clearly, where we have had to take further action.

Senator KIRK—Could you give us some information about the Sydney Business and Travel Academy? Has there been any investigation into that academy?

Ms Keski-Nummi—Yes. We have put in a production notice. I would have to take the rest on notice and follow up on just what has occurred.

Senator KIRK—So a production notice has been sent out. What is the consequence if they do not comply with that?

Ms Keski-Nummi—There are consequences if they do not comply.

Senator KIRK—I would have thought. What are they?

Ms Keski-Nummi—I would have to follow up on just what the results have been. We have served several production notices, the last one on 28 January this year. It related to the production of some fraudulent entrance results submitted by the student's agent, in which the

college was not complicit. I would have to follow up a bit more to find out just what the results were.

Senator KIRK—If you could perhaps take that on notice, that would be helpful; thank you. I have some questions in relation to so-called education agents. There has been some media coverage in relation to this in the *Sydney Morning Herald*. There was a report that a student paid \$6,500 or thereabouts to a gentleman known as Mr Bob Chen of the Oriental Education Centre in Sydney for documentation that proved to be false. What is done in terms of the regulation of these education agents from DIMIA's perspective?

Mr Rizvi—There are two parts to this. Education agents may also be registered migration agents, and they should be registered if they are in the business of providing immigration advice. So if they are providing immigration advice they should be registered with MARA. If a registered migration agent lodges fraudulent documentation, that is something that we will analyse. We may go back to the agent and ask for the agent to show cause why they might have done that. If the answers given are unsatisfactory, we can refer that matter to the Migration Agents Registration Authority for appropriate action. In recent times, MARA has been very active in sanctioning agents where those sorts of things have been involved. At a broader level, however, education agents generally—that is, insofar as they are not involved in the provision of immigration advice—do not have to be registered. There is not a regulatory regime for education agents who are not in the business of providing immigration advice.

Last year, Mr Hardgrave, the former minister, put out a discussion paper on options for regulating the immigration related activities of education agents both onshore and offshore. The responses we received to that were mixed. For example, the Migration Institute of Australia takes a very strong view that all education agents should be required to be registered within their scheme. That is in respect of their immigration related activities. Other bodies argued that there should be strong regulation covering the full range of activities of education agents—that is, not just their immigration related activities but also their education related activities and any work they might do, for example, in providing welfare services and other sorts of services to students. Parts of the international education industry, however, argued that introducing an onerous regulatory regime for education agents may result in significant increases in costs for the industry, and that was of concern to them.

Confronted with that sort of diversity of views, what we are seeking to do is to find a path forward whereby we do not increase costs for the industry significantly but can deal with some of the integrity and consumer service issues. We are planning a meeting with some of the key players over the next month or two to try to get some consensus on a way forward in that particular area. Firstly, we are looking at things like, for example, measures that might enable and encourage more agents, particularly offshore agents, to become registered. Secondly, we are looking at ways of encouraging more education agents to administratively register with DIMIA as part of our initiatives to extend electronic lodgment arrangements; that is, in order for many of these agents to stay in the industry, they are eventually going to have to lodge their applications electronically because that will inevitably be the way of the future. However, we are saying that if they wish to have this electronic arrangement with us, they will need to be trained and they will need to sign up to a code of conduct associated with

that. We believe that is a less onerous way of taking this forward and we believe we can get consensus amongst the various players on that, but over the next few months we will find out whether we can or cannot.

Senator KIRK—It sounds hopeful. I look forward to asking you more questions about that in November. You were talking about education agents who are offshore. Is it the case that you did a survey of 39 Australian posts quite recently to find out a bit more detail about these education agents?

Mr Rizvi—Yes, it was done a couple of years ago, I think.

Senator KIRK—Do you have a copy of that report that you could provide the committee with?

Mr Rizvi—We can certainly provide you with a copy of the discussion paper that the minister issued.

Senator KIRK—That is the one that Minister Hardgrave issued? This is a separate—

Mr Rizvi—It is on our web site but we can provide you with a hard copy.

Senator KIRK—That would be helpful. My next lot of questions are in relation to students who then seek permanent residency. There was a report in the *Sunday Age* back in March regarding an international student who has a degree in media from RMIT and is seeking to become a permanent resident. However, in order to do so he is now undertaking a course in hairdressing in order to get his 60 points of skills. I was interested in what the view of the department is about this. Clearly, it seems this gentleman is undertaking this course so that he can become a permanent resident, yet is unlikely to actually work in that field given that his main interest is in film making, from what I understand. Do you have any information that would lead you to believe that perhaps the onshore permanent residency visa application provisions are being manipulated in some cases? If so, how widespread do you consider this to be?

Mr Rizvi—Certainly it is true that students who wish to obtain a permanent migration outcome will seek to undertake studies in occupations that are in demand in Australia, and it is certainly true that hairdressing is considerably in demand in Australia. As part of the general skilled migration arrangements, however, we are really not in a position to ask someone, ‘Do you really want to be a hairdresser or are you intending to be something else?’ People change their minds and it is something that I think it would be very difficult to test in that context. If the person has obtained the qualifications to become a hairdresser and Australia has a shortage of hairdressers then really we are obliged to visa that person. Most of our research shows that most of the people in those circumstances go on to work in the occupations that they nominated for migration. But I would accept that some will not.

Senator Vanstone—Can I make a general point as well that I have got great admiration for migrants because they give up a life somewhere else. It is not that they and their family or they on their own come; they give up all their social contacts and the whole thing that makes up your life is left behind. It is not my view that the majority of people who do that come here so that they can go on benefits. Whatever qualification this gentleman has got, he may be in the typical category of someone who wants to get ahead, is ambitious, is prepared to move

countries to do that and give up a life and do a course that was not his first choice. But I infer from that that it is a fair bet that he is not the sort of bloke who is going to say, 'Well, I'll sit on the dole because I can't get a job as a media manager,' or whatever you said his course was. He will do something with his life because, if he is prepared to keep at it as far as he has, he obviously wants to get on. That is why we are in favour of migration.

In one sense I understand what you are saying, that they just do a course, as Mr Rizvi said. But that is indicative of something, a desire to get ahead. That is one of the things that has, in my view, been good for Australia: a constant influx of fresh blood with that kind of enthusiasm and determination to get ahead. I know somebody will then keep the name of this person and he will probably show up in three years time as having done something terrible! They will come back and say that I suggested. I am just saying that is the general inference I get from the story that you told me, and I do not know that it is that uncommon.

Senator KIRK—And hairdressing and film-making are probably quite complementary in some respects.

Senator Vanstone—I am not sure about that. You might watch the current affairs programs and see how very careful the presenters are about their hair. He could at least get a leg in there somewhere. There is a bit of product up top on those male newsreaders, you know.

Senator KIRK—I am not sure if this will come into 1.3 or 1.1. It involves student visas for women who upon the raid of a brothel said that they were not illegal immigrants but they held student visas—a kind of a crossover between the two.

Mr Farmer—It sounds more like 1.3, Senator.

Senator KIRK—I will leave it until 1.3. That is all I have.

Senator BARTLETT—My first question is on the family program in general. What is the overall number expected for the current financial year and are there any projections for next financial year on the size of the overall family program?

Mr Rizvi—We are looking at a family stream outcome this year of around 41,500 and a family stream outcome next year of around 42,000.

Senator BARTLETT—So fairly steady, then.

Mr Rizvi—Yes.

Senator BARTLETT—On the area I think called partner visas now rather than spouse visas, are you able to provide numbers of the cancellations of spouse visas in the current financial year due to breakdown of the relationship?

Mr Rizvi—The way the spouse visa provisions work is that a person simultaneously makes an application for a provisional spouse visa and a permanent residence visa. We process their provisional spouse visa and then, two years after that, we again process their visa to check that the relationship was ongoing. It is at that second stage when we may find that the relationship was not ongoing or had broken down. The rate of refusal at that second stage, I recall, fluctuates between five and 10 per cent. Not all of those will be because of a breakdown of the relationship. There could be other factors. It might be best if I take this on notice so that I can give you more comprehensive data.

Senator BARTLETT—Thank you for that. I am not sure of the terminology, but where a relationship breaks down, allegedly due to domestic violence, and people seek to ensure their visa is not cancelled for that reason: are you able to give any figures about the number that fit into that category or circumstance?

Mr Rizvi—The latest figures I have on the numbers of cases obtaining permanent residence under the domestic violence provisions are for 2003-04, when we issued 506 visas. Of those, approximately 20 per cent were to males and 80 per cent were to females.

Senator BARTLETT—Is there a nationality breakdown of those figures? It can be provided on notice; you do not need to read it out.

Mr Rizvi—For 2001-02—my figures are a bit dated—Fiji accounted for 7.5 per cent; the former Soviet Union, 4.7 per cent; Lebanon, 3.7 per cent; the Philippines, 3.3 per cent; People's Republic of China, three per cent; Vietnam, 2.8 per cent; and the United Kingdom, 2.2 per cent of the total number getting permanent residence on domestic violence grounds. So it is fairly spread.

Senator BARTLETT—Is it the case that there has just been a change to the regulations surrounding the domestic violence provisions?

Mr Rizvi—The government has announced that the regulations for the domestic violence provisions will change from 1 July 2005. As you will recall, some regulations in this area were disallowed by the Senate in 2000. After that, we entered into a period of consultations with the Office for the Status of Women as well as the organisation formerly known as the Partnerships Against Domestic Violence Task Force. Through those discussions, led by the Office for the Status of Women, we have come up with a proposal which seeks to address the concerns the Senate raised with the earlier version of the proposal.

One of the two biggest differences between what is proposed for 1 July this year compared with what was introduced in 2000 is that in the 2000 regulations all domestic violence applicants had to go to Centrelink to have their claims assessed before coming to DIMIA. Under the proposal that is being put forward for July 2005, DIMIA will only now refer those cases where it has a concern about the veracity of the claims made. On the basis of the surveys that we have done, we think between 20 per cent and 30 per cent of cases may be referred because of concerns that the claims are not genuine. That means the vast majority of claims will go through using the normal processes that already exist, and we believe they should not be in any way affected.

The second difference is that, where DIMIA refers a particular claim to Centrelink or whichever body is selected to make these assessments, the DIMIA decision maker will be bound by the recommendation of the expert body and will have no capacity to vary from the findings of the expert body. They are probably the two biggest differences between what is proposed for July this year and the regulations that were disallowed in 2000.

Senator BARTLETT—So they are finalised now—is it just a matter of them being introduced?

Mr Rizvi—They are scheduled to be introduced on 1 July 2005.

Senator BARTLETT—This might be 1.3, I am not sure. The action that has been taken in the last year or so surrounding women who have been sex trafficked—is that in this area?

Mr Farmer—It is 1.3.

Senator BARTLETT—There was a case that got some public attention towards the end of last year which I think comes into this area. A family in Canberra, I think it was, had an autistic boy who was seeking permanent residency. Firstly, has that individual case been resolved?

Mr Rizvi—That case has been resolved. I think the minister intervened in that particular case, and a visa was granted.

Senator Vanstone—The family very kindly sent me a very nice note and a very nice gift, which was completely unnecessary—and unsolicited, I should say. We get more thankyou notes than people might imagine from interventions and things like that.

Senator FAULKNER—Do you declare these gifts normally, Minister? What is your practice on that?

Senator Vanstone—I do not get a lot of gifts actually.

Senator FAULKNER—I can understand that.

Senator VANSTONE—I will have a look at the register. I have not thought of it in the context of its value.

Senator FAULKNER—I assume it would depend on the value of the gift, wouldn't it?

Senator Vanstone—Yes. I am not assuming at this point that it fits into that category.

Senator FAULKNER—I am asking what your normal practice is. Frankly, members and senators from time to time who are involved in a successful immigration representation receive small gifts from grateful constituents. It is not unknown to members of parliament; of course, it is not.

Senator Vanstone—No, I am sure, but I think it was the first gift from interventions. I know there have been cards and letters and things. Someone may have sent me another small gift, but with the volume of stuff that comes through that does not come to mind at this point.

Senator BARTLETT—I will not give you a gift but I will indicate my thanks to the minister for acting in that case. The broader issue I am interested in is the difficulty that arises from time to time in a public sense with individual cases but is an ongoing issue beneath the radar of people with children or spouses with health problems and the impact that can have on the success of their visa claims. Is there any reconsideration of the guidelines surrounding that issue at the moment? The department is fairly happy with how it operates.

Mr Rizvi—I think what you are referring to is known as the health waiver. The health waiver is available in the current regulations for all partner categories, it is available in dependent child categories and it is available in refugee and humanitarian categories. The particular case that you were referring to and that the minister intervened in was actually a skilled migration category. The waiver under the current rules is not available in that category at present. As part of discussions of the ministerial council on immigration, this question has been raised. At the direction of the ministerial council we have been undertaking consultations

with the Department of Family and Community Services, the Department of Health and Ageing and their state counterparts on possible mechanisms to introduce a health waiver provision in a wider range of categories and to see how it might be best administered. We prepared a discussion paper under the auspices of the ministerial council in that context and we are awaiting final input, particularly from a number of states, before we put a report to the minister.

Senator BARTLETT—Are those discussion papers internal documents, as in non-public?

Mr Rizvi—It is a document that has really only been shared with the state governments, DHA and DFACS at this stage.

Senator Vanstone—It is worth mentioning that, even though there might not be a health waiver in these other areas, and Mr Rizvi has indicated how that is being looked at, I can assure you that when they come to interventions what I think are fair decisions are made. I am sure some people would say, ‘Well, you should have said no,’ because there are some health issues that are expensive, but I can tell you I sleep very happily at night with the number of yeses that we give. My only regret, as I have indicated in the Senate before, is that I do not have the stomach to send *A Current Affair* around, say, ‘Here’s a really great story,’ and interrupt these people’s lives, because the people who need intervention obviously do not need intervention by the media.

Senator BARTLETT—The final point I want to put a question on is the issue I raised back in February, I think, of the fairly large set aside rates at the Migration Review Tribunal in a range of categories. That is an ongoing issue, I guess. I want to check whether there has been any further improvement in that area—a decline in the number of alterations of original decisions by the department or any further actions from the department’s side of things to address that matter.

Mr Rizvi—The news overall is probably mixed. I will start with the good news. The good news is that the number of applications to the MRT over the last 18 to 24 months has declined quite a bit. The overall number of cases being appealed to the MRT is falling, and that is good news, especially against the background of the rising size of the migration program and the rising size of a range of temporary entry categories. So the overall number of applications we are deciding is going up; the number of applications that are being appealed to the MRT is falling.

There have been slight improvements in set-aside rates in visitor categories, in student categories, in temporary entry categories and in general family categories. Set aside rates in partner categories and in what is known as the skill linked category have gone up a little bit. These are at the margins.

In the partner category, the real challenge is that the point at which we make a decision about a relationship is sometimes fairly early in that relationship, so the judgment that is made is often being made on the basis of a very short relationship and relatively little information. By the time it gets to the MRT, in many instances the relationship has been continuing for a considerable time longer and the MRT has access to significantly more information than our original decision makers had. As a result, to some degree, some level of set-aside rate is going to occur because of that factor.

Having said that, absolutely, we need to improve the quality of our decision making in the partner area. One thing we have done to try to improve that is to develop what we call an interactive partner application form whereby, rather than just filling in the hard copy form, the applicant and sponsor can go to our web site and fill in this interactive form. It will guide them through the process with a series of prompts and responses, depending on their responses, to help them lodge a more complete application so that they have a better understanding of what information we expect. The other thing we have done is develop a package of information for our decision makers which goes to issues of cultural norms in different parts of the world, so that our decision makers can be better informed about those cultural norms when making decisions about partner applications. We are hopeful that those two initiatives will help us improve our decision making in the partner area.

[3.21 pm]

CHAIR—It gives me great pleasure to announce that we have completed output 1.1. We will move to output 1.2, ‘Refugee and humanitarian entry and stay’.

Senator NETTLE—I want to ask about decisions on humanitarian visas generally and the issue of the culture within the department, which we have talked about. Both the minister and Mr Farmer have acknowledged that there are opportunities for improvement and change. I agree and feel that change should go all the way up the levels to include the secretary, the minister and the government as well. Mr Farmer, you might be aware of comments made on *Lateline* last night by Diana Goldrick, who was introduced as:

... one of the longest-serving New South Wales managers dealing with refugee applications from detention centres.

She mentioned that, as departmental secretary, you had addressed her staff in Sydney in 2000. In the interview she said you:

... told the case officers to be very careful when dealing with the applications from the boat people because ... ‘We don’t know who these people are.’

She also mentioned another address you made to her staff later in 2000 in which you said there were:

... so many people in detention, the head of the Department of Prime Minister and Cabinet had told—
you—

that unless people were ... out of detention very quickly ... the department would go bankrupt—
and if this occurred you—

would lose—

your—

job as secretary.

She said you had:

... come to Sydney to appeal to the case officers to do their utmost to issue the detainees with temporary protection visas as quickly as possible.

Do you want to comment on whether you made those remarks on either of those occasions? In the interview, she went on to say she resigned from the department in the early 2001 because she was:

... sick and tired of the hypocrisy ... inconsistency and ... mistreatment of people I considered to be bona fide refugees.

I want to ask you if you made those comments. Could you explain what, on the face of it, appears to be inconsistency in the message being sent to case officers about how they deal with protection applications from refugees in detention centres and also the issue of any political interference in the operations of the department.

Mr Farmer—Thank you for the opportunity, Senator. I did not see that program. I do not recall having met the person in question—but I am not disputing that; I would not necessarily remember the name of everyone I have spoken with in the department. It was during 2000 and 2001, if I understand you correctly.

Senator NETTLE—I think she was indicating that both instances were in 2000 and that she resigned in 2001.

Mr Farmer—I have no knowledge of her record with the department, so I will not deal with her, because it is not within my knowledge. If you are interested in that, we can obviously establish the facts of her employment. But that is not the nub of your question, as I understand it. In relation to the second point, about getting people out of detention quickly, it is hard to know where to start in addressing that question. It is possible that the person concerned is reflecting things that I certainly did say but reflecting them through a very muddy and distorted lens.

Let me tell you the sorts of things that I would have been saying at that time. At that time, the department was looking at processing applications from a sizeable number of unauthorised boat arrivals. We certainly had, as you know, a great influx in the period 1999, 2000 and 2001. I had a great concern that our processing of applications for protection visas was not efficient and effective enough. It was taking too much time to make our primary decision, and that was time when people—families, children and so on—were in detention. So we had an interest in making sure that our processes, to the extent that they were not efficient and effective in dealing with that large number of people, were improved. I think the fact of the matter is—and we have gone over this in estimates committees during the last few years—that processes which were reasonably effective when we were dealing with dozens or hundreds of people proved not be effective when we were dealing with hundreds and then thousands of people.

You may recall that, in one of the budgets—I forget which year, but it was about this time—the government changed the funding arrangements for the department. It changed them to the effect that the department would be funded for detention costs for boat arrivals for a certain period of time, and we were in effect charged with making a primary decision within that time. So there certainly was an imperative on us to improve our record of processing protection visa applications. There were two imperatives. One was the view within the department that we needed to examine our processes, change them and make them work better so that we were actually doing our job better and delivering those decisions—the

primary decisions—earlier. The second reason was the budgetary one that I have just talked about.

The quotation ‘Unless we get people out of detention quickly we will go bankrupt’ is an absurd recollection by someone, because it bears no reference to what were the objective and known facts at the time. If the person has got that recollection, they are, as I said, recollecting through a muddy and distorted lens. I have given you the objective nature of what we were saying then.

As for dealing carefully with boat people because we do not know who they are: I am not quite sure whether that is any more than a statement of fact. The government quite rightly expected that we would take the appropriate measures in looking at people who arrived unauthorised on our shores. We had not had any chance, for obvious reasons, to do health, security or any other background checks on them, and there was an expectation that we did not know who they were. It was obviously important that we take appropriate measures, because they arrived without documentation, in many cases.

So I am glad to have the opportunity to comment on a program I did not see. I guess it just goes to show that people’s recollections of events can be very different; but this is, to me, a grotesque, distasteful and quite inaccurate recollection by someone, and I refute it absolutely.

Senator NETTLE—I do not have anything more to ask on that. I suppose it is worth saying that it may well be a very sad instance if—if she is correctly described in the interview—she was the long-serving manager dealing with refugee applications in detention centres, that she subsequently felt, presumably through a range of her experiences, that she needed to resign for the reasons that she cited. So, whilst you might find it frustrating, the circumstances as portrayed here were, for her as well, an issue of frustration.

Mr Farmer—Yes. She is entitled to her views and, I am sure you would agree that I am entitled to mine. And, as I have shown today, occasionally I do have them.

Senator NETTLE—I will move on. I wanted to ask about Red One.

Mr Farmer—Is this a detention issue?

Senator NETTLE—Yes. It is to do with the operations of Red One.

Mr Farmer—That would be under 1.3.

Senator NETTLE—All right. I will save that one up for then. I might go to a couple of instances which relate to detainees and the circumstances they are in right now—some of which we discussed yesterday.

Mr Farmer—The matters relating to detention would come under 1.3. We are dealing now with the refugee and humanitarian program.

Senator NETTLE—That is correct—refugee applications.

Mr Farmer—Okay.

Senator NETTLE—We spoke yesterday about a refugee applicant in Baxter Detention Centre who was transferred to Royal Adelaide Hospital last night. Mr Davis was speaking about him. Senator Bartlett asked a question, I subsequently asked a question, and Mr Davis gave an answer. I am just wondering: a number of people have sought to get in contact with

this particular detainee in the hospital and have been told that they are not able to speak with him on the phone. They sought information about whether that was a decision that had been made by the hospital staff or by DIMIA, and they had been told by hospital staff that it was made by DIMIA. I just wanted to check that.

Mr Farmer—That really is a question that should be directed to the officers under 1.3. It relates to detention.

Senator NETTLE—Okay.

CHAIR—Mr Farmer, in terms of clarifying this to assist senators: the refugee and humanitarian entry and stay is that very specific part of the program which is about Australia's bringing refugees and humanitarian entrants into Australia through the offshore application process, largely—

Mr Farmer—Yes, and it also deals with our international cooperation programs.

CHAIR—Yes.

Mr Farmer—And onshore asylum decisions.

CHAIR—So, Senator Nettle, that is the area.

Senator NETTLE—Fair enough. I think my questions are probably 1.3.

CHAIR—Do we have any more questions in 1.2? I actually do not know whether Senator Bartlett has questions in 1.2.

Senator FAULKNER—I have questions in 1.3.

Senator NETTLE—He may well have because he asked me if I would be long. I thought I could do mine in this so I said I would be a little while.

Senator FAULKNER—Could we just do a couple in 1.3 and come back?

CHAIR—How did I know you were going to say that?

Senator FAULKNER—Just to save some time.

[3.35 pm]

CHAIR—I think it is just my natural prescience, actually. But, yes, indeed; why don't we do that. We will go to 1.3 now. I may have to ask the officers relevant to 1.2 to remain in the room, or the general vicinity at least—my apologies. We will go to 1.3, which is 'Enforcement of immigration law'. We have a number of other senators to call from other committees in this area as well. I envisage that we will take a small amount of time on this. If we are ready to continue, I will go to Senator Faulkner.

Senator FAULKNER—I just wanted to ask a few questions, if I could, about some media reports that I have seen. Let me describe the media reports this way. They regard a Chinese-born Australian citizen, allegedly detained by immigration officials and held at Sydney's Villawood detention centre for a number of days—three days, as reported in the media—despite telling these officials that his passport was at home. That is as fair a summary of the issue as I can give. It is based on media reports, and I am not going to pretend to you otherwise. Mr Farmer, I am sure you are aware of this because this did receive a considerable

amount of media coverage. We know the case we are speaking of. I do not know if there is an easy way of identifying it. You can tell me if there is a good way, or Mr McMahon can.

Mr McMahon—We do know of the case. It was related to a compliance operation that took place on 25 November 2002. It is one of the cases which has been identified and passed to the Palmer inquiry. It has already gone to be mentioned, although a hearing has not been set. There is some level of frustration in terms of the way in which I can convey information to you because it is going to be a court case and some of the details actually go to the nature of the defence that we will be mounting. I can make a couple of comments though.

Senator FAULKNER—I think it might be useful. I appreciate that and I appreciate the information you have given. I was going to ask you basically for a status report, if you could provide that as much as you can. Obviously I was going to ask you whether it was included in that number, which is now 201, that have been referred to the other inquiries that are being undertaken in the department. So I think it would be useful if you could just outline what you can to the committee.

Mr McMahon—It is relatively limited but I will simply say that, as you would expect, because we were serving a warrant we did have intelligence in relation to that case. The intelligence proved quite accurate. It did involve, in the end, identifying a female unlawful noncitizen, who was subsequently deported. It also involved false documentation, and it is the nature of that false documentation and a complex family relationship—which is all I can say at the moment, I guess—which go to the heart of the case. It is a very well documented case from our point of view. We strongly dispute the assertions which have been placed in the media. We shall be running that case once it hits the courts.

Senator FAULKNER—This raises in the first instance, it seems to me, the threshold issue, which I touched on a little earlier in the day, about the status of some of these matters that are included in the ongoing inquiries of Mr Palmer, which might be subject to other action. I do not know if you heard the question I asked about this. Possibly I mentioned compensation and the like. That is the threshold issue, it seems to me—or one of the threshold issues here.

How would the department expect those that have been given a responsibility for investigating those matters as consultants to the department to deal with an issue like this, which you are saying is also subject to court action? Is it court action, or some other form of legal action?

Mr McMahon—It is a court case.

Ms Godwin—I think I took that precise question on notice this morning. You asked about whether there were any such cases. I said I recalled that there were probably some and that we would take on notice the details and the question that you raised about what that meant in terms of the inquiry.

Senator FAULKNER—I appreciate this particular case would obviously be one of those that you would deal with in answering that question on notice. That is logical and obvious, frankly. Fair enough, but there is still clearly a threshold issue of how those who have been provided with these 101 instances are going to balance that function and role, given that there is some ongoing court action. Court action is one of the examples I mentioned. I thought there

might be some other process problems here with some of these issues. Here is one that is pretty stark, given that it is before the courts as well as being before Mr Palmer.

Senator Vanstone—As we said, we will take that on notice, but I think there are two things to bear in mind. The Palmer inquiry can contact such people as they think appropriate. With court action, presumably the first contact is going to be—through or, if not, first up—a referral to whichever lawyers are acting for the people concerned. It is up to Mr Palmer to pursue with people or their legal advisers the interaction between those two. This sort of thing happens, and I cannot say how it will be resolved unless I ask Mr Palmer what discussions he has had and I have no intention of doing that. I am confident that his report will give us, as I say, advice on how to proceed with the remainder of the inquiry. I repeat what I have said to you before. If he has any concerns, he should raise them with us. The interaction between a matter potentially afoot and his inquiry has not, to the best of my recollection, been raised with me, but there are appropriate processes for following through, and that is through the legal advisers of people concerned.

Senator FAULKNER—But surely his inquiry has limited powers, doesn't it?

Senator Vanstone—You say there is a conflict; that there are two things happening—

Senator FAULKNER—I did not say there was a conflict; I said that it struck me as a threshold issue.

Senator Vanstone—Well the threshold starting point is with the lawyers acting for the relevant people. Anyone who is contacted who wants to appoint a lawyer is obviously free to do that and instruct Mr Palmer to deal through that lawyer. It may well be that people welcome the opportunity to tell Mr Palmer their story. I can imagine circumstances where, if I was in litigation with a department and there was an inquiry that related to the department's conduct in certain matters, I would be only too pleased to get in there and have another person to put my side of the story to. We will take that on notice.

Senator FAULKNER—Mr Palmer's inquiry has no capacity to compel witnesses, for example, does it?

Senator Vanstone—That is right.

Senator FAULKNER—None at all. It has no capacity to demand the production of documents, has it?

Senator Vanstone—I am sure we have covered this ground in other places. I see the point you are making; there is no disagreement. Mr Palmer's powers in that respect are clear. We have no disagreement about this.

Mr Farmer—Except, Senator, I make the point that, within the Public Service context, instructions have been given to employees of the department to render assistance to Mr Palmer, to cooperate with his inquiry and to make information, files and other matters requested by the inquiry available. So in that particular very germane area there is an element of instruction and compulsion, not by Mr Palmer, but in this case via the powers of the secretary.

Senator FAULKNER—Well, you tell me, Mr Farmer, what protection there is for Public Service witnesses before Mr Palmer's inquiry. What protections?

Mr Farmer—I was not talking about protections—

Senator FAULKNER—No, I know. I am. I am just asking. You are saying instructions have been issued. What instructions are they? Have they been issued in writing?

Mr Farmer—Yes, they have. At the time that Mr Palmer's inquiry was initiated we took steps to issue an instruction to all officers of the department in writing under the Public Service Act requiring them to give whatever assistance was required. We can get that and table it—

Senator FAULKNER—Are they public?

Mr Farmer—I just said we can get that for you, if you would like that.

Senator FAULKNER—So you could provide those to us. But are there any protections for witnesses who might come forward? It is possible that there might be information provided that might be damaging. It could be damaging to the minister, to you or to who knows what senior person in government or the department. What protections are there for those who come forward with an inquiry like this?

Mr Farmer—I would need to get advice on what the Public Service Act provisions are for people who are acting in accordance with an instruction by the secretary issued under the act. I am perfectly happy to get a view for you on that.

Senator FAULKNER—I would appreciate that. These are some of the concerns, obviously, with Mr Palmer's inquiry. I will come back to the specific issue we have got before us, but didn't I read the transcript of an interview, Minister, last night? I have it with me somewhere. It was an interview on ABC television. You were questioned about Mr Palmer coming forward with recommendations for a more independent inquiry—in other words, a judicial inquiry, with obviously very different powers to those of the sort of inquiry he is conducting. You were questioned about this, as you know, on ABC television last night. Is this a matter that was canvassed by Mr Palmer in the number of meetings he has had with you?

Senator Vanstone—I have answered that question on a number of occasions, Senator, and, really, I am not going to add to it and take up the committee's time. I have answered it on—well, I cannot remember how many occasions, but that has been made very, very clear this morning.

Senator FAULKNER—It has not been asked at this committee, has it?

Senator Vanstone—I think, with respect, it has, Senator. I think you have actually put that question in the sense that I indicated to you. You asked me what the nature of the discussions was, you asked me what it meant that he would give recommendations as to where it went, and I told you what I told Radio National this morning. I refer you back to that *Hansard*.

Senator FAULKNER—I talked about meetings you had. You raised that issue, not me. You informed the committee that you had had a number of meetings with Mr Palmer about matters pertaining to the inquiry that he is conducting. I indicated to you that that left me even more concerned about the independence of his inquiry. We await answers to the questions you have taken on notice about how many meetings you had with Mr Palmer, when you had them and at whose instigation they were held. I am still hoping you will be able to come back to the committee and provide that information. It really goes to the heart of the issue of the

independence of the inquiry. We also know that Mr Farmer has had meetings with Mr Palmer. We now hear from Mr Farmer that public servants have been issued with instructions. But I am asking the obvious question when you have got an inquiry like this with very limited powers, and I would also say no protection for witnesses. There is no protection for witnesses who appear before this inquiry.

Senator Vanstone—If I may respond to the point I was making—with respect, I think you did interrupt—the question you put to me was: has the nature of the remainder of the inquiry been discussed with me? You tagged on whether judicial powers or something had been specifically included. What I said to you—

Senator FAULKNER—You were asked that question last night. I was just pointing to the fact that you were specifically asked the question in an interview.

Senator Vanstone—Madam Chair, I cannot do this with the senator. I am happy to listen to very, very long questions, but if I cannot even speak without being interrupted it is hardly worth it. If he does not want the answers now, I will take them on notice.

CHAIR—We have been over this before and I have asked senators to allow those who are answering to complete their answers and others to allow senators to complete their questions—

Senator FAULKNER—So, Mr Farmer, you cannot—

CHAIR—Are you interrupting me, Senator Faulkner? That really was unhelpful.

Senator Vanstone—Yes, he is.

CHAIR—If you are asking a question to Mr Farmer, Senator Faulkner, please do.

Senator FAULKNER—I was asking a question of the minister and the minister was offering a reply. Now she is not going to. I was asking Mr Farmer what specific protections have been afforded to Public Service—

Senator Vanstone—That has been asked.

Senator FAULKNER—I am asking Mr Farmer—

Senator Vanstone—But he has been asked and he has answered.

CHAIR—Minister, it would be helpful if you let him finish the question.

Senator Vanstone—If it is going to be Rafferty's rules on that side, it is going to be on this side.

Senator FAULKNER—I was asking Mr Farmer what specific protections are afforded to Public Service witnesses before Mr Palmer's and Mr Comrie's inquiry.

CHAIR—Senator Faulkner, I do believe Mr Farmer said to you that he would take that on notice and get information for you and come back to you.

Senator Vanstone—That is certainly my recollection, which is why I perhaps inappropriately interrupted you, Madam Chair, to say that has been asked and it has been answered.

Senator FAULKNER—But it has not been answered. It has been apparently taken on notice.

Senator Vanstone—That is right.

Senator FAULKNER—That is not answered, and I am hoping it will be able to be answered soon. I would have actually thought that the departmental secretary would be able to answer such an important issue without taking it on notice. But if he is not able to, I hope an answer might be able to be provided as soon as possible. It is pretty fundamental for those people who might be appearing before Mr Palmer's or Mr Comrie's inquiries.

CHAIR—Do you have any further questions in this area?

Senator Vanstone—I have something I would like to add, if I may. There are two points to make. I am sure anybody who is interested in this repartee between the senator and this side of estimates will go back over the record and they will see that the question was answered earlier today. With respect to what view Mr Palmer has about the future conduct of the inquiry, they will see that I made it very clear that I have an idea of what his views are. I made it clear that I am ad idem with his thinking at this point. But I also made it clear that it is not for me to announce what his thinking is at this point. The government has tasked him with the job of giving us advice as to the best way to conclude this inquiry, and all of that is on the record this morning. I am not quite sure why it is being re-asked this afternoon.

The second point I want to make is about the assumption put on the record by Senator Faulkner that somebody takes something on notice because they are unable to answer. Ministers and officers are entitled to give answers as they see fit and, if they have a desire to get fuller and further information before they put on the record what they already know, they are entitled to do that. Taking on notice is not to be paraphrased as 'unable to answer'. It may well mean—in fact it more often than not does mean—'keen to get the full, correct and most informed answer we can possibly give'.

Senator FAULKNER—Of course knowing what Mr Palmer's thinking is and indicating to this committee that you find yourself in agreement with it does indicate to me—absolutely—that there is no independence about this inquiry at all. You know what his thinking is. You say to this committee that you are in agreement with it. I am expressing the most serious concerns about the independence of the inquiry. I am also expressing concerns about the protection of Public Service witnesses who appear before it, particularly in the light that you find yourself so comfortable with its general and broad direction.

Senator Vanstone—Because Senator Faulkner's remarks go to the independence and therefore the credibility of Mr Palmer I am bound to respond to them. I cannot let that go unattended. I do not wish to protract the committee on this issue, but the remarks that Senator Faulkner has made—quite intentionally; he is not hiding behind that—go to the independence of Mr Palmer. Therefore I cannot let that go unattended lest someone—not Senator Faulkner but someone else—is reading a portion of the *Hansard*, perhaps this afternoon's proceedings and not this morning's, sees that uncorrected and forms an incorrect assumption. That is the only reason I am going to delay the committee by going over this point again.

What I said this morning, and this is available to people reading the *Hansard*, is that I do not know much at all about Mr Palmer's thinking with respect to the whole gamut of what he

wants to say. What I indicated this morning that I do have some knowledge of and that I am an *idem* with Mr Palmer on is his thinking at this stage as to what might be appropriate to conclude the remainder of this inquiry. It does not go to the substance of the inquiry. What I understand of his thinking and where I am *ad idem* with him on his thinking at this point—because it may change—is where we ought to go from here. Any recommendation he makes is going to be taken into account by the government and funded by the government. In my view it is quite appropriate that a range of options are considered. It is not inappropriate for those options to be considered by government at the same time that Mr Palmer considers them.

As I have indicated, Mr Palmer can recommend as he chooses. He may change his view from what he has at the moment. We will be very interested in his view because of the confidence we have in him, given his experience—not only his broader life experience but his experience in looking at these two main cases—to give us a very sensible recommendation about what ought to be done. That is what I have knowledge about. Mr Palmer does not make it a practice to come and discuss what he is going to say with respect to the whole gamut of the substantive matters that he is looking at. I have indicated, because I have made it public, my view in the past—as I did yesterday—about the need for a culture change. I do not think that is discussing the detail anything. I would rather say no more than that. I do not want Senator Faulkner or anybody reading the *Hansard* to get some idea—and it is clear that this is the impression that Senator Faulkner wants to create—that there are ongoing daily discussions about the substantive issues that Mr Palmer is looking at; but it is quite appropriate for me to have an idea of what he thinks about where we might go.

CHAIR—Thank you, Minister. That is clearly on the record and I would like to return to questions.

Senator FAULKNER—If the minister wants to allay these concerns, the best thing for her to do forthwith is to provide detail to this committee and hence publicly about the contact that she has had with Mr Palmer and Mr Comrie. That would be a sensible way of proceeding.

CHAIR—A question which the minister has taken on notice—

Senator Vanstone—That is right.

CHAIR—for which an answer will be forthcoming. Do you have any further questions?

Senator FAULKNER—Yes, I do have a number of further questions. I hope, Mr Farmer, you are able to see the obvious issue that arises here with the ongoing work that Mr Palmer and Mr Comrie might be involved in or engaged in in certain circumstances where there may be ongoing legal action. Perhaps cases have been concluded. Compensation may have been decided in some cases, which, as I described, is the threshold issue or one of the threshold issues in relation to those further inquiries that I was raising this morning. We are dealing with a specific issue, which I just canvassed a moment ago with Mr McMahon, about this Chinese-born Australian citizen. We now find out that this matter, or elements of this matter, are before the courts, as well as also being before, probably, Mr Comrie's investigations. How do you deal with that problem?

Mr Farmer—I do not think I will deal with it. It is a matter for the inquiry.

Senator FAULKNER—Fair enough. How is that problem—

Mr Farmer—I think it is a matter for the inquiry. It will clearly be forming, as it has formed and I guess will form in the future, its views about how it will go about conducting its business.

Senator Vanstone—I put on the record—we can go through this a million times; I do not care—that the government has made it very clear to Mr Palmer, and we made this public in the beginning and it has been repeated again and again, that should Mr Palmer have any concerns about the nature of the inquiry, such as any need for extra powers or whatever, he should raise that with the government. I know it is clear that we have been having discussions. We asked Mr Palmer to recommend the best way to handle the remainder of the cases.

It has been made clear here that an inquiry that started off into one case and that then became two—they might have been specific and focused on individuals—has now been given the task of looking at and crosschecking some 200 files, which I see are very poorly described in the media today as being ‘200 files expected with problems’. These are 0.2 per cent of the compliance load during that period. They are the people who were later found to be lawful. It may mean they were detained for very short periods of time. It may mean they later became lawful by the granting of a visa or whatever—by turning 10, for example.

All of these have been referred off for checking because we want to find every single problem that is there. We have had discussions with Mr Palmer about the future nature of the inquiry. We have listened to his views and we have asked him to report to us, when he reports to us on the Rau matter, what his views are. In other words, we have asked him to tell the world at large what his views are, and then we will make a decision. I think that is transparent government and I am very happy with that process.

Senator FAULKNER—Has Mr Palmer raised with you any concerns or issues about the powers of his inquiry?

Senator Vanstone—That goes again to the questions that have been answered. I have indicated that I have had discussions with Mr Palmer about the conduct of the future of the inquiry, which relates primarily to the 200 cases that are going to have to be checked and which may or may not have among them cases similar to the two identified cases. That is quite a different task. It may well be handled in a different way.

We have asked Mr Palmer for advice on that. As I have indicated numerous times today, I have had a discussion with him about that. And I have indicated publicly—you cannot be more transparent than that—that I have had that discussion and that I am *ad idem* with his thinking at this point. But I am not going to raise what I understand to be his view at this point, because we have charged him with advising us and he will give us that advice when he gives us the report. His view may change between now and then. For all I know, it has changed already as a consequence of discussions he has had with other people.

Senator FAULKNER—But surely, Minister, if he has raised such concerns with you and you continue spending a huge amount of public money on holding an inquiry that the inquirer himself believes is inadequate and lacking in powers—

Senator Vanstone—Well, I think I can answer that question. I think I can put it this way: I have not had the slightest view from Mr Palmer that he is in any way concerned with the report that he is going to give us—not the slightest view that he has any concern with the report that he is going to give us.

Senator FAULKNER—If you have all these views about the report he is going to give you, how can you sit here and barefacedly say to this committee that his inquiry and report are independent? That is just preposterous.

Senator Vanstone—No, I am sorry, it is not preposterous. This goes again, Madam Chair, to the point that has been raised before. Mr Palmer's inquiry goes to the substance of the issues. The substance of the issues is not the sort of thing, as I have indicated before, where it would be appropriate for a minister to be running some parallel inquiry—which is why we happen to have been speaking to witnesses or seeking to know on a day-to-day basis what is going on or what is in Mr Palmer's mind. But it is appropriate. In fact, it would be inappropriate for a minister or for the government not to be listening to the inquirer as to whether, in the future, things may be handled differently. It is clear as a bell that we indicated in the very beginning that we wanted Mr Palmer to give us advice if he needed further powers or he thought the nature of the inquiry had to change. We have flagged publicly the fact that we have asked Mr Palmer to give us, if you like, fresh advice for the conduct of the remainder of the inquiry. It is as transparent as it could be. I do not know how much more clearly it needs to be spelt out.

Senator FAULKNER—More, because it is not at arm's length, not even remotely. You are not even suggesting there is any independence from government. It sounds like you are almost saying to us that every second or third day you are having discussions—

Senator Vanstone—No, that is quite—

Senator FAULKNER—if not meetings with Mr Palmer about his inquiry. That is not independent, it is not at arm's length and it lacks credibility.

Senator Vanstone—Madam Chair, Senator Faulkner can raise his voice all he likes; invective rage does little to me. Frankly, real rage on behalf of other people often does quite little. The simple point is that I have made it very clear that, in relation to the substance of the inquiry, other than the issue that I have canvassed publicly—the issue of a culture—is entirely a matter for Mr Palmer and that is not something that is discussed. But I have made it clear that it is appropriate for the government to consider whether the nature of the inquiry as it is now structured will be appropriate for the future, given the changed nature of the inquiry. If a minister came here and said, 'No, I haven't even turned my mind to that; no, I don't care what Mr Palmer thinks; no, I am not vaguely interested; no, look, I'll just wait and see if someone rolls up and announces something to me through the media,' that would be a dereliction of duty. We made it very clear in the very beginning that we were conscious of the need to take into account Mr Palmer's view. We have made it clear by way of a press release that we have invited Mr Palmer to give us fresh advice.

Independence with respect to the substance of the inquiry is of course vitally important, but any changed nature of an inquiry is obviously an inquiry that is going to be set up by the government, and the government is not going to be independent of an inquiry that it sets up or

future moves that it makes other than by saying to Mr Palmer, ‘Will you give us advice on what you think is the appropriate way to handle the remainder of these matters?’ So, for the substance of the inquiry, as I say, that is fair enough—other than matters that are generally in the public arena, like my view with respect to culture. That is important in that respect, as I say, to the substance of the matters he is investigating. He has complete independence. That is understood. But I simply reject the notion that it is inappropriate to discuss with him what he might think about the future conduct. In fact, the very interest Senator Faulkner is showing in these issues indicates that he is interested in Mr Palmer’s view. So are the government. We cannot on the one hand say, ‘We ought to be interested; everybody’s interested,’ and then say somehow that I should shut the door and not be interested. We are interested in Mr Palmer’s view and we will get it in his report.

Senator FAULKNER—I note the admission contained in that answer. But it is quite clear, isn’t it, Minister, that neither Mr Palmer’s nor Mr Comrie’s inquiries go to your role, your actions or your decisions? So how can that inquiry in these circumstances be considered credible?

Senator Vanstone—That is a completely separate question. I do not believe that question has been answered, because it has not been asked. The terms of reference are quite clear. If Senator Faulkner does not have a copy of them, I will make them available to him. The government is happy with the terms of reference. I understand Senator Faulkner may not be.

Senator FAULKNER—I think I may know the answer to this, but let me be absolutely clear: Minister, are your role, your actions or any of your decisions in relation to matters being investigated—the matters before Mr Palmer or Mr Comrie—a matter for consideration by them?

Senator Vanstone—Through you, Madam Chair, I have answered that question. The terms of reference are there. Senator Faulkner has plenty of forums in which to air his views. He is welcome to do so. The government is happy with the terms of reference. I believe Mr Palmer has—

Senator FAULKNER—Of course it is, because you—

Senator Vanstone—There we are again. You see? You try and answer a question and you get interrupted.

CHAIR—Senator Faulkner, if you could let the minister conclude—

Senator Vanstone—I think I will leave it, Madam Chair, as the terms of reference are there and Senator Faulkner can make such remarks about them as he chooses.

CHAIR—Thank you.

Senator FAULKNER—Minister, you are happy with the terms of reference because what you have done or have not done in relation to all these issues is not going to be investigated. Again I say: how on earth can you sit there and barefacedly suggest that this inquiry has any independence or credibility in those circumstances? No wonder Mr Palmer has come to you and suggested he needs more powers and a different type of inquiry.

Senator Vanstone—Madam Chair, I say again that the government asked Mr Palmer to give us fresh advice given the changed nature of inquiry. This was covered yesterday when

Senator Faulkner was not here. It was covered again today. It was very clear. Let me go through it again. Mr Palmer was given the job of one particular discrete matter. During that time it became clear that another matter had come up. As a consequence of the first matter, the department were already looking to see if this could have happened elsewhere and going back through the files. What we have done is change the nature of the inquiry from being one focused on one file to one focused on two, but we have also taken on the task of checking every other file we could find, as I say, many of which we will have no problem with. Some of them would have been detained for very short periods of time. I am not saying that because it is a short period of time it is necessarily okay. Mr Palmer and others may have the view that the period of time could have been even shorter. But we recognise that the nature of the task has changed. That is very clear.

Frankly, a kid in year 7 could look at the press release that says we have asked Mr Palmer for advice on how to handle the remainder of the cases and that child would conclude that the government are looking at whether they need to change the nature of the inquiry because they have asked for fresh advice. That is what we have done. It is transparent. I do not know whether we need to put it in larger letters, or what we need to do, but we have asked Mr Palmer for further advice on how to conduct the remainder of the inquiry because its nature has changed. We will take Mr Palmer's advice when he gives it to us. The nature of the inquiry or what we do with his advice is not something that is somehow independent. The government have to fund whatever the future path is. In a sense, whatever happens will be at the government's direction, so of course the government have a say. This is not secret news here. This is not rocket science. The press releases have been put out some time ago.

CHAIR—I think that concludes that exchange.

Senator Vanstone—I am happy to go over that again if it has not sunk in.

CHAIR—Senator Faulkner, do you have any other questions, because there are a number of others—

Senator FAULKNER—I do have—

CHAIR—Senator Faulkner, if you do not let me finish—

Senator FAULKNER—I do have questions, but I am happy to cede to some of my colleagues on the committee who wish to ask questions. I will ask mine a little later on.

Senator VANSTONE—Madam Chair, as I understand it, it is the full members of the committee that are ceding to a non-full member. It is not Senator Faulkner's prerogative to cede; the members are ceding to him.

CHAIR—If we are going to talk about full members of the committee, that would be a very short conversation right now.

Senator FAULKNER—Senator Vanstone, I suggest you start running the committee too because you have to do a better job at that than running the immigration department.

Senator Vanstone—Ho! Ho! Ho! Get the masking tape—my sides are splitting with laughter. You are a really funny man.

CHAIR—Senator O'Brien is keen to ask questions in relation to Christmas Island. Is that relevant in this area, or is that in output—

Senator Vanstone—Madam Chair, if I may, I think I can soften proceedings and ease the afternoon, although I see Senator Faulkner going. The truth is, I did participate with him once in a charity event to help Barnardos, I think it was, in Sydney. I can assure you that out of this place—I do not know what happened to him this night—he can actually be a very, very, very funny man. In the name of charity he can do it but perhaps not in the name of politics. With that note, he leaves with embarrassment.

CHAIR—Minister, I really do not think we are helping ourselves.

Senator Vanstone—I was trying to be nice. All right, I withdraw it all.

CHAIR—Mr Farmer, is Christmas Island here or elsewhere?

Mr Farmer—Probably here.

CHAIR—Senator Buckland has been waiting to ask questions for some time.

Senator BUCKLAND—Some of these questions may have been answered yesterday. If so, a simple, 'We answered it,' will be fine because we can find that. I will start with some of the mental health issues, particularly concerning Baxter. Who is the provider of the services there for mental health matters?

Mr Williams—The detention services provider is a company called GSL. Health is provided by a company called International Health and Medical Services.

Mr Davis—International Health and Medical Services provide general health as well as psychiatric services and psychological support services provide psychological services and counselling as subcontractors to GSL.

Senator BUCKLAND—Are the staff that do this psychiatrists, psychologists or just mental health nurses?

Mr Davis—The service provider has a range of staff who provide services. I believe one of the questions on notice gave details of the services provided on the ground. I was just trying to find that. I do not seem to be able to lay my hands on it.

Essentially the range of services provided is a mixture of nurses on site and on call at all facilities; psychologists and counsellors on site and on call; visiting psychiatrists or referral to external psychiatric services, depending on which facility we are talking about; and also regular clinics in all centres from general practitioners, and that again varies depending on which centre, simply because of the number of detainees and the number of appointments required. For example, at Baxter there is a clinic every weekday, in Maribyrnong I understand it is two days a week and in the other facilities it does vary but it is a regular clinic to provide for the detainees' needs.

Senator BUCKLAND—But that is not for mental health, that is for health in general. Am I right?

Mr Davis—As I said, the psychologists and counsellors are on site or on call at all facilities and so are available for consultations on an ongoing basis for detainees. Referral to specialists is different at different facilities. Up until the announcements the minister made

yesterday, the arrangements at Baxter were six-weekly. The judge criticised that and we recognised the need to make that more frequent, and that will be two-weekly from this Saturday. As the minister announced yesterday, we are also engaging two new psychiatric nurse positions which will be in place for seven days a week at Baxter commencing from next week or progressively from next week. GPs who treat people in the community can refer people to specialist services. We also have in South Australia agreed protocols for emergency or urgent attention through the South Australian mental health system using the rural and remote triage service. Those agreed protocols have been in operation since September last year.

Senator BUCKLAND—With these services provided for those suffering from mental health issues, are psychiatrists involved?

Mr Davis—Yes.

Senator BUCKLAND—Who makes the determination that the detainee requires psychiatric or mental health services? Do they do it themselves or is there a process?

Mr Davis—Essentially the initial alerts to those issues are usually to the medical staff in the facility, whether that be a nurse, a counsellor or a psychologist, or even a GP. Any one of those health professionals can arrange, through the health services managers of each facility, an appointment with a psychiatrist or referral to an outside facility. That is the way it works. Also, the detention services staff generally and DIMIA staff have as an element of their overall training program the awareness of mental health issues and they can refer to health staff on site initially for follow-up processes and then usually the referrals will go from there through the psychologists or GPs.

Senator BUCKLAND—We heard yesterday—this is not verbatim—that you cannot insist on someone taking a mental health service unless they consent to it.

Mr Davis—That is the normal arrangement, but general practitioners and psychiatrists do have authorisation under the relevant mental health act in each state for mandatory assessment and treatment. It is called sectioning or scheduling, which we talked about at other times. Other than that, a person may refuse. They are the only people who have the authority under that relevant legislation for mandatory type treatments and assessments.

Senator BUCKLAND—I am more concerned about children in this situation and I do not think there are any children in this situation at the moment. If a detainee is diagnosed as having a mental health issue and they have no spouse or carer with them, then who becomes the carer in those situations? I understand that the various state acts give powers.

Ms Godwin—Can I clarify whether you are talking about who becomes the carer from a guardianship point of view or in terms of their health treatment?

Senator BUCKLAND—More from a guardianship point of view.

Ms Godwin—If it is a child, an unaccompanied minor, the Immigration (Guardianship of Children) Act would apply, whereby the minister has the responsibility as the guardian and would agree to treatment in those sorts of circumstances. If the child is not unaccompanied, if they are accompanied by a custodial parent—and we had this discussion yesterday to some extent—then the guardianship of children act does not apply because the parents continue to

have the rights and responsibilities of guardianship for the children. But in that situation, if a child appeared to need treatment and a parent was not agreeing to that, we would consult with the relevant child welfare authority. Where adults are concerned, the adult has the right to agree to or refuse treatment. The only way we could step in in that case would be if a qualified medical practitioner was of the view that the person was not, in a sense, competent to make that judgment and, as Mr Davis has said, signed a schedule under one of the mental health acts to require that person to have assessment or treatment.

In some instances there have been cases where a state guardianship board has appointed a guardian, who can then make those decisions in respect of an individual. The only other provision is within the Migration Act. There is a regulation which enables the secretary, and only the secretary, to order treatment where a properly qualified medical practitioner has assessed that—and this is a paraphrase; we can get you the precise wording—the person's health or wellbeing is at serious risk. Those sorts of circumstances, generally speaking, have been if people are undertaking a serious hunger strike. So those are the only ways that we can, in a sense, force treatment onto somebody. It is obviously a very serious step to take, because normally people would make those decisions about themselves. That step is not taken lightly or routinely.

Senator BUCKLAND—Can you tell us the size of the budget that is available for mental health? I guess I am asking for all centres, and this might need to be taken on notice. I would like a breakdown of the size of the budget set aside for mental health care. Also, I would like to know how that compares to the overall health care budget.

Mr Davis—That is a difficult question to answer because of the way the arrangements work, because within the contract one element of the normal contractual services is health care and that is, if you like, paid within the broad payment made to the contractor. So the expenditure for health care in particular is, if you like, paid by us to the contractor and then flows through to the subcontractor. In terms of additional health care, such as referral to specialists or stays in hospital related to medical care et cetera, we do have separate financial figures on that because we make the payments directly to the relevant hospital in which someone is held. If you like, I can have a look at what we could do to try and come up with something, but it may be a difficult question to answer definitively in that sense.

Senator BUCKLAND—I think it is an important thing to try and get an answer to that is definitive because, for those of us who have contact with these centres on a reasonably regular basis, mental health is all that is talked about now, and it is getting to a frightening stage. I think we have a right to know what it is costing us to provide care to these people.

Mr Davis—I will perhaps take that on notice and see what I can do. I was looking for this before and I eventually found it. Question on notice No. 79 outlines the health professionals who are onsite or available to detainees. That is obviously prior to the announcements yesterday, which add the more regular visiting of the psychiatrist to Baxter and also the additional psychiatric nurse positions we are putting in there. Also, as I indicated yesterday when we were talking about the recent judgment by Justice Finn, we are in a process of discussion about and review of our health arrangements broadly to give us assurance that what we have is adequate. If there are further modifications or enhancements needed, we will take those steps. It is an area of active review by us. As I indicated yesterday, Justice Finn

made a number of criticisms of current services plus our monitoring and assurances processes and other things. We are actively seeking to review our current arrangements to give us all confidence that we have got just what we need for detainees.

Senator KIRK—Has the department conducted any audits or reviews into the mental health service providers?

Mr Davis—We have, as I think I indicated yesterday, already conducted reviews of all health services for Maribyrnong and Villawood, which includes the mental health services. I could give you the summary words for the Villawood and Maribyrnong reviews.

Senator KIRK—Perhaps you could table that.

Mr Davis—Could I perhaps take that on notice?

Senator KIRK—Yes; take that on notice. What about in Baxter?

Mr Davis—Baxter is scheduled for June. The contractor and the subcontractors have their own program of internal quality assurance and audit processes. The audits that I have been talking about are ones where we have engaged expert panel health providers separately—independent medical people—to review facilities. We have already done Maribyrnong, which was in January. We did Villawood at the end of March and we are scheduled to do Baxter in June. That includes all the health services, including mental health services, in those processes. That is a program which we will continue to run on a routine basis.

Senator BUCKLAND—I wonder—I am asking you to take this on notice because I doubt very much you will have it at your fingertips—if we could be told how many detainees in each centre are receiving mental health care of some nature. I am very interested to know how many of the folk who are staying in the alternative accommodation at Port Augusta are actually receiving care of that nature.

Mr Davis—I will take that on notice but, in terms of the health care I am talking about, the Port Augusta RHP, for example, has its own dedicated nurse and the people there have access to the range of professionals I have talked about who are available to the Baxter facility. They have the full range of care but they have their own dedicated nursing position as well.

Senator BUCKLAND—The reason I am asking that is that one might think that staying in the alternative accommodation is less stressful but I tend to think not, with it having fences and guards around. So I am very interested to know about those people who are affected by this. In the case of a child receiving mental health counselling, is this done with a guardian present?

Mr Davis—I would assume so but I would need to check the exact arrangements.

CHAIR—Will you take that on notice?

Ms Godwin—I think we do need to check. Clearly the views of the treating professional would have a bearing. It would depend very much on the nature of the issue and, just as happens in the community, sometimes a professional may want to counsel someone or the child might want access to counselling without the parent there. I think we just need to take that on notice and see what the general approach is.

Senator BUCKLAND—I would also like to know—and I appreciate that you will get these answers for us—if the people providing counselling for people with disturbed minds, particularly children, are trained to deal with children.

Mr Davis—The health professionals we are talking about, nurses, psychologists and counsellors, are all professionally trained people with relevant accreditation et cetera.

Senator BUCKLAND—I understand they are professionally trained—you have explained that. But quite often you can be professionally trained in this area but not be trained to a level where you can deal with children, which is quite different from dealing with an adult, from what I have found.

Mr Davis—I will take on notice the specialisation there, but there are health professionals within the facilities who are specifically trained to deal with children as an aspect of their training. I will take it on notice and get some detail around that question.

Senator BUCKLAND—When a person goes into mental health care, who makes the determination that that care should cease?

Mr Davis—The medical professionals. If we are talking about an involuntary situation, then obviously it is the treating GP or specialist psychiatrist who has made the referral and asked for the assessment or treatment. And then it would be the mental health authorities of the relevant state or territory who will be the ones who determined the pathway of care from there.

Senator BUCKLAND—You said GSL provides this service to the centre management. What are the auditing arrangements?

Mr Davis—As I indicated earlier, each health subcontractor has their own auditing arrangements for their own service delivery. GSL has an additional quality assurance or audit type processes for delivery on the ground. We have our own monitoring regimes, both from the DIMIA staff on the ground and the DIMIA central office staff, who do things like review records and other things for completeness and that processes are adhered to and so forth. And we have a program of independent auditing or review by our expert panel members. I think I have just mentioned five levels of audit or review across health services. That is the range of things that occur.

Senator BUCKLAND—There have been a number of suggestions—and I have no knowledge of whether this is right or wrong—that the detainees do not always see the same counsellor. Do you have knowledge of that?

Mr Davis—I do not have knowledge of that. From time to time, the availability of counsellors—someone going on leave or something—may be an issue. But I have not had that issue raised with me as a concern previously. I will happily take that on board and give you some information on that.

Senator BUCKLAND—I will just go back to the budget again. Are the consultations paid by persons seen or is it a contract amount or job lot arrangement?

Mr Davis—The arrangements are under the detention services contract. The clinics run within the facilities are part of the overall payments we make to the contractor for provision of services. For referrals to hospital, if there is a referral to emergency or an inpatient type

treatment where they are in and out within a day, that is part of the normal day-to-day running costs of the contract. But if a detainee is in hospital for more than one night, the Commonwealth pays the costs associated with the detainee's treatment entirely as a separate payment. So, in that sense, there are day-to-day costs met within the contract, but there are additional costs that we bear as well.

Senator BUCKLAND—I was going to ask you about the costs of them going to hospital, but that answer was provided to Senator Nettle, as I recall, yesterday.

Mr Davis—Yes. As I just said, if they are in overnight or longer, then we pay separately.

Senator BUCKLAND—I picked up something you said at the end of that that. You were looking at a different arrangement for Adelaide. Is that right?

Mr Davis—No. The arrangements are whether it is in the Port Augusta Hospital, for example, or—

Senator BUCKLAND—I will restate that. I was just wondering if you were going to look at saving costs in this. Because I would imagine there would be two or three security people going with a person, are you looking at contracting that service out to other security service providers?

Mr Davis—Mr Williams actually discussed that yesterday. One of the requirements we have is to maintain lawful detention. That requires escorting officers to be within the area the detainee is held within hospitals unless the hospital agrees to take on the responsibilities under the act as designated persons to hold on behalf on the Commonwealth, in which case our detention service providers are not required. It does vary depending on the hospital. Some hospitals have in the past taken on that role. Therefore, we have not required to have GSL or detention service officers there. Others, and Glenside is one of those at the moment, have not taken on that area of responsibility but, as Mr Williams said, we are currently in discussion with both Glenside and GSL on that issue. It is in discussion at the moment. There may well be changes. Glenside, the department and, as I said, GSL are in dialogue on that right at the moment. That may lead to a number of outcomes. There may be fewer detention officers than we have there now or it may be that the hospital is willing to take on those responsibilities. But that is a matter that is obviously one for us to work through with them.

Senator BUCKLAND—I have to say I am not a regular visitor to Baxter and Maribyrnong but certainly my staff visit folk there. Talking to others who visit regularly, there is a real fear that, if a detainee opens up and really puts it on the line what his views are, punishment follows. I do not know how you control that but that is a frightening thing to think about—that if a person who is sick makes their views known they can expect some reprisal. We cannot just brush that under the counter. It is something that needs dealing with and I am not sure how to do it. I am wondering if you are looking at trying to manage that sort of thing.

Mr Davis—Detention issues day to day are dynamic situations. What I can say is that there are internal complaint mechanisms both directly to GSL and directly to DIMIA as well as ready and open access to the ombudsman or the human rights commission or others such as legal representatives that could deal with that. I do not know if Jim has any comments but that certainly is not our intention or our service provider's intent. If there were any instances

where someone considers that to be the case then I would want to know about it to deal with it. It is not my experience nor my expectation that that is how things work.

Senator BUCKLAND—It is a very hard issue to deal with. We have names of folk that we are reluctant to pass on because of this fear that they have about having their names used. It is like holding a pot of gold and not being able to spend any of it. It is the management of something and it is the culture of people who are involved, I guess.

Mr Williams—In a situation like that, an option may well be to provide that information to the Commonwealth Ombudsman because it is an independent agency who has pretty strong investigative powers. It is also an agency that keeps that kind of thing confidential.

Senator BUCKLAND—I have a raft of questions about the man that has been transferred to Adelaide. You mentioned yesterday that he was being transferred.

Mr Davis—Yes.

Senator BUCKLAND—I will leave it for Senator Nettle to pursue when she gets a go. What is the catalyst for determining that a detainee should be treated externally to the facility?

Mr Davis—Essentially it is the advice of the medical professionals. The GPs who, for example, service the Baxter facility—the GPs who operate within the community of Port Augusta—have, as I said, clinics there every day. If a detainee wishes to see a GP then they simply need to ask that of the health service provider, who will arrange it. The GP, or indeed the psychologist or counsellor, can go through a referral process. It is the medical professionals on site as well as the general practitioners who come in every day who have ready capacity to refer people to external specialists. The visiting psychiatrist may have people who he has assessed or treated previously and wants to follow up on through his visits or there may be people who are referred for the purpose of his consultation when he visits. Again, the internal health professionals as well as the GPs will identify people who may need to be seen by the visiting psychiatrist who, as I said, from this Saturday will be visiting Baxter every two weeks.

Senator BUCKLAND—I will move on to the infamous Red compound. Was that compound closed shortly after the Rau matter came to light and Cornelia Rau was transferred to Adelaide?

Mr Davis—No. My understanding is that it has been open. It is always available to the service provider. There may be times when there are no detainees in that compound. That does not mean it is closed; it just means it is empty. In that sense, that compound is available. During the March–April period I know there was one detainee there, but there were at least two prior to Easter, who I understand are still in the compound. Some others have gone there from time to time since then. It has not been closed.

Senator BUCKLAND—So there have been people in there continuously since Easter?

Mr Davis—I do not have the exact statistics to say that that is absolutely true, but it has certainly been open through the March period. I know the individual detainees who have been in there. I am also aware that in the last week or so another detainee has gone in there. Mr Williams might have some personal awareness, but I am not personally aware of other detainees who have been in there during that period. I could get that information to you.

Senator BUCKLAND—Are detainees suffering from psychological problems put into these conditions?

Mr Davis—Part of the process of someone transferring to the Red 1 compound is an assessment which includes the health professionals on the ground assessing people for movement to what we call a more restrictive place of detention. They are also under regular monitoring. While they are in the Red 1 compound they are visited daily by a nurse, and health professionals such as counsellors, psychologists and other people visit those people routinely. The way I would answer your question is that whether or not they are under mental health treatment is not an absolute consideration; however, the treatment that people receive is based on the health professional's view of what treatment is required.

The Red 1 compound is the compound we rebuilt after the fires at the end of 2002. That compound has been rebuilt with fireproof material. It is an open compound where there is a capacity for people to be held within their rooms but equally a capacity for people to have unlimited access to the full range of compound activities. The time people have in and outside their rooms is based on an individual care plan approach, and medical professionals are involved in developing those care plans.

Senator BUCKLAND—So you are suggesting that health professionals are prepared to put people suffering mental health issues into these conditions. Have I missed something? Is this now a holiday farm or something? I have seen those rooms, and unless the rebuilding of them is somewhat different I cannot believe that professionals would allow someone with these mental issues to go into those rooms.

Mr Davis—What I am saying is that health professionals, including mental health professionals, are involved in developing the care plans associated with individuals and their needs. For the people who are in the Red 1 compound it is mandatory for their care plan to be in place. Indeed, care plans are developed for lots of people who are held in general compounds as well. That is part of the general welfare approach adopted by the service provider.

Senator BUCKLAND—Can you just describe the cells that they are in? I might be missing something here.

Mr Davis—They are not cells; they are rooms which were rebuilt after the fires with fireproof materials. Other than that, they are rooms with an ensuite, a single bed on one half of the compound and double bunks on the other half of the compound, which have the normal range of things that are in the rooms in the other parts of the facility. If I could clarify, you may be mixing up that and the management support units, which is quite a different facility.

Senator BUCKLAND—No, I am not mixing it up at all. I am also aware of the management support units. Is anyone suffering from mental health issues put in those cells in the support unit? Are you able to answer that?

Ms Godwin—Yes, from time to time it is probably the case that someone who is being treated for a mental health issue is also accommodated in one of those parts of the facility. It would depend a lot on what the nature of the issue was—for example, someone who was at risk of self-harm and needed careful supervision, close supervision, may well be located in one of those areas because it provides the opportunity for close supervision in that sort of

situation. So mental health issues may well be one of the considerations that would be taken into account in making a decision either to place someone there or indeed not to place them there. Mr Davis's point is that the decisions about where people are accommodated are taken in consultation with a variety of professionals in the centre and take into consideration a variety of factors, one of which would be the person's health status.

Senator BUCKLAND—Of course, Cornelia Rau spent some of her time in those cells.

Ms Godwin—She was accommodated in that unit for a period, yes.

Senator BUCKLAND—We might just turn now to the low dependency medical unit at Baxter. How many beds make up the ward? How is the ward structured?

Mr Davis—I do not have that information here. My recollection is that there are four general beds. I have a recollection that there may be a child sized facility as well as an emergency area in the medical centre.

Senator BUCKLAND—The people suffering mental health disturbances cannot be kept in this facility?

Mr Davis—It depends on the nature of the care required. The service provider has used and does use that area for observation for periods of time, for, as you say, low dependency care. However, one of the key differences between that and the management support unit is the 24-hour nature of the observation capacity with cameras to supervise people. It depends on the nature of the care that is required as to where someone should be held and access to the local hospital and referral to other hospitals are also available. Those decisions are made by the medical health professionals.

Senator BUCKLAND—Is nursing staff on duty 24 hours in this unit?

Mr Davis—Yes.

Senator BUCKLAND—What about the doctors? Do they visit daily?

Mr Davis—As I said, general practitioners have clinics in Baxter every weekday five days a week and are available on call at all other times.

Senator BUCKLAND—Do you know how many people are currently in this ward?

Mr Davis—I do not know that. I would need to seek information on that.

Senator BUCKLAND—Perhaps you could give us information on that and give us a total for the last 12 months of what the occupancy rate has been.

Mr Davis—I can probably get that fairly readily because it is an area that we have been reviewing with GSL in terms of its level of use over the last little while.

Senator BUCKLAND—So its level of use is increasing?

Mr Davis—No. In relative terms, I would say there has been an increase in use of the low dependency ward in lieu of the MSU in situations. There has been a greater use of the medical facility in times of observation but, as I say, it depends on the health professionals and the care needs of the individual as to whether external care is required. That is a decision of the health professionals.

Senator BUCKLAND—Are detainees who are in that ward entitled to have visitors?

Mr Davis—It depends on the nature of the illness or the situation. We seek to maximise visitors. If other detainees wish to visit or they wish to see other detainees, we attempt to facilitate that. Usually, that is subject to the nature of the medical care issue.

Senator BUCKLAND—What about visitors from outside?

Mr Davis—I would have to seek advice on that. I think it would depend on the medical situation of the individual as to how that is arranged.

Mr Williams—Visits would rarely be held in the medical unit. They prefer people to have visits in the normal visits area.. If people are mobile and are able to go down there for visits and there is no medical objection—

Senator BUCKLAND—If they are immobile then they are denied access to visits.

Mr Williams—It is possible to arrange it, but people are not normally in that unit for very long. If they require extensive treatment then normally that would be provided off site.

Senator BUCKLAND—What about phone access while they are in that unit?

Mr Williams—I do not know if there is a pay phone in the unit.

Senator BUCKLAND—What about for people phoning in to talk to a person?

Mr Williams—I would not think that would be a problem. Normally, people are able to move around the centre fairly freely during the day. If they are mobile, there would be no particular problem with going to one of the other places to make a phone call.

CHAIR—Would you like to take it on notice to get a precise answer for the senator?

Mr Davis—We will get some advice so we can give you details of what is available. My understanding is that it is facilitated, but we will get some details.

Senator BUCKLAND—You might take into account that the report is that this phone is for staff and no-one else. If there is insistence that someone be spoken to, you are limited to five minutes and the phone hangs up.

Mr Davis—We will have a look at that and respond to it.

Senator BUCKLAND—If a person is so sick that they require close supervision, what is the process for getting them into Glenside hospital?

Mr Davis—Normally, if someone is to be moved to Glenside, that is a matter that is discussed with the Port Augusta Hospital, the ambulance service and Glenside as to the best way to achieve that. I know that from time to time people go to Port Augusta Hospital first and are then moved from there, but that is a matter that is discussed with the treating doctors, the local hospital and the ambulance service, as I said, as to the best way to achieve that. So the medical professionals consult each other and work out the best way to do it.

Senator BUCKLAND—The Christmas Island facility is currently being upgraded, is it not?

Mr Davis—We have in recent times put a couple of additional buildings into the temporary facility. Is that what you are talking about?

Senator BUCKLAND—I have not seen it, so you are telling me.

Mr Davis—The current facility that is operating on Christmas Island is a temporary facility. We have put a couple of additional buildings into the facility in recent times—a new demountable building to be used as a gym and a new recreation-activity building into the second compound. Part of that was the replacement of buildings that we lost, again, in the fires of 2002. It has added functionality in terms of additional activities that can be undertaken and so forth. The new facility—the project is being managed by the Department of Finance and Administration—is scheduled for completion towards the end of 2006. But that project is a matter for the Department of Finance and Administration.

Senator BUCKLAND—Do you know what the cost of the upgrade of this facility is?

Mr Davis—Of the temporary facility?

Senator BUCKLAND—The facilities at Christmas Island.

Mr Davis—I am confused by the word ‘upgrade’. We have made some modifications to the temporary facility which we have borne the costs of. In terms of the project to build a new facility in a separate location on Christmas Island, that is a matter for the Department of Finance and Administration and is perhaps a question they should answer in terms of cost. But I am happy to see what I can provide in terms of the costs we have recently incurred in adding additional facilities to our temporary facility.

Senator BUCKLAND—That may be an area that Senator O’Brien was hoping to pursue. I might just leave that. If there is time, I will come back to this later on or put some questions on notice. Thank you.

Senator O’BRIEN—As you are aware, Minister, I recently visited the temporary immigration reception processing centre on Christmas Island during a visit in my capacity as shadow minister for territories. And can I acknowledge the courtesy of the departmental officers and GSL employees who escorted me around the detention compound. I wanted to raise some matters today that are directly related to my discussion with detainees during my visit. First, can you tell me how many people are detained in the centre as of today?

Mr Davis—The figure I have in front of me is as at 18 May, but I believe that it is the same today—if it is different I will correct it—and that is 35.

Senator O’BRIEN—How many of those detainees are children?

Mr Davis—Eight.

Senator O’BRIEN—Does the overall number include any detainees who were under the age of 18 when they arrived but have since turned 18?

Mr Davis—I am afraid I do not have that level of detail. Can I take that on notice?

Senator O’BRIEN—Yes. I believe all the detainees currently held at the centre arrived in Australia and sought asylum at the same time. Is that right?

Mr Davis—They certainly arrived on the same boat. Whether they all claimed asylum at the same time is a question that would need to be put to our protection visa colleagues.

Senator O’BRIEN—Around the same time.

Mr Davis—Yes, that is my understanding. That was July 2003.

Senator O'BRIEN—So they have been held at the Christmas Island Immigration Reception and Processing Centre since that time?

Mr Davis—Yes.

Senator O'BRIEN—All of them?

Mr Davis—There have been movements to and from the mainland for some detainees for things like medical care and, I believe, some legal and other matters, but, generally speaking, yes.

Senator O'BRIEN—From the original group, how many have been granted temporary protection visas or other visas facilitating their release from detention?

Mr Davis—That is a matter for my colleagues who undertake the protection visa processing.

Mr Illingworth—Twelve have been granted temporary visas following tribunal review.

Senator O'BRIEN—I take it there were 47 in the original group.

Mr Illingworth—There were 53 in the original group. There have since been two children born. So, taking the original arrivals and subsequent births, there were 55 people.

Senator O'BRIEN—There are 35 remaining on the island—12 have been granted temporary protection visas or other visas which have facilitated their release, and I think you said that two children have been born since the detainees arrived.

Mr Illingworth—I will just expand on the answer I gave you earlier. There have been 12 granted temporary visas following tribunal review. A further two were granted temporary visas through intervention.

Senator O'BRIEN—So is the total that have been granted visas 12 or 14?

Mr Illingworth—A total of 14.

Senator O'BRIEN—What happened to the other six?

Mr Davis—Four of them are on the mainland in Perth.

Senator O'BRIEN—Are they in detention in Perth?

Mr Davis—Yes. I do not know about the other two.

Senator O'BRIEN—Don't tell me that you have lost two!

Mr Davis—I will read from Mr Illingworth's notes. There are 55 individuals. There are 35 applicants that are currently on Christmas Island. There is one applicant in Acacia prison in Western Australia. There are three applicants and a newborn baby, so four people, in alternative detention in Perth.

Senator O'BRIEN—What does that mean?

Mr Davis—The mother and child are in the hospital. The father and another detainee are in a house in the community, so they are in a community detention arrangement. There is one applicant who is currently in the Perth IDC. There are particular legal matters around that detainee as to why he is there. There are 14 who have been granted temporary visas. Hopefully that adds up to 55.

Senator O'BRIEN—It does. Minister, I asked in December whether you had visited the temporary immigration detention centre on Christmas Island and you said, 'Not yet.' Have you visited since?

Senator Vanstone—No, I have not. I would like to find the time to go because I would like to have a look at the spacing plans of where the new one is meant to be going.

Senator O'BRIEN—It is earthworks at the moment. I can tell you that.

Senator Vanstone—But you still get a perspective. I have been there once or maybe twice before, but not since having this portfolio.

Senator O'BRIEN—It is worth a look. Mr Farmer, have you been?

Mr Farmer—Yes, I have.

Senator O'BRIEN—So you are familiar with the way the temporary immigration reception and processing centre is laid out?

Mr Farmer—No, I went with Mr Ruddock. I do not have the timing but, as you know, Mr Ruddock left the portfolio in October 2003. We have obviously been involved in looking at the design because we were intimately involved in the early part of the construction of the earthworks phase. With regard to the design, we are in effect the clients of the department of finance as they have gone through the process of taking over the work.

Senator O'BRIEN—Have any of the officers at the table visited?

Mr Davis—I have been to the temporary facility once. Last time I tried to get there, we had to turn around halfway and come back because of plane problems, fortuitously getting back. I believe Mr Williams has been a number of times.

Mr Williams—I have been a number of times. The most recent time was three or four months ago.

Senator O'BRIEN—I just want to be sure that there is someone at the table who actually knows what the layout of the place is. I understand that detainees have on a number of occasions asked for the removal of the green shade cloth from the cyclone wire and perimeter fence so that they can, in their words, 'see the world'. Why have the department and GSL not acceded to that simple request?

Mr Williams—If I recall—because I have heard this before—the shade cloth is up between the fence line and the new building project next door. Is that the one you are talking about?

Senator O'BRIEN—That will do. There is probably shade cloth there but the new building site is the recreation centre, which is higher up the hill. You have the roadway to the new recreation centre, which has only recently opened. You probably would not have seen it on your visit, but that was the construction site.

Mr Williams—I do not remember the shade cloth along the other fence line. I can find out for you, though.

Senator O'BRIEN—I would appreciate that. I do not understand why the view would need to be restricted.

Mr Davis—The only reason I can think of would simply be to prevent dust or other things coming in if there is traffic along that area. We can have a look at the question and come back to you.

Senator O'BRIEN—Roads are not necessarily sealed, but shadecloth would not stop any excessive dust. It seems to be a sight barrier, from my observation, rather than being an effective dust barrier. I suppose that depends on the breezes.

Mr Williams—There was an issue a couple of years ago when there was a lot of media interest and some detainees were upset about the cameras on the fence line.

Senator O'BRIEN—The detainees certainly are not upset about the people looking in. They would rather be able to see out a bit.

Mr Williams—Sure. We will have a look at it.

Senator O'BRIEN—I think Senator Buckland has in part dealt with or established the department of finance involvement in managing the construction of the permanent immigration reception and processing centre, which is in a much more remote location on the island. I think the cost, last I heard, of the actual construction is about \$206.9 million. Is that the figure you are familiar with? If you do not know, that is fine.

Mr Davis—I do not think I have it here, and I do not know it off the top of my head. I am sorry.

Senator O'BRIEN—Can you confirm that in the meantime the department is carrying out significant earthworks and preparations in a new area attached to or part of the temporary immigration reception and processing compound in preparation for the arrival of new detainees on Christmas Island? I say that because I saw with my eyes works in preparation—bobcats.

Mr Davis—I have been advised that we are doing some earthworks to re-level the ground and do some benching. That is part of normal arrangements to maintain a contingency compound.

Senator O'BRIEN—It is a contingency compound you are preparing, is it?

Mr Davis—Yes.

Senator O'BRIEN—I was told something about concrete works being laid there.

Mr Davis—Part of that, I believe, is some concrete works. The compound is being re-levelled for the purpose of contingency for use of tents in an emergency situation. Any concreting is probably associated with simply ensuring that the ground is firm or with pathways or other things that might be needed, if needed—it is purely contingency related.

Senator O'BRIEN—So part of the centre is currently unoccupied; one of the compounds is unoccupied.

Mr Davis—That is right.

Senator O'BRIEN—There are a number of rooms, each of which seems to be set up to accommodate up to four people, that are vacant.

Mr Davis—Yes.

Senator O'BRIEN—But it is believed that you will need to establish an overflow emergency area to allow you to establish a tent facility?

Mr Davis—That is the nature of the contingency area we are talking about. The facility has a normal occupancy level of 104—I am using these figures off the top of my head, but I think they are right—and a capacity to surge up to twice that. So 104 is based on two per room and we use a notional figure of 208 for four per room. In line with normal contingency arrangements, we are simply doing a bit of work in the third compound to give us comfort that we have the capacity to respond in an emergency situation. Really, doing that is simply associated with the timelines for the availability of the new facility.

Senator O'BRIEN—At the same time as the department of finance is constructing a much larger facility, this department is extending the temporary facility. It can already cope with six times the current level of occupation, but you think you need more.

Mr Davis—We are operating from the position that we are expected to respond as a contingency facility. As I said, there are at least another 12 months or more before the new facility is available. We have had boats in the past that have had well over 200 or 300 people. Of course the activities of the defence department, customs and so forth are all very vigilant and so forth, but the requirement I have or that I am being tasked with is to be ready to respond. That is essentially what that work is associated with.

Senator O'BRIEN—Is it the intention to move any detainees in detention in centres in other parts of Australia to Christmas Island in that intervening 12 months?

Mr Davis—No.

Senator O'BRIEN—It is a strange decision then. How much will this work cost?

Mr Davis—Can I take that on notice and advice? I do not have those figures here.

Senator O'BRIEN—If you do not, you will have to, thanks. When is it intended that the work will be completed?

Mr Davis—I do not have that information here; I am sorry. We could provide that on notice.

Senator O'BRIEN—Thank you. During my visit I was told by the management that there were no restrictions placed on detainees' telephone contact with legal representatives. My attention has since been drawn to a report of the independent detention advisory group, which expressed concern about interruptions to these calls. This is the most remote part of Australian soil or, if it is not, it is the second most remote, and the centre is there as a matter of government policy. Isn't it appropriate that detainees be given unfettered contact with their lawyers?

Mr Davis—The arrangement in all facilities is for detainees to have access to their legal representatives. I am sorry—I should be but I am not aware of interruptions to calls from IDAG, but I will certainly follow up that matter.

Senator O'BRIEN—I have a document titled 'Response to IDAG re Christmas Island public submission December 2004'. Page 7 of that submission refers to it.

Mr Davis—I am not aware of that. I will need to follow that up.

Senator O'BRIEN—Is the department aware of claims that, during the recent Refugee Review Tribunal hearings on Christmas Island in the IRPC, local people invited to attend to support detainees during the hearings were not allowed entry to the IRPC or had their entry restricted?

Mr Williams—I know the issue came up. There was at least one person who wanted to come in to the tribunal hearing. The view of my branch in the management of the centre was that it was a matter for the tribunal, so people being allowed or not being allowed into the hearing was a matter for the tribunal member.

Senator O'BRIEN—If people were not allowed in, that would have been a deliberate, specific decision of the tribunal member?

Mr Williams—Of the tribunal. DIMIA had no objection one way or the other. It was a matter for the tribunal.

Senator O'BRIEN—One of the concerns put to me during my visit to the island—and this arose within the community on the island—was that visitors to the IRPC are subject to arbitrary and changing rules that restrict entry to the centre according to the whim of the management. Has that concern been brought to the department's attention?

Mr Williams—I have heard that concern before, and it was also raised with the minister's advisory group when they travelled to the island recently. That was the last occasion I went there. I was accompanying that group, and we did look into it. There have been changes over time. There were certainly changes between the changeover from the previous service provider to the new provider, but that was more than a year ago. We could not identify any significant, major changes. There were some changes made to visiting hours that might have included an extension at some times of the weekend and restrictions in other times of the week that might have affected people because of the change to times, but it did not seem to be borne out by the investigation we were able to make into it.

Senator O'BRIEN—Can you provide the committee with a copy of the operational procedures for visit to the Christmas Island IRPC?

Mr Williams—We can take that on notice, Senator.

Senator O'BRIEN—Do you know if the conditions of entry displayed at the entrance are consistent with the operational procedures?

Mr Williams—Again, I would have to take that on notice. I do not recall what the conditions say on entry.

Mr Davis—Senator, that would be my expectation. Part of our monitoring regime is to ensure that visiting processes and other things are undertaken in line with operational procedures. I would be surprised if it was not consistent, but we will double-check to assure ourselves of that.

Senator O'BRIEN—Who has the right to determine which visitors will be granted access to the centre?

Mr Williams—Normally that is a matter left to the operator, GSL. Generally there are not objections to visits.

Mr Davis—There are operational procedures associated with visitor processes. GSL do make the ultimate decision on each individual who comes in, but as long as people comply with the visiting procedures—which I have approved personally—it should be fine.

Senator O'BRIEN—They should not be restricted arbitrarily—is that what you are saying?

Mr Davis—That is right; that is what I am saying. There are procedures which I have personally approved, and that is what should be applied.

Senator O'BRIEN—Can denial of visitation, restrictions placed on visitation or restrictions placed on gifts brought to the centre be appealed?

Mr Williams—There is no formal appeal mechanism, although it is always something that we are willing to discuss. Again, the issue of presents being brought in is something that we do have procedures about. Obviously, there are some things that we have concerns about.

Senator O'BRIEN—You have concerns about birthday cakes for 18-year-old girls?

Mr Williams—I do not know. We would have to have a look at particular instances.

Senator O'BRIEN—That is a specific instance. I know someone turned 18, because a lady in the community said, 'I wanted to take a birthday cake to this girl because she has just turned 18.' The lady's kids are back on the mainland, so she thought it was a good idea. But no: 'You can't bring a birthday cake in.' Did they think there was a file in it or something?

Mr Davis—Maybe if we get some details we can look at that. Generally speaking, there is an issue with food that arises from time to time in facilities. If detainees do take food back to their rooms, it can go mouldy or whatever. There are issues about hygiene, which are actually important issues in terms of how food coming into the facility is managed. But, as Mr Williams said, there are procedures around what can and cannot come in. I will look into the birthday cake issue, but there are issues about some aspects of food—particularly food that will deteriorate quickly. Usually, the expectation is that, if they are brought into a visits area, they are consumed in that area rather than taken back to people's rooms. There are procedures around those issues which we can examine in the circumstances you have described.

Senator Vanstone—Perhaps I can add to that. I agree entirely. I remember very early on in this portfolio there was a suggestion that some food at Baxter was not up to standard. People were saying there were maggots in it or something. You just do not know. As I recall—I am happy to check this if you want—we could not find any evidence that that had been the case across the board. There was a suggestion that someone had taken some food back and kept it or planted it—who knows? But there are very good reasons for wanting to control the quality of the food that is there. Having said that, commonsense—which is of course a misnomer; it is not that common—should apply. A kid should have a birthday cake, even if someone has to stand and watch people eat it to make sure there is not a file in it or whatever. How long ago was this, Senator—do you know?

Senator O'BRIEN—I do not have a date. I am sure I can get a date for you.

Senator Vanstone—Roughly, though?

Senator O'BRIEN—It was recent.

Senator Vanstone—If I have to pay for it myself—I am sure the department will offer to organise it for me—

Senator O'BRIEN—I do not think it comes down to that. I think the opportunity is probably a missed opportunity, in a sense, but I think I should raise it because it is a principle that should be dealt with.

Senator Vanstone—It is a missed opportunity if she was not allowed to have the birthday cake on her birthday, but here is another opportunity: she can have a birthday cake by way of sorry—or a sorry cake, if you like; not a birthday cake because it is past her birthday. If the department cannot fund it because that is not considered reasonable, I will fund it or you and I can go halves in it or whatever.

Senator O'BRIEN—I will give you the contact details of the lady who wanted to take the cake so you can authorise her to take a cake.

Senator Vanstone—She may want to make the cake herself—whatever the case, we will attend to it.

Senator O'BRIEN—In addition to the Christmas Island community, I understand the Vietnamese community on mainland Australia, and other concerned Australians, have donated goods for the detainees at the centre. Do you know if distribution of donated goods has been delayed for any reason? Is that something in the knowledge of the department?

Mr Williams—Again, I have a vague recollection of the issue being raised but I just cannot remember what the outcome was. Can I take that on notice?

Senator O'BRIEN—Yes. I would like the details of this: if there is some reason for a delay or if there is no knowledge of a delay, because that is an issue that has been raised. The suggestion is that things have been sent which have not arrived. Maybe it is Australia Post or maybe it is something else. Has the department received any request to investigate missing donated goods dispatched by Australia Post?

Mr Williams—I do not recall, but again I will check.

Senator O'BRIEN—Has any detainee on Christmas Island in the immigration reception and processing centre offered to withdraw their application for asylum and seek repatriation back to Vietnam?

Mr Williams—There have been some occasions where that has occurred.

Senator O'BRIEN—And has repatriation occurred?

Mr Williams—In those cases, no. I think in the cases that that occurred in, both subsequently changed their minds.

Senator O'BRIEN—So it was simply a case of them changing their minds—there was no other problem?

Mr Williams—It took some time to get travel documents and things and to make arrangements. That is quite common with that kind of case load where people arrive without a lot of documentation. I think, in the period during which we were seeking to arrange the travel documents, at least one person changed their mind.

Senator O'BRIEN—So the department was able to obtain travel documents for these people?

Mr Williams—No, I do not believe that travel documents were arranged before the person changed their mind.

Senator O'BRIEN—What sort of period would have elapsed between the decision to agree to go back and the decision to change their mind?

Mr Williams—It was a few months—at least a couple of months.

Senator O'BRIEN—Did they stay on Christmas Island or did you take them to Perth?

Mr Williams—In that particular case there are some sensitivities around that issue but we did decide to move the people to Perth, yes.

Senator O'BRIEN—And they are back on Christmas Island now, are they?

Mr Williams—I think they have gone back to Christmas Island, yes.

Senator O'BRIEN—Have GSL or the department prevented or censored the depiction of Vietnam and/or the immigration reception and processing centre on any paintings or drawings by detainees, including children, held at the centre?

Mr Williams—I do not know. I will have see what I can find out.

Senator O'BRIEN—This was an issue that was also raised in the IDAG report, at page 8.

Mr Williams—I will have a look at that.

Senator O'BRIEN—There were some other matters that were raised with me which are more of a private nature. I will be raising them privately. I do not have any more questions today. Thank you for the help that you have given me.

Senator Vanstone—Have you been to the detention centre at Villawood, Senator O'Brien?

Senator O'BRIEN—You are testing my memory. I do not think so, but I may have many years ago. I used to live near there, but I have not been recently.

Senator Vanstone—I just invite you to go again. I was listening to the comments you were making about the shade cloth thing—and I am sure that will be followed up. I asked the department, not long after getting the job, to look at what it could do, and I indicated that I wanted it done quickly, to reform the visiting arrangements there—which were, frankly, atrocious. There was no waiting area if it was wet, beyond a small space. There was no capacity for people to store—blah, blah, blah. Anyway, I invite you to go and have a look and see what the department can do when it turns its mind to it. It is now a very professional and vastly improved reception area.

Senator NETTLE—Senator Buckland was talking about Red One before. Can you describe what you believe is the purpose for Red One?

Mr Davis—Red One is a compound which can be flexibly used. As I indicated before, it is a compound that has been separated into two or three subsections. It can be used in an open way or within smaller compounds within the compound, so to speak. How it is being used by GSL has evolved over a period of time. GSL proposed some time ago an arrangement whereby they had a number of stages in the management of detainees who went there. There

were individual plans for detainees and varying periods of time inside and outside their rooms. It is generally used—by GSL, at the moment, anyway—by people who may need to be separated from the general compound communities due to a number of factors, including behaviour of the detainee, whether it be behaviour that threatens themselves, others or the good order and safety of the facility. In some cases, it is for their own safety and welfare.

Ms Godwin—I would like to add a point of context. In a couple of Ombudsman's reports over the last few years, one of the things the Ombudsman recommended, on a couple of occasions, was that we ought to develop infrastructure with a number of layers to it, if I can put it that way. There were concerns that we did not have a capacity in the detention centres to differentiate the detainee population, particularly if there were problems with management or behaviour. The department accepted those recommendations from the Ombudsman and has sought to try to ensure that, as we develop infrastructure, we have a variety of types of accommodation to give the service provider that flexibility.

Mr Davis—In that context, as I said, GSL have been evolving their operating processes for the Red One compound. Essentially, we have been working with them for some time on those procedures, processes and principles that are operating there, including dialogue with the Ombudsman's office as to those operating principles. Fairly recently, GSL wrote to me with an evolved set of principles which they wanted to move forward with. That has been provided to the Ombudsman's office, and we are in active dialogue on that. Essentially the principles underpinning the operation of Red One that GSL are adopting are associated with using Red One, management support units and restrictive areas in looking at individual detainees and their needs. The principle being adopted is that placements into such facilities should only occur where there is no viable alternative and it would be unsafe or an unacceptable risk to individuals or the community in the mainstream compound area and for the safety, security and wellbeing of the individual. There are some individuals who have been in places like Red One for their own safety and wellbeing.

There are a number of protocols that GSL are operating by, including involving the GSL centre manager in the decision-making processes associated with the placement of people into areas such as Red One or indeed management support units. There is a management unit review team which applies to anyone who is put in a more restrictive area. As I indicated earlier, there are individual detainee welfare plans established; they include not only the general manager of the facility but also operations people and mental health people within the facility in terms of placement there, management of people there and movement back to mainstream populations within the facility. I could go on with a bit more, but that is probably the gist of where we are at at the moment.

Senator NETTLE—So is it fair to say that, predominantly, Red One is used for behaviour management? That is what I am taking from your answer.

Mr Davis—Behaviour management, I know, is a term that has been used before. Where there is behaviour that creates a risk for individuals or for the community in which they are living, that needs to be managed. There are issues of safety from other detainees which are also a factor, particularly more recently. Detainees have been there for those sorts of reasons.

Senator NETTLE—When I visited Red One, I was introduced to a GSL woman called Shirley Ellison, who was described to me as the case manager and the person responsible for Red One—that was how she introduced herself to me. She said to me that the majority of people who were in Red One were there because they requested to be there because they wanted some peace and quiet. She said that was the reason people were there. I was surprised and I asked, ‘What proportion of people would be there for that reason?’ to which she answered, ‘The majority of people would be there for that reason.’

Mr Davis—That is another reason people do request to move to Red One and indeed, in the past, to the management support unit as well.

Senator NETTLE—I was surprised to hear her saying ‘the majority’, because of the behaviour plans you were describing before for the various stages of people who are in Red One. There were people who were signing on to not using abusive language or signing on in relation to not using a particular behaviour. That seems in stark contrast to the idea that you are there for peace and quiet. If you are, then why are you signing forms to say that you will not use particular language when you are talking to people? That struck me as being entirely incongruous.

Mr Davis—As I said before, the detainees who move to Red One have individual plans and it is true that, where there is a behavioural management issue, the plans would have those elements. If a detainee is moving there because they wish for some peace and quiet then I imagine the nature of the detainee’s plan will be different, but there will still be a plan. The other thing I would say is that GSL, in the process they have adopted in terms of managing facilities, have established not only a staff code of conduct but a detainee code of conduct, which expresses general expectations of people treating each other with dignity and so forth. Detainees, upon induction into a facility, are made aware of the code of conduct and indeed seek to comply with the code of conduct because they are living in a community of people and, like in all communities, there needs to be some guidance as to how people behave in that community and respect each other’s needs. In terms of the words you just mentioned, to me they would be simply restatements of aspects of the code of conduct which are expected of all detainees.

Senator NETTLE—The other issue that Ms Ellison and Ms Cannis, who was there at the time in Red One, indicated to me was that people were able to move freely within their rooms and to visit a variety of people. This struck me as being in contrast to when I looked at both the notes that were in the Finn report and the behaviour plan for detainees in Baxter. Saying people could have four hours time out during the day or six hours time out during the day was entirely incongruous with what I had been told when I was there about the way in which it operated—that is, that doors were locked and they were only allowed out for the four or the six hours.

Mr Davis—As I said, the use of Red One has evolved over time and the four-stage process I mentioned before has essentially evolved already. As I indicated, new principles have been provided to the Ombudsman’s office, and we are in active discussions right now on the principles operating. People attending religious services, having visitors, access to telephones and visits from other compounds are still factors, and it is a case by case consideration as to

the circumstances of an individual. The sort of thing you describe in terms of intercompound visits is something that occurs but is a matter to be looked at in individual cases.

Senator NETTLE—If a detainee did not comply with the code of conduct that you were describing, would they be in Red One as a result of not abiding by the code of conduct they had signed when they were in the general compound?

Mr Davis—Not necessarily because, as I said, GSL have evolved their principles. It is an area where both the service provider and we have been in dialogue for some time over the use of Red One—with the Ombudsman involved as well. The principles that have been adopted, which I read out, essentially say that such placements will only occur where there is no viable alternative, and it would be unsafe for them to remain in the general population. That means that if a matter arises where a code of conduct is breached or something occurs within a compound, it does not necessarily automatically mean off to Red One. What it means is they work with the individual detainee and, having taken into account the dialogue with the detainee or the factors that they have in front of them, decisions will be made, as I said, by the centre manager as to whether or not it is appropriate to move someone to Red One. A breach of the code of conduct does not necessarily automatically mean a move to Red One.

Senator NETTLE—It strikes me that you are saying that not necessarily but on occasions Red One may be used in that manner where somebody has breached the code of conduct or there is some other issue. Cornelia Rau and many former detainees have made comments in which they describe Red One as a punishment unit that people are sent to. I was at a dinner function that was organised by the New South Wales Council for Civil Liberties that Julian Burnside QC was speaking at. Subsequent to one of the breaks in the evening, he got up and spoke about a conversation he had had with Andrew Kirk, the minister's former senior advisor, in which he relayed that people were being put into solitary confinement and being deprived of their privileges, that that was punitive and unconstitutional, and that the government would continue to do it until the courts put a stop to it. I am wondering: has advice been sought about whether it is unconstitutional to use punitive punishment in this way?

CHAIR—I assume you are going to go on to advise that Mr Kirk also spoke in relation to Mr Burnside's repetition of that private conversation at that function.

Senator NETTLE—I was at the function and that was the comment that was made. I think it is fair to ask—

CHAIR—And the rest of the function, the rest of the comments—are you going to advise the committee about those as well or just your selective interpretation?

Senator NETTLE—Julian Burnside offered at the time to have a debate with Andrew Kirk, who wanted to have a debate with him. He offered and suggested a forum—in fact, the Young Liberals was the forum which he suggested for it. I am telling you about the subsequent conversation, because that is what you asked and that is what he said. I am telling you about the subsequent conversation, because that is what you asked. That is what he said.

CHAIR—I did not ask; I asked if you were going to clarify Mr Kirk's words in response to Mr Burnside. But let us ask Mr Davis or Ms Godwin to answer the question, because you are clearly not going to do that.

Senator NETTLE—I think it is fair to go through a series of questions.

CHAIR—Ms Godwin?

Ms Godwin—I was going to make the same point. Essentially, that is a report of a hearsay conversation. I have no knowledge of Mr Kirk saying that, apart from the report of the conversation. I am aware that Mr Kirk has subsequently rejected that interpretation of what he said. The fact is that we do not agree that that part of the centre is used in that way.

Senator NETTLE—It is absolutely because it is a passing on of a comment that somebody had made that I was asking the question—is that something you have sought legal advice about? I wanted to ask whether or not you perceive that that behaviour management strategy is a form of punishment. Is it punitive? Is it unconstitutional? Have you sought advice? That is why I am asking the question—because it has been raised. I am giving you the opportunity to answer that question.

CHAIR—And Ms Godwin has answered it.

Senator NETTLE—You do not believe—

Ms Godwin—We do not accept it is used in that way. We believe that it is used as a part of the overall operation of the centre. I have already mentioned that it was an Ombudsman's recommendation to us some years ago that we should have different levels of accommodation in order to give the service provider the capacity to have separate forms of accommodation for the detainees in case there were situations where some detainees were more difficult to manage in the general population than others and for the variety of other reasons that Mr Davis has mentioned. It is not used for punishment.

It is used, however, if someone is assessed as not being able to fit in with the overall community and the general population. The service provider has a duty of care of course to each individual detainee but they also have a duty of care to the population of detainees—to the community in which they are operating. So if a compound has within it a person who is disruptive to the other detainees or is a risk to themselves then of course the service provider needs to look at that and think of other options. Mr Davis has already said that people are only moved to other parts of the centre if that is the only option. If they are moved, they are the subject of a care plan which is monitored carefully, including by health professionals in the centre.

It is not used for punishment; it is not used for single infractions of the code of conduct. But if someone is regularly disruptive to other detainees and other detainees are complaining about that—which is the sort of situation that happens quite frequently—then of course the service provider needs to look at that. The usual option is to counsel the person and to seek to settle the situation in the compound where the person is;. But if the person is at risk, if other detainees are at risk, then, as I say, the service provider cannot ignore that. That does not constitute punishment.

Senator BUCKLAND—Who makes the assessment that a detainee should go into this facility?

Mr Davis—The final decision is with the GSL centre manager. DIMIA is informed of that decision and, if DIMIA have any views on it, they can be put to him, but the decision maker is the GSL manager of the centre.

Senator BUCKLAND—If someone is not well—if they have a problem that goes to mental health—are doctors advised of this or consulted?

Mr Davis—The on-site medical staff are involved in the decision making process and, as needed, GPs' or other advice can be sought in the process of both placement and review. The review is a daily review of people's placement into these facilities, so access to that can be made.

Senator BUCKLAND—We established that on-site medical people are the nurses in that low-dependency unit.

Mr Davis—The on-site medical people are a combination of nurses, psychologists, counsellors—

Senator BUCKLAND—The psychologist comes about once what? Until next Saturday? Once every six weeks?

Mr Davis—No. At Baxter there are on-site psychologists every day. The psychiatrist is going to come every fortnight.

Senator BUCKLAND—Okay.

Mr Davis—There is also the capacity to bring in general practitioners. They are on call and available as needed. As I said, from next week psychiatric nurse positions are being established. It is planned that those people will also be involved in these sorts of processes.

Senator BUCKLAND—Is there a prescriber or something that directs what the circumstances are in which a detainee can be moved to Red One?

Mr Davis—There is an operational procedure which I have approved for the processes associated with transferring people to more restrictive places of detention within a facility, and Red One is that sort of area.

Senator BUCKLAND—Could you provide the committee with that?

Mr Davis—Could I take that on notice?

Senator BUCKLAND—Yes. I certainly understand that you would need to do that to provide us with a copy of those procedures.

Senator NETTLE—Ms Godwin, I accept that you do not believe that Red One is used as a form of punishment. I have two subsequent questions to that. One is about how you define punishment. If somebody breaks a code of conduct or engages in a form of behaviour which results in them being put into a situation against their will—either in Red One or the management unit—in which they are in solitary confinement, I would perceive that as a form of punishment, but perhaps you would not.

Ms Godwin—I do not know how much more I can add to what I have said. The service provider has a duty of care to the individual detainees and to the total population of detainees and needs to try to create an accommodation setting and a set of rules and procedures that

enables all of the detainees in a centre to live safely and securely. If that means that some people need to be, as Mr Davis has said, in a more restrictive environment, then that is an assessment which goes to trying to make sure that the operation of the centre as a whole can proceed in a smooth and sensible fashion. It is not a punishment to an individual to do that, but it is saying that the normal freedoms and so forth that are available in the general compounds need to be contained so that that person can be managed to the benefit of them and the rest of the centre.

Mr Davis—I will add one thing which partly relates to this but perhaps also adds to my answer to Senator Buckland. There are also some aspects of the contract and the service requirement in schedules 2 and 3 which relate to this sort of matter. We recognise the sensitivity of this issue. Given the nature of this operational procedure, it was one on which we consulted with the Ombudsman before I approved it and sought their views on this particular operational procedure. In moving forward and approving that operational procedure, I was cognisant of the comments of the Ombudsman as that occurred. I just thought I would add that.

Senator NETTLE—Ms Godwin, you described that the normal freedoms would be taken away, but you did not describe that as a punishment situation. I visited Red One, as I say. I have also visited a number of solitary confinement cells in prisons across the country. To me, Red One did not look any different to those. I was being shown one of the single-bed rooms in the Red One area in the context of: ‘This is where Cornelia Rau would have been.’ Having visited solitary confinement cells in prisons, it did not look any different to me. Can you describe to me a difference in that cell?

Ms Godwin—I am sorry; I was just asking Mr Davis. I thought he had some notes on this. I may need to provide more detail on notice but most of the rooms at Baxter are occupied on a single basis so the fact that it is a single occupancy room does not make it solitary confinement. Secondly, generally speaking, while people may be confined to their rooms for a period, they are not confined to their rooms for the whole day. While they are not confined to their rooms, they move around the compound and have access to the other detainees who are there.

They also have access to HREOC, to the Ombudsman and to religious services and, depending on their circumstances, can have visitors down at the visit centre. It is not about separating people in a sense of solitary confinement. It may well be though that people have a management plan that does have some restrictions in it.

Senator NETTLE—The reason I specified a single room was that Mr Davis before was describing the rooms at Red One to Senator Buckland and he was describing rooms where there were several beds.

Mr Davis—There are some.

Senator NETTLE—The one I saw was a single one. I was not saying it was single and therefore it was solitary confinement; I was saying it was a single one, which is different from the other ones. You just described that people are not being confined to their rooms all day. I am not suggesting that people are confined to their rooms all day because I can see from the guidelines that they are allowed out for four hours a day if they are in a stage 1 behavioural

plan for the people who are at Red One. I can also see from those guidelines that they do not have the capacity to interact with other detainees. You describe to me that they are able to interact with people and that they are not locked up all day. I am just saying back to you that I am not claiming they are locked up all day because I can see the guidelines say that they are out for four hours a day. The guidelines also say they cannot interact with other detainees.

Mr Davis—There is an issue of the evolution of guidelines. The guidelines you are referring to are probably the draft ones that have been around for a while. As I said, GSL have progressively evolved the way they operate Red One. It is true that detainees do interact in Red One with other detainees who are in that compound. Indeed, we have records that show that Ms Rau, while she was in Red One, interacted with other detainees, for example. It depends on the individual plan of the detainee. That is not a prescriptive instruction. Nor is what you have read. That was a draft guideline, which has evolved over time and is still subject to further discussion between us, GSL and the Ombudsman. In that sense, it has been used as a guide in the interim period but, in the sense of what you have just described, I know for a fact that for quite some time detainees in Red One have interacted with each other. I have proof of that.

Senator NETTLE—It may well be that these are old guidelines. These actually say they were reviewed last year. The other place in which those same stages were set out was in the Finn judgment of a couple of weeks ago, which again goes through and describes the stages. But if there is something more up to date since then, maybe I would ask if you can provide that at some point.

Mr Davis—I think Justice Finn also observes that they are draft guidelines and not finally approved by me, and that is true and that is what I am saying. We are still in active dialogue. Indeed, as recently as a couple of weeks ago, we have had further discussion with both the service provider and the Ombudsman on the guidelines. My aim is to have the final set of guidelines locked down by the end of June—that is my time line—because I still think there is a bit more work for us to do jointly. That is my aim. It is regrettable that it has taken that long—I acknowledge that—but nevertheless we want to get it right because it is an important aspect of the operation of facilities.

Senator NETTLE—Perhaps you could just take on notice, once they are finalised, providing those guidelines. I have one last question on that particular area. I accept that you do not believe that it is punishment. The question is: have you sought legal advice as to whether or not it is punishment?

Mr Davis—I have sought some legal advice. As Ms Godwin said, the main thrust of the legal advice is that, as long as it is not used as punishment, it is legal to have such facilities. The legal advice indicates that we have a duty of care, as Ms Godwin described, both to the individual and to the detainee population as a whole to use such facilities for the purpose of management and the good order and safety of the facility. The legal advice says that, as long as it is used that way, it is appropriate.

Senator NETTLE—My question is about the detainee from Baxter who was transferred to Royal Adelaide Hospital. I understand that a number of people who have sought to get in contact with him have said that he is not able to speak on the phone. I understand sometimes

the doctors and at other times GSL or DIMIA—I am not sure who—advise that. In their conversations the hospital said it was not a requirement that they had put in place, so I wanted to check if it was something that either DIMIA or GSL had put in place.

Mr Williams—Which hospital are you referring to?

Senator NETTLE—The Royal Adelaide Hospital. Yesterday we spoke about a detainee who had been transferred there last night.

Mr Williams—I have checked since you asked earlier today about whether we or GSL had put any restrictions on phone calls or visits, and we have not. So I am not sure where that is coming from. It is not from us. It may be a medical judgment; I do not know.

Senator FAULKNER—Mr Farmer, I wondered if you or any of your officials had any further disaggregation of that information that I asked you for previously. I was hoping you might. I will have to ask, if these other answers are coming back after the dinner break, for the committee secretariat to contact me because I will be in another committee. I wondered if before the break whether you had any further information.

Mr Farmer—Yes, we have. Mr Moorhouse referred earlier to the information on payments included in the consultants cost element of the inquiry—the cost centre that the department has. I think that was as at today's date. The total, you will recall, was a little over \$332,000. Of that amount, Mr Palmer has been paid \$112,500 and Mr Comrie, \$59,090.91. So between them they received about \$172,000 of the \$332,000. Those, as the officer said, are the payments made as of today. That is not to say that those are the only amounts which will be paid in respect of work so far.

Senator FAULKNER—I appreciate that.

Mr Farmer—Mr Moorhouse gave you the per diem rate. That, of course, would suggest the potential for substantially larger amounts of money. Although I do not have the contract details in my head, usually with a contract like that we would put a cap on the amount that can be paid, even if that amount is not going to be paid. That would be fairly standard practice.

Senator FAULKNER—I think I can accept, then, that the balance of the close to \$332,000 in consultancies is going to other consultants that have been engaged by either Mr Palmer or Mr Comrie.

Mr Farmer—I believe that is right. The details that I have show an amount of \$160 going to a Mr Mere. I am not sure whether Mr Mere is providing services only himself or whether he is providing a range of services via others. I just do not know.

Senator FAULKNER—But that information will come through with your fuller answer to the question that you have taken on notice, and that is a very small sum of money anyway. You said \$160, didn't you?

Mr Farmer—No, \$160,000.

Senator FAULKNER—Oh, \$160,000.

Mr Farmer—That is the balance. Correct.

Senator FAULKNER—You are not sure whether that is one consultant or not.

Mr Farmer—It is listed on the piece of paper I have in the name of one person.

Senator FAULKNER—You do not know who Mr Mere is?

Mr Farmer—I have met a man called Rene. I am sorry but I do not know whether his surname is Mere. As I understand it, he is working very closely with the inquiry. We will give you the information about whether that money is for one consultant or whether it has been channelled through Mr Mere to other people and he has organised something. I do not know that but we will get that information for you quickly.

Senator FAULKNER—Thank you. I think you will know the answer to this in relation to Mr Palmer. You may well know the answer in relation to Mr Palmer and Mr Comrie. Was a disclosure of interests required by government from either Mr Palmer or Mr Comrie?

Mr Farmer—I will have to ask one of my colleagues to address that question. I do not know the answer.

Senator FAULKNER—Is that colleague available?

Mr Farmer—We will make efforts to get him now. If there are other things on your list—

Senator FAULKNER—Well, yes. I'm sorry, is this colleague in a back room or not in the building?

Mr Farmer—They're just going—

Senator FAULKNER—Sure. Sometimes that means it is a colleague in the department. I was not sure what you meant. As my other questions flow from the answers that we are about to receive I am not sure whether or not I want to ask any further questions.

Mr Moorhouse—I understand the question was whether Mr Palmer was required to sign a confidentiality statement—

Senator FAULKNER—I asked Mr Farmer whether either Mr Palmer or Mr Comrie were required to provide any disclosure of interests before they were engaged.

Mr Moorhouse—I do not have the contract with me at the present time so I do not have that information. I need to take that on notice.

Senator FAULKNER—But I can be assured—I think Minister Vanstone gave evidence but, just for the sake of the record, let's double check it—that Mr Comrie was appointed by government on the recommendation of Mr Palmer. It think that is correct, isn't it?

Senator Vanstone—Absolutely.

Senator FAULKNER—Are you able to assist us, Mr Moorhouse? Is it correct that Mr Palmer and Mr Comrie either are or were business associates in a company by the name of Global Village Survival Pty Ltd? Can you help me with that?

Mr Moorhouse—I am not able to help you with that, Senator. I do not have that information.

Senator FAULKNER—You do not have that information.

Mr Moorhouse—I do not have any information about the previous employment of either gentleman

n.

Senator FAULKNER—This company, Global Village Survival Pty Ltd, has received some media coverage, admittedly, some time ago. I found it in an article in the *Australian Financial Review*. It says:

However, the Melbourne-based Global Village Survival group has no shortage of staff and associates with impressive CVs in pursuing its stated goal of protecting companies from non-commercial threats. Apart from Mick Palmer who retired as head of the AFP in March last year, they include the former Victoria Police Commissioner Neil Comrie, the former Victorian Fire Brigade chief Alan Richards, as well as Bill Crews who previously directed DIO.

That was from many moons ago, December 2003—well in advance, of course, of this matter and this consultancy. Are you able to say to me whether Mr Comrie is a current director of that company?

Mr Farmer—No, I do not think we are in a position to say that.

Senator FAULKNER—So you would not be able to say to me whether Mr Palmer was a past director of that company?

Mr Farmer—That also is correct. I am not in a position to do that.

Senator FAULKNER—Would you be able to indicate to me whether either are current shareholders in that company?

Mr Farmer—No, I am not in a position to do that.

Senator FAULKNER—Can someone indicate to the committee, please, whether, when Mr Palmer recommended Mr Comrie to undertake the balance of these important duties, Mr Palmer indicated either a current or previous business association with Mr Comrie?

Senator Vanstone—Not to me, verbally. But I would have to check in the documentation. I will take the question on notice.

Senator FAULKNER—I think it is probably something you would recall. You are saying not to you verbally?

Senator Vanstone—Yes. I think I would recall if that had been said to me.

Senator FAULKNER—I am sure you would. I think you would accept, wouldn't you, Minister, that if such a recommendation is made such a disclosure should be made.

Senator Vanstone—I do not know that I do. I think it depends on the nature of the relationship, existing or past. It depends on a whole range of things. I do not know what you are talking about, therefore I cannot comment on its relevance or importance until I do.

Senator FAULKNER—I am asking questions about the engagement of Mr Palmer and Mr Comrie. They have been quite specific questions, and they arise out of some public commentary on the previous business association that was public back in 2003. I accept that you say, Minister, that it was not disclosed to you by Mr Palmer.

Senator Vanstone—What I said is that I do not have a recollection of that being disclosed, and I think I would. But, if Mr Palmer had said that they had worked together, he may have said that they had worked together over a number of years. I would not, frankly, think anything of that because they have, in capacities with which I am familiar.

Senator FAULKNER—Is there other documentation that accompanies the engagement of—

Senator Vanstone—I will ask for the record to be checked.

Senator FAULKNER—I would appreciate it if you could do that as a matter of urgency. I do think it is important. You might be able to assist us, Mr Moorhouse, in this regard—or you may, Minister. It is not clear to me now whether Mr Palmer and Mr Comrie have been engaged for this task and function as individuals or if the business entity, either Global Village Survival Pty Ltd or Global Village Strategies—I think that is a well-known business trading name, have been engaged. I think it is a very important thing for this committee to be informed about.

Mr Farmer—We will check that. My memory—I signed the contract—is that they are with individuals. If that is not the case, we will let the committee know very quickly.

Senator FAULKNER—I would assume the principles that apply in relation to engagement with the department would require such disclosure.

Mr Farmer—That is a rather different question. You were talking about whether the contract was concluded with—

Senator FAULKNER—It is a different question, I accept that. I did ask whether the contract was with individuals or with either one of the two business entities I am aware of—Global Village Strategies or Global Village Survival Pty Ltd.

Mr Farmer—Yes.

Senator FAULKNER—I did ask that, and you indicated that you did not know but you were fairly certain it was with the individuals concerned.

Mr Farmer—I said yes. That was not exactly what I said—

Senator FAULKNER—I am now going on to a separate matter. It would be my strong view—let me ask whether you would share it—if Mr Palmer were to nominate someone to undertake the conclusion or completion of such an important inquiry, if an individual were to be nominated, that any current or recent business association would be disclosed when such a nomination was made. I am sure you would agree with that, wouldn't you, Mr Farmer?

Mr Farmer—It was not a nomination to the department, Senator.

Senator FAULKNER—You are going to tell me it was a nomination to government or the minister. To whomever the nomination was made—to government in the broad or to the minister specifically—the principle is still an absolute cornerstone of the way public administration should be carried out in this country, isn't it?

Mr Farmer—I am not sure about that at all. Let me repeat: the department was not instrumental in selecting Mr Palmer or Mr Comrie. As a matter of administrative convenience, it is the department—

Senator FAULKNER—Who was that?

Mr Farmer—Well—

Senator Vanstone—Sorry—

Senator FAULKNER—No, I think this is important.

Senator Vanstone—I understand your point of view. I think it is fair enough—

Senator FAULKNER—Mr Farmer makes a very strong—

Senator Vanstone—With respect—

CHAIR—Yes, Minister. I think the secretary and the minister were just trying to clarify what you have asked, Senator Faulkner, which is hardly unreasonable.

Senator FAULKNER—Let me try to do that for you.

Senator Vanstone—They cannot do that if they are consistently interrupted.

CHAIR—Could they just finish the sentence.

Senator Vanstone—With respect, I think Mr Farmer was trying to be helpful and he should be allowed to speak without being interrupted.

CHAIR—I think I just said that, Minister. Minister, I thought you were clarifying the question. One of you was.

Mr Farmer—I was saying that, as a matter of administrative convenience, the department is making arrangements for paying the costs of the inquiry. But we did not select Mr Comrie, Mr Palmer or indeed any of the other people who are engaged with the work of the inquiry.

Senator Vanstone—Which was made very clear earlier in the estimates today. I made it clear to you that Mr Palmer put the proposition of the extra assistance he needed at a particular level—frankly, I put this to other people from your party yesterday—to me.

Senator FAULKNER—I have heard that evidence. Mr Farmer has indicated the department did not engage Mr Palmer. I accept that. My question was: who did?

Mr Farmer—Sorry, we did not select.

Senator FAULKNER—You did not select.

Mr Farmer—Yes.

Senator Vanstone—They did the contract.

Mr Farmer—I signed—

Senator FAULKNER—Who did?

CHAIR—Senator Faulkner, I think Mr Farmer was again halfway through an answer. Please let him finish and then we will go to another question.

Senator FAULKNER—Christ!

CHAIR—It m

Senator Vanstone—It has not been my experience that seeking assistance ay be frustrating, Senator, but it is appropriate and it is polite. from the almighty is always instantly, or for that matter if ever, forthcoming.

CHAIR—Mr Farmer.

Mr Farmer—I did not want to slide away from the fact, which is just a fact, that it was the department that concluded the contracts with Mr Palmer and with Mr Comrie. So, in terms of the engagement, I would think that that process equals engagement, but it does not equal selection, which was a prior matter.

Senator FAULKNER—So let me just ask this question: who was responsible for selecting Mr Palmer?

Senator Vanstone—Let us calmly go through the record as repeated a number of times yesterday and a number of times today. Mr Farmer has been very patient in answering this question on a number of occasions. He was asked whether he had an involvement in selection. He gave his answer. He covered off on the issue of the one discussion, or maybe it was a number of discussions, with Dr Shergold about an inquiry that was going to happen and he did not specifically put forward names.

I answered as I recall, and the record will show this, that there were a number of names considered, that they were considered in discussions with the Prime Minister's office and mine, and that my recollection was that I put forward Mr Palmer's name. As to who formally took responsibility, I am happy to say that I did. I have just been advised that apparently the Prime Minister said today that he appointed Mr Palmer. I think it is fair to say that the government appointed Mr Palmer. But I am happy to say that I recommended him.

Senator FAULKNER—Thank you for that.

Senator Vanstone—Thank you for thanking me, but this was, I thought, I hope, made clear earlier today.

Senator FAULKNER—So who appointed Mr Comrie?

Senator Vanstone—I think the same answer in effect applies. I indicated earlier today that there was a point where Mr Palmer contacted me and indicated that, for a number of reasons which are outlined in the press release about the appointment of Mr Comrie—and I think I might have drawn your attention to that earlier this morning or, if not, this afternoon by the time we got onto this section; it was earlier today anyway—including the scope and depth of the inquiry that was required and, for some personal reasons, Mr Palmer felt he needed the assistance of someone of the calibre, experience and depth of experience that Mr Comrie would have.

Commensurate with the government's commitment to consider any request from Mr Palmer for additional resourcing, powers or whatever, I dutifully took on board that request and pursued that matter with the Prime Minister's office. The result of that is perfectly clear and it is in the press release that I issued—I am sorry, I think I have sent that back on the basis that we have done this over and over but I will get it back again—outlining those details.

Senator FAULKNER—So if a disclosure were to be made in relation to any current or previous, albeit recent, business interests between Mr Palmer and Mr Comrie—given that Mr Palmer was recommending Mr Comrie to you—is it reasonable in these circumstances then to suggest that such a disclosure should have been made to you given that your department's only role appears to have been one of, if you like, formal administration in the formal engagement process?

Senator Vanstone—Drawing up the relevant contracts and arrangements—for example, salary and that sort of stuff. I have outlined who made the decisions and I think the answer to your question is perfectly clear from that. No doubt we will pursue this matter after the dinner break.

Senator FAULKNER—I may not be able to.

Senator Vanstone—Well, tomorrow morning if you are available then.

Senator FAULKNER—If such a disclosure were to be made then it would have to be made to you, and you are not aware of any such disclosure.

Senator Vanstone—I have given you my answer there. What I indicated to you was that I do not recollect the specifics of what you indicate being raised with me. I do not have any recollection of that. But I also indicated that Mr Palmer probably did say to me that he has had a longstanding working relationship with Mr Comrie, with which I am familiar in the sense of them both being police commissioners and working together over a long period of time.

Proceedings suspended from 6.30 pm to 7.36 pm

CHAIR—We were, in theory at least, on output 1.3 in outcome 1. I do not know if there is any information which either the minister or Mr Farmer has to provide the committee, or if we shall move straight back to enforcement of immigration law.

Senator Vanstone—Move straight back.

Senator NETTLE—Mr Davis, I have a question for you in response to your answer about the legal advice that you sought about Red One. You said that the advice was that, as long as it was not used for punishment, it was all right. Did the advice go to whether the facility itself constituted punishment or was the advice only sought in relation to the use of the facility?

Mr Davis—The advice as I recall it, and I do not have it here, went to the use of the facility, not to the nature of the facility.

Senator NETTLE—So no advice has been sought about the condition of the facility rather than the use of it?

Mr Davis—I would not say that, because architects and other designers—including security advisers and people of that nature—were involved in the development of the facility during the initial establishment phase of the Red One compound and the acquisition of buildings and also during the reconstruction, and things like building codes and other things were applied to the development. So the nature of the facility went through all those normal processes you would go through in the establishment of such a facility.

Senator NETTLE—So they may have sought advice about whether the facility and the conditions amounted to punishment or they may not have.

Mr Farmer—Would it be of help if on notice we tried to reflect the elements of the advice?

Senator NETTLE—Yes.

Mr Farmer—Why don't we do that? We do not have it here.

Senator NETTLE—What Mr Davis said seemed to relate to the use of the facility, and I am interested in whether either the facility or the conditions amount to punishment. That is probably the thing I am most interested in. I appreciate that. When a detainee is given a positive determination about their refugee status my understanding, just from speaking with detainees, is that there is often then a period of time in which they continue to be detained whilst I think the health and security check process is carried out. I want to get an idea about how long that period of time is. Take it on notice if you want. I want to know the average period of time that people are waiting and perhaps the longest period of time that people have waited. I am hearing reports that people are waiting for several months whilst that process is gone through.

If it is—and correct me if I am wrong—health and security checks that are being carried out, I would be interested to know if there is a view that it is likely or possible that either their health or security situation would have changed since they were put into detention. If someone had been in detention for several years, they got accepted as a refugee and then they were in there for several more months whilst health and security were checked, it would seem reasonable to ask, ‘Couldn’t you have done health and security during the five years they were in detention?’

Mr Illingworth—To start with your first comment about the stages which people go through, if they are successful, before they get the visa granted, it is quite often the case that a person—particularly from the Refugee Review Tribunal—will remit a case to the department with a conclusion that, in that particular case, the person meets the inclusion clause of a refugee. Then that leads the department to finalise the visa application and deal with the outstanding checks. Wherever possible, the department front-loads, as we call it, the checks that are required for a visa grant. In the case of somebody who arrived by boat, for example, in the years when there were very large numbers arriving by boat, one of the major initiatives that we put in place to streamline our processing was to front-load medical checks and front-load ASIO checks. But, with the passage of time, things do need to be revisited. Judgments about whether they need to be revisited are not for the department to make; they are for other agencies to determine, whether it is a health issue or whether it is something else. So there are going to be cases where a conclusion is reached that the person meets the inclusion clause of the definition of a refugee, and the rest of the stuff has to be assessed. That is something that can lead to a lag between the two decision points. So the grant of a visa can be held up by outstanding medical or security requirements.

Ms Godwin—Can I emphasise one of the points that Mr Illingworth is making. The point is: when a case is remitted to us from the RRT, they have not made a determination under all aspects of the refugees convention; they have only made a determination under article 1A—the so-called inclusion clauses. So, when it is remitted, what is remitted is their view that the person meets the inclusion clause elements of the refugees convention. The departmental decision maker then has to turn their mind to whether or not there are any other aspects of the convention which need to be taken into account. Generally speaking, it is a question of exclusion—the exclusion clauses. The security assessment is pertinent to that part of the determination.

So it is not true to say that they have been, in a sense, found to be a refugee and we are just going through health and character. They have been found to meet article 1A, and what we are doing is making the rest of the determination so that we can make the decision under the act—that is, whether Australia owes a protection obligation. That is what section 36 of the act says. If you are owed a protection obligation then you have to be given a protection visa. But being owed a protection obligation means meeting all the requirements of the convention—that is, not only that you are included under article 1A but that there is nothing that would subsequently exclude you from protection. So, when the departmental decision maker gets the application or gets the decision back from the RRT, they do not turn their mind again to the article 1A issue but they are obliged to turn their mind to the other elements. That includes the character components, importantly, to make that final determination. In order to make that final determination, if it is necessary to get further advice from other agencies, as Mr Illingworth has said, they cannot make the final part of the decision until we have all the material from those other agencies.

Senator NETTLE—Is the individual informed of the positive decision by the RRT?

Ms Godwin—Yes.

Senator NETTLE—And in that information is it explained to them that there are subsequent processes still required by the department?

Ms Godwin—It is.

Mr Illingworth—And we offer publicly funded migration agent assistance to explain RRT decisions and the consequences of those decisions to people in detention should they wish it. Some people in detention choose to retain their own advisers, but a large number avail themselves of the publicly funded migration agent. So there is somebody there to interpret for them what the letter means.

Senator NETTLE—Are they told they can access that at the time they are given the determination or is the person there when they are given the decision?

Mr Illingworth—When a person in detention applies for a protection visa, our usual practice is to offer them immigration assistance at that point. So, throughout the entire protection visa process, a person in detention has available to them publicly funded migration agent assistance. That goes through helping them to prepare their initial claims, attendance at interviews, explaining primary decisions, helping them with things like completing forms that are needed for some of these other checks, explaining the outcome of RRT decisions and helping them with any further processing, right up to the point of final determination of the visa, either a grant or a refusal.

Senator NETTLE—I acknowledge what you say about offering that at the beginning, but I am particularly asking about the end process. If that is offered at the beginning, is there another form of process or prompt in which it is offered again at the point when the decision is made? I am concerned about people who have been given a tick and are then told, ‘But you have to stay here for this period of time.’ Is the advice that the migration agent can be accessed again prompted when the letter comes from the RRT?

Mr Illingworth—Usually the arrangement that is established at the outset, when the person commences the protection visa process, continues throughout, so it is not a case of sporadic involvement of advice as and when certain events occur. A relationship is established. The person would have formal recognition of the fact that they have a representative in our systems, and we have statutory obligations to communicate with those nominated people.

Senator NETTLE—I understand that providing advice on the way through—

Mr Illingworth—So when we get to that review point we are not just communicating with the applicant in detention; we are also communicating directly with the agent.

Senator NETTLE—I want to go back to what Ms Godwin was saying before. So article 1A has been reached and then there is the exclusion part that needs a decision. Is there a requirement that you can only work on the exclusion component once you already have the inclusion component?

Mr Illingworth—No, there is no such requirement. All the criteria for granting the visa have to be met in order for it to be granted, and obviously only one needs to be failed for the person not to be eligible for the visa. Particularly for people who are in detention, one of our major streamlining initiatives when we had the large influx of boat arrivals was to front-load these checks. So we actually initiate the security checks right at the time that people are getting their first protection visa interview. This was the approach that we adopted for the boat arrivals. So wherever we can we try and front-load these checks, the medical checks as well. But medical checks, for example, do not last forever and there are requirements to have people rechecked after certain periods, and it is a professional judgment of the relevant body that undertakes those checks and evaluations that decides how long a particular clearance is going to last before they say, 'No, that's too old and it needs to be revisited.' Usually I think it is for about a year that these medical checks are held to be current. After that there might be some scope for extension in individual cases, but my understanding is that the usual practice is that they need to be redone if they get too old.

Senator NETTLE—Who is it who finds that to be current—is that DIMIA or a health authority?

Mr Illingworth—It is a health judgment, by Health Services Australia.

Ms Godwin—Health clearances are governed by a series of protocols that are discussed with the department of health because they include, importantly, a range of public health issues and, in a sense, we are guided by public health authorities about whether something needs to be redone, retested or whatever. But the things that can often take time are not so much the health elements as the character clearances. There we have to take the advice of the professional agencies that are responsible for giving the clearances. In some instances, because of changing circumstances overseas and so forth, they advise us that they need to redo clearances even though clearances were initially done. The fact that someone had a clearance done three or four years ago does not necessarily mean it will not be redone. It may mean that, but it is entirely up to the agencies involved.

The other thing is that, if a person resided in countries other than the country against which they have sought protection, parts of the character provisions require us to get certificates

from those countries. That can sometimes be time consuming. There are waiver provisions that can operate if that becomes inordinately delayed, but all of those processes have to be gone through. As I said, sometimes the agencies involved indicate that they require a new clearance to be done even though a person was previously cleared.

Senator NETTLE—But that is a determination they make rather than you.

Ms Godwin—Yes.

Senator NETTLE—I might ask about the process that applies when a refugee is applying for a protection visa and they have an Australian citizen spouse. I understand that that interview is conducted jointly. It may be one interview in a range of processes, but I want to know about the process that applies when somebody applies for a protection visa, they have an interview at which their Australian citizen spouse is present and a series of questions are put to that spouse. I am getting lots of blank looks.

Mr Illingworth—I think the reference to an Australian citizen spouse opened up a few possibilities. If a person in Australia has an Australian citizen spouse there may be opportunities other than a protection visa for them to apply for legalising their status.

Senator NETTLE—I am asking about some particular instances of detainees with Australian spouses applying for protection visas. As a part of that process the refugee applicants were involved in an interview with DIMIA which also involved their spouse, and a series of questions were directed to the spouse. Does that help?

Mr Illingworth—I do not know if you have a particular case in mind. It is not a case that is resonating with me.

Senator NETTLE—It is not a particular case; I am aware of a number of cases in which that process has occurred. My question was about whether there is a standard format for the questions that are asked of somebody's spouse in that particular interview. I was trying to get us clear about which interview it was to be able to then ask—

Mr Illingworth—As I said, I am not aware of any individual case that matches that scenario, but that is not to say that it has not happened. It probably just means that I will not be able to be as helpful as I otherwise might be. As a general principle, when we are interviewing a protection visa applicant they can have a close family member with them for support if that is going to be beneficial for them. The questioning is largely up to the individual decision maker. They would determine what lines of questioning to follow and how—within broad guidelines, instructions and training on issues like cultural sensitivity—they would pursue those lines of inquiry. Each case, even cases that look extremely similar on the surface, can quite quickly, as one digs down into them, develop their own features which make them quite different, and different issues become important to test in different cases. The lines of questioning are developed by the case officer.

Senator NETTLE—So there is no standard set of questions that are asked in that circumstance that you are aware of?

Mr Illingworth—In protection visa interviewing, there would tend to be broad themes of questioning that would pop up quite commonly, but there is no template that says, 'You ask this question, you ask that question and then you ask some other question.'

Senator NETTLE—The reason I ask is that I have been told of two instances, and potentially a third instance. An Australian citizen in that circumstance, whose interview was carried out last year, claims to have been asked a question about how they were going to vote in the upcoming federal election. When I heard that I was gobsmacked. They claim that it appeared to them as though questions were being read off a prepared series of questions, which is why I asked if there is a standard set of questions. Your answer was—

Mr Illingworth—There is no standard. In my mind, a question like that certainly has nothing to do with protection visa assessment whatsoever. If you have details of those cases, I ask that you pass them to the department—outside this session—because we would want to look at those very closely.

Senator Vanstone—I have only got one minor addition to what Mr Illingworth has said and that is that, if you would like us to follow that up, we certainly will.

Senator NETTLE—Thank you. Minister, I have a question which relates to a question that I asked you in the chamber in March. To put it in context, the question I asked was about Iranian Christians and, in the answer that you gave, you said:

I have had discussions with the Uniting Church in Australia in relation to their preparedness to certify as to whether people have genuinely converted or not.

In your answer to the supplementary question, you subsequently said that you did not have enough time to explain in the answer what criteria they might be using for making a decision about whether or not it had been a genuine conversion. While we are here and there is a bit more time, can you explain what discussions you have had with the Uniting Church about their role?

Senator Vanstone—I vaguely remember you asking me that question. It was some time ago. I had a meeting in my office in Adelaide with the moderator, or the head man, and the woman who I think is in charge of their social policy. I believe it was in January because I think I was down at the beach and came back from the beach to see them as they were the only days he was there. I can get you the date of that if the date is wrong—and I do not suspect it is. What they were particularly concerned about was whether the department took into account conversion. What he indicated was that he had spent a major part of his life on these issues, that he believed he did recognise what was genuine and what was not and that he would be prepared to in a sense certify what was and was not genuine. We indicated that that presented a range of problems. You cannot have one person who is unelected, not accountable and not involved in the system et cetera saying up or down. Nonetheless, his views might be particularly relevant.

What was also relevant was whether any alleged conversion had been raised and considered in the first instance—and, in particular, by the RRT—because, if it had already been considered, that is a different matter from someone subsequently saying, ‘Something has changed.’ That does not have the same impact as new information in the sense that someone who had not then converted now has. Let me go back and have a look at what I said to you and I will come back and add to that. It will certainly not be tonight and I doubt it will be tomorrow if we are here late tonight. We had discussions because they were concerned, and

we wanted to understand their point of view and be able to take into account what they said and, where they could be helpful to us in this process, use that help.

Senator NETTLE—Did it go any further about having them playing any ongoing role?

Senator Vanstone—No, I would not take it that anything was particularly formalised. Each of these cases is on a case-by-case basis, for starters—which always makes generalities a bit difficult. I would put it as high as that and no higher.

Senator NETTLE—The discussion was not on the basis of an individual case, was it?

Senator Vanstone—The meeting was not held on the basis of an individual case, no. There may have been a number of cases raised in the sense of: ‘Let me use this example or that example.’

Senator NETTLE—That is all right.

Senator Vanstone—I think a group was raised. I think it was the woman who raised the issue. I asked, ‘What happens to people who convert?’ Most of the religions of which I am aware—this is just a purely personal view—have a common set of values, pretty much, and that is, neatly summarised: if you are a decent person, whatever heaven there is, you will get in if you have been nice to people, generally, in your daily life, apart from defending yourself, which is, of course, fair licence. I said before that I do not think there are any pearly gates or whatever, where someone is going to say, ‘Ah-ha! You picked the wrong type of religion.’ I was quite interested in why it is that someone who happens to start off being a believer in Islam converts to Christianity—how does this happen?

With respect to the group they were talking about, that is what occasioned the woman to tell me a particular story about how she believed that happened, which was, in short, that they had been on a boat and the engine had failed. The story, as related to her and as she related to me, was that everybody was praying on the deck to Allah, and the engine was not starting. Then one person said, ‘I’m going to pray to Jesus Christ.’ A few people joined him and the engine started. Apparently, as a consequence of that, on arriving at Port Hedland, I think—the west coast, anyway—they wanted to inquire about Christianity. As I understand it, the first person you come into contact with pretty much amounts to who is on a duty roster on the weekend—the Roman Catholic priest, the Anglican, the Uniting Church or whatever. And so it goes from there. So that is the group who were on that boat that they had a particular interest in.

Senator NETTLE—The point of the question was about whether there was any ongoing role that somebody from the Uniting Church that you mentioned, or from any other—

Senator Vanstone—Yes, and I answered that. Sorry—I told you that, because you asked me whether any particular case was raised and I was just telling you: that is the story I was told about the group they were interested in. And I said that it is not my view that there is anything formalised and structural.

Senator NETTLE—That was about with the Uniting Church. Is there any with any other denomination?

Senator Vanstone—No, but the same applies. If someone who is a longstanding member of a recognised church puts a proposition to us that they genuinely believe that someone has

recently converted and that is new information, where it is relevant of course we are going to take that into account. There is no special deal for the Uniting Church.

Senator NETTLE—It was an intriguing concept that someone could verify a conversion, which is why I wanted to see if it had gone anywhere—

Senator Vanstone—I did not ask for the details. I was talking about the face value where he said he had spent his life on the issues of people taking up Christianity and different branches, and that he understood what it was. If he understands it for him and for his religion, that is fair enough. I am not second-guessing whether one religion is more appropriate than another. It is a question of whether it is in relation to these countries, whether it is any branch of Christianity, and whether it is a genuine conversion. That is the question.

CHAIR—I am glad we cleared that up.

Senator NETTLE—So the place for the determination is the RRT? There is no external person whom you are bringing in? You said they are not playing a formal role. So if a case before the RRT is about a conversion it is the RRT members who are—

Senator Vanstone—Yes. We do not interfere with the RRT.

CHAIR—So the answer to the question is no.

Senator Vanstone—Yes.

Senator NETTLE—If I put the question as, ‘Do the RRT therefore decide whether the conversion is genuine or not?’—

Senator Vanstone—People will make claims. I have seen RRT reports where comments have been made as to whether they accept that or not. But Mr Illingworth has years and years of experience on this matter.

CHAIR—Mr Illingworth.

Mr Illingworth—Issues like the genuineness of conversion and the strength or political beliefs that people might be using—that might be coming forward as the basis of their claim for protection—are considered as a matter of course by the decision makers in the department. If the person is not successful at that stage and seeks a review, it is considered afresh at the tribunal. These are judgments of fact that are made by the decision makers in each case based on the particular claims and the weight of information available to the decision maker. It is an independent process.

Senator NETTLE—I might move to another question.

Senator Vanstone—If I may, just for the purposes of the record, can I say that I have got my answer to your supplementary, and I will leave the gratuitous criticism I gave you at the time, although I thought it was appropriate. My answer was:

There is not, as I understand, a set guide for deciding these things. They are undertaken by the Refugee Review Tribunal—

that was the context of my answer to you—

obviously on the basis of what they are told and what responses people can give to answers. I do not think that it is easy to codify that—

that is true—

certainly not to give you an answer in this short period of time.

Obviously, that related to the RRT—not, as I think you intimated before, to what arrangements had been made in relation to this meeting. I just help you with that.

Senator NETTLE—Fair enough.

Senator Vanstone—Because the gratuitous criticism I gave you before in fact made an assertion that was not correct. The reason I pick you up on it is that it is very frustrating. It is a lot easier flow if you get to the point where you trust what someone says and answer them directly. If you do not, you always want a second check.

Senator NETTLE—I will move to a question about the immigration detention standards. I understand that there is an immigration detention standard which says:

Staff do not carry or use firearms. For riot control or other security incidents, detention officers appropriately trained and authorised are permitted to use emergency response equipment.

Could you explain what emergency response equipment is permitted to be used by employees of GSL in immigration detention centres?

Mr Davis—Could I take that on notice and provide detail on that?

Senator NETTLE—Yes, you can.

Mr Davis—I just do not have the information here.

Senator NETTLE—That is fair enough. I will ask another question, and if you do not have the information you can take that on notice as well. Is the contractor's facility manager required to expressly approve the use of such equipment in advance of it being used?

Mr Davis—The emergency response equipment?

Senator NETTLE—That is right, yes.

Mr Davis—I do not believe so, because I think the facilities manager is normally associated with the infrastructure and running the facility. The process of approval of the equipment, as I understand, would be a separate process. Perhaps I could try to go through that in the information we provide.

Senator NETTLE—And whether you are informed about the use of the equipment—sorry, whether the department is informed.

Mr Davis—We are informed. My recollection, but I will check this, is that within the operational procedures that sort of information is part of the procedures that I have approved. I will confirm that.

Senator NETTLE—And I would be interested in the number of instances in which it was used.

Mr Davis—Okay. We will see what we can do.

Senator NETTLE—In relation to this contract.

Mr Davis—Yes.

Senator NETTLE—I want to ask a question about a couple of current detainees and their situation. It is a more general point. Where people apply to the minister for a 417 and there is not a ministerial intervention but there is a decision to grant a 48B and return them to the tribunal process, how often does that occur? I am thinking of a particular case, but I do not know if that is a common scenario—where people apply for ministerial intervention, a 417, and are not granted that but are granted the opportunity to go back and start that process again.

Senator Vanstone—It does happen, but I do not have any figures on it. I would not even hazard a guess. The ministerial intervention workload is very, very substantial and continuous. Quite frankly, when you do a large batch of them, at the end I do not think you are in a position to give a summary of what you have done—the way I do them anyway. You close one; you shut it; you put it away; and you try to almost clean the hard disk and then sit down and take the next file in. In my own case, it is always with one, possibly two, advisers who have gone through it, so there is a discussion. That tends to shut it all out. I am in no position to do an off-the-cuff summary. The department might have some idea of how many people—there are all sorts of permutations you might be asking for. Are you asking about people who have done a 417, do not get it and get a 48B—

Senator NETTLE—Yes.

Senator Vanstone—Or people who try some other way to get a 48B? Just the 417s?

Senator NETTLE—Just the 417 to the 48B.

Senator Vanstone—Who become 48Bs?

Senator NETTLE—Yes.

Senator Vanstone—The department might have them, but I suspect they do not and I am not sure how retrievable that would be.

Ms Godwin—When you refer to 417s who become 48Bs, I am not quite sure what you mean. Sometimes people ask the minister to look at them under both—or their advisers do, their legal advisers or whatever. I am not quite sure what you mean. We have statistics on 417 and 48B, which we can give you on notice, but I am not sure whether we have anything that shows—I am not 100 per cent sure what you are getting at and I am not sure whether we have statistics. The other point is this, just by way of clarification. If the minister lifts the base under section 48, the person does not go back to the RRT; they make a fresh application.

Senator NETTLE—Yes.

Ms Godwin—It is lifted on the basis that they believe they have new information. Therefore they make a fresh application.

Senator NETTLE—My question is about where they ask for a 417 and they are not granted a 417 but they are granted an opportunity to resubmit—whether that occurs, and how regularly that occurs, if you are able to.

Mr Illingworth—It certainly does occur, because, in a number of cases, if people are asking for section 417 intervention they have been through the process; they have had their review tribunal decision. Essentially their visa application is finished. In those cases, the

minister quite often has the two powers available to her and she can see a case and decide, if she wants to use her power, which one is the more appropriate to use. It does happen, but I do not have the statistics.

Senator NETTLE—The reason I am asking is this. If someone is applying for a 417, presumably they think they are at the end of the process. If the answer at the end of the process is ‘No, you didn’t get the ministerial intervention; instead you are going back to the beginning of the process,’ that is a long wait for them. The person I am thinking of is a detainee at Villawood who has been there for five years. He is the third longest detainee. When he is having a positive day, he will describe himself as the Peter Costello of Villawood, because he has been there the third longest time. He is somebody who has played a role as a carer for Naomi Leong when Virginia has not been available for that role. I am aware that last night, having asked for a 417 and been granted a 48B, he saw Naomi and Virginia leave and has now drunk a bottle of bleach and is in the Liverpool hospital. He is in a circumstance where he has been there a long time and, because he applied for a 417 and got a 48B—as well as the circumstances of Virginia and Naomi leaving—that is the response that he has taken, which is unfortunate, obviously.

Mr Illingworth—Perhaps I can talk a bit about the conceptual difference between the two provisions. Both of them require the minister to be satisfied that it is in the public interest to use the power. It is a personal power. There has to be the public interest there for it to be used. The conceptual difference in having two powers in the Migration Act was that 417 was a way to give somebody a visa who did not meet the criteria for grant of a visa. That is why we talk of the other nonrefugee convention international obligations being dealt with there. It is almost as if conceptually you say, ‘The person’s gone through the protection visa process. At that stage they have been found not to be a refugee, but is there some other reason, not to do with the reliability of that refugee decision, to give them a visa anyway?’ That is the issue for the minister to consider.

48B conceptually is more about saying, ‘Somebody’s been through a process and they’ve got a decision, but now something has happened that means that you might want to think about whether that was the right outcome.’ Quite often that can be changed country circumstances or a new claim that needs to be considered. Those are the issues that the minister would no doubt be considering. She is not bound by those concepts that I just put because the flexibility is there for the minister to act to use those powers whenever she believes it is in the public interest to do so. When the act was constructed those were the conceptual differences. That is why, if somebody raises a new claim, for example—

Senator NETTLE—They go back; I understand. Can the minister, when she is making a decision to grant a 48B, make a decision to also grant a bridging visa? I am thinking of the particular instance where somebody has been in for a long time and then they go back to the beginning of the process and the 48B. Can a bridging visa be granted at the same time so that the next run through the process, so to speak, is done whilst they are in the community? Can the minister do that, or would it be appropriate to do that?

Mr Illingworth—When 48B is used, essentially it removes an impediment that prevents a person from making a fresh application. It does not change their immigration status. If the person was, as an applicant for a visa, entitled to apply for particular bridging visas then that

entitlement would be restored if they applied again for the visa that they had applied for before. So, if an applicant for a protection visa was entitled to a bridging visa the first time around and the minister lifted the bar and let them apply again, generally speaking that entitlement for bridging visa access would be restored along with it. But, if a person was not immigration cleared to start with, then that would not change if the minister lifted the bar.

Senator NETTLE—I think I understand.

Ms Godwin—It goes to the discussion we had yesterday about the different things available to people depending on whether they have been immigration cleared or not.

Senator NETTLE—So, if they were not immigration cleared, they would remain in detention.

Ms Godwin—Yes, they would have limited access to bridging visas.

Senator NETTLE—I want to ask about the case of an Iraqi man who I visited in Baxter detention centre. He has a deformed hand, and I have subsequently heard about his individual case. He was subject to torture in north Iraq by the Baathist regime. I understand he has an application in for a bridging visa at the moment on the basis of torture and trauma. I am wondering if there is any update on that. Will that decision be made by the minister or the department?

Mr Williams—I am broadly aware of it and, as I understand it, it is a request for a bridging visa that is with the department.

Senator NETTLE—Does the department make that decision or does it go to the minister?

Mr Williams—The department makes decisions on bridging visas.

Senator NETTLE—Is there a general period of time for how long that decision takes?

Mr Williams—The sort of bridging visa for unauthorised arrivals in particular has a number of criteria. Even where the criteria are met, there is also a need to put in place a care plan and things for that particular class of visa. That sometimes takes quite a while to get organised.

Senator NETTLE—I have two more questions. One is about a group of Chinese detainees in Villawood. There have been some comments recently that they have been separated off and they have had access to Chinese officials. There has been speculation that this is preparation for a deportation. I am wondering if you wanted to make any comment about why that has occurred and how it is occurring. Is it part of a deportation process?

Mr Williams—We are not collecting people into a place to put them together for a deportation. That is not what is occurring. There is a process going on for processing travel documents for a large number of people from the PRC where it has been quite difficult to establish their identity and we have the assistance of the government of the PRC to try and sort that out. Whilst some of those people remain un interviewed we are seeking to keep them separate. We do not expect that to go on for more than a week or so, and then they will return to the normal compound.

Senator NETTLE—You say that is not preparing for a deportation but it is preparing travel documents. Is it a removal pending visa?

Mr Williams—No, it is really to issue travel documents for people for removal but we are not talking about a group removal; we are talking about a large number of people from one country who are available for removal and whose travel document processing is at various stages but who all need to be interviewed by their country of origin.

Senator NETTLE—Available for removal because their applications have been rejected or because they have signed up to be removed?

Mr Williams—It could be a combination of people whose applications have been rejected, people who have made no application and people who wish to go but have not been able to satisfactorily identify themselves. It could be any number of those sorts of circumstances.

Senator NETTLE—Is that the process that you would follow if, for example, one of those was a removal pending visa as well?

Mr Williams—Yes. If somebody was awaiting removal and they may be eligible for a bridging visa, we would still be looking at trying to arrange a travel document, so those processes may work in parallel. But that is not the reason behind this particular operational activity.

Senator NETTLE—So they have been separated because they have not been interviewed yet. Is that what you said?

Mr Williams—Separated because some have been interviewed and some have not, so it is question of making sure that we keep some integrity around the interview process.

Senator NETTLE—They have been separated from the other detainees because some of them have and some have not been interviewed, or the ones who have not been—

Mr Williams—Those that have been interviewed have been separated from the ones who have not. It is only expected to be on foot for a couple of weeks and I think by the end of next week things should go back to normal.

Senator NETTLE—The last question is about the situation for Arab Ahwazi people and whether the department is monitoring the recent protests and the violent crackdown that has occurred by the government in Iran against that particular group of people, Arab Ahwazis, from which I understand there are a number of detainees. Is the government monitoring that for the process of making determinations about whether removal or deportation is to occur or to wait?

Mr Illingworth—The department is very closely monitoring developments in a whole range of countries and Iran is amongst those countries. As a matter of course we remain alert for any developments in home countries of people who have previously been found not to be owed protection. If there are developments there which mean that we feel we need to draw matters to the minister's attention and seek her views on whether she wishes to allow them to make a further application, we have processes in place to identify cases that might be affected and to put them to the minister.

Senator NETTLE—I know there are about six Arab Ahwazis in Baxter of whom one has been removed to Villawood. Villawood is a facility from which people can be deported and there has been some comment to say that Villawood is a place where people are more prepared to be involved in any sedation or chemical restraint process that might be a part of

that following removal. Is that transfer to Villawood a part of a process of removal or deportation?

Mr Williams—I have to take issue with the statement that Villawood is more prepared to use chemical restraint or measures of that nature. Australian government policy is not to use chemical restraint for the purpose of restraint. That is not a fair statement.

Senator NETTLE—I am aware of that; that is why I said ‘claim’.

Mr Farmer—Were you asking us to comment on it?

Senator NETTLE—I was asking about the Arab Ahwazi. I am saying that is the claim and I am asking: what is the situation with monitoring the Arab Ahwazi and any potential deportation?

Mr Williams—For anybody who is available for removal, potentially, that will occur as soon as we are able to achieve that. In the cases of many of the Iranians, it is a process of seeking a travel document, which takes a little while but is possible. If a person has no applications on foot, no matters before the court, it is safe to assume that we are seeking a travel document for that person so we can arrange removal.

Senator NETTLE—And monitoring the situation in Iran.

Mr Illingworth—The situation in a whole range of countries is monitored, particularly in relation to people who are at the stage that Mr Williams referred to. For those people who have no applications on foot, who are available for removal, we pay particularly close attention to their cases and to developments which might affect them.

Senator NETTLE—Part of that monitoring of Iran relates specifically to the recent uprisings and violence against the Arab Ahwazi.

Mr Illingworth—It does.

Mr Farmer—We have a piece of follow-up to a question asked by Senator Nettle.

Mr Williams—I did not hear the question, but my colleagues who are watching on television did. It was a question relating to somebody being encouraged to vote in a certain way.

Senator NETTLE—It was an interview—there are a number of them—with people who have subsequently been found to be refugees and who were married to Australian citizens. They were asked a series of interview questions in which the Australian citizen’s spouse was present. I was asking whether there was a prepared set of questions because there was a claim—I know of two and there may be a third—that they were asked in that interview, which occurred last year, how they would be voting in the upcoming federal election.

Mr Williams—I am not sure if we are talking about the same thing, but there was a complaint raised recently about an interview—it was a bridging visa process, as I understand it, but it may have been what you are referring to—where a person during the course of the interview raised a complaint and the interviewing officer suggested that one option might be for the person to raise that matter with their local member. That was misconstrued as a suggestion that they should vote in a certain way. That matter was, as I understand it,

investigated by the Ombudsman's office and found not to have foundation. It may be that that is the case you are referring to.

Senator NETTLE—I am not sure either, but thank you.

Senator BARTLETT—In light of the recent MOU with Afghanistan, which is probably partly 1.2 and maybe 1.3, has that package already been offered to any people either in Baxter or in the Australian community?

Mr Williams—Yes, it has been offered to detainees in Baxter who are available for removal and other centres, I believe.

Senator BARTLETT—How do you determine 'available for removal'? People who have nothing afoot, no other claims?

Mr Williams—That is right—no application on foot or a court action relating to a visa application. Others who have something on foot have been briefed about it but not made a formal offer.

Senator BARTLETT—I have a similar question on Nauru but I will wait for the other output on that. I raised an issue a year ago about the identity checking unit in Afghanistan and visa cancellations due to identity fraud. In an answer a year or so ago the department said it had cancelled 27 temporary protection visas on identity grounds, all of whom had claimed to be Afghans. Firstly, have any of those 27 or any subsequent cancellations been reversed following challenges to the cancellations?

Mr Hughes—I think we said that there were a number of cancellations last year. There were also a number of other cases where the possibility of identity fraud was an issue, where allegations have been received that were also being considered in the protection visa process, particularly looking at the applications for further protection visas. I think it is possible that there may have been a change effecting cancellation. I do not have the figures with me but I can take that on notice and get the answer for you.

In relation to the other cases being considered in the further protection visa process, there has been a fairly high rate of finding that people do require further protection at the primary decision making stage, which would reflect that the allegations of identity fraud have not been substantiated in those cases.

Senator BARTLETT—To clarify, you are taking on notice these further figures about any other cancellations or reversals of cancellations.

Mr Hughes—I do.

Senator BARTLETT—I asked some questions about the identity checking unit about a year ago here, not long after it had been set up in Afghanistan. Is that still operational and rolling along okay?

Mr Hughes—Yes, it is.

Senator BARTLETT—I think at that stage the department was saying that you would see how it operated with an eye to having it transferred to Afghan government funding. Is it still being funded by DIMIA or the Australian government at the moment?

Mr Hughes—I think it is still being funded by us at this stage.

Senator BARTLETT—Is there any time line for reassessing its operation?

Mr Hughes—There are still a number of cases being looked at. I do not have a particular time line in which we will reassess it. I think we just have to see how we go with the cases that are already being examined. The results to date would be mixed. In some cases the identity checking unit is able to verify claims of Afghan identity positively for us. In some other cases, they are saying that individuals are not Afghans as claimed or they cannot establish that they are.

Senator BARTLETT—I want to ask about the various detention centres around Australia, if this has not been covered already whilst I have been out of the room. What is the current status of the former facilities at Woomera and Port Hedland? Are they mothballed for possible future readiness?

Mr Williams—They are mothballed for possible future readiness.

Senator BARTLETT—I understand the one in Darwin that has been there for a little while is now going to be upgraded or refurbished in some way to accommodate fishing people. Is that correct?

Mr Williams—That is right. The government took a decision to do that.

Senator BARNETT—Given that it was built a little while ago and for a couple of years it has basically not been used much, if at all, what extra needs to be done to enable it to now accommodate people?

Mr Farmer—That facility was first set up as a contingency facility. This was at a time when the boat arrivals were peaking. In the current circumstances, where we are looking at using it as an ongoing facility—as the government announced late last year, I believe—we have to look at a number of amenities that are required for an ongoing facility.

For example, if my memory serves me correctly, we were looking, at an earlier stage, at preparation of meals in a way that was sustainable on a short-term basis but is not on a long-term basis, and so we are looking at the need, among other things, to install a kitchen. The essential answer is that the extra requirements now flow from the change in nature from an interim facility to one that will be required on an ongoing basis. There are a number of implications that flow from that. That is the basic reason.

Senator BARTLETT—When is that expected to be ready in Darwin?

Mr Farmer—I think it has yet to go to the public works committee. It may have been referred today—I do not know what the developments have been today.

Senator BARTLETT—Is it still planned to build a facility in Brisbane?

Mr Davis—The land is being acquired for a possible future facility in Brisbane, but any decisions on that are matters for the government in some years time. A site has been reserved for the government to consider the issue in the future.

Senator BARTLETT—So it has been purchased?

Mr Davis—It has been purchased from Defence and transferred to our ownership, but whether or not it is developed in due course is a matter for the government to consider in the future.

Senator BARTLETT—Thank you for that. I know there have been some questions about Christmas Island but I do not think this has specifically been asked, so I will quickly do it. I know there have also been questions about mental health services delivery, but I think they have been mainly focused on the mainland. I have some specific questions I have been asked to ask about the psychological counselling available to people on Christmas Island—stop me if this has already been asked. I believe this was raised by IDAG, and DIMIA responded to those concerns about individual psychological counselling being available to all detainees through a particular subcontractor, saying that those staff visit Christmas Island on a regular, scheduled rotation. Are you able to provide details of how frequent that regular, scheduled rotation of professional support services visits is?

Mr Davis—Yes. In answer to question on notice No. 79 we provided details of health support across all facilities, and that included Christmas Island. In that table we provided information that one visiting psychologist spends one week per month on the island.

Senator BARTLETT—How long has that been operational for?

Mr Davis—My recollection is that it was a bit less frequent than that, going back some time ago, but we did review our position and increased the frequency and regularity of the visit to the current amount. I do not recall how long ago that was changed, but it was quite some time ago that we changed that.

Senator BARTLETT—I have received copies of concerns that were expressed by Professor David Fletcher about conditions—mental health and wellbeing issues for the detainees—on Christmas Island, around the end of last year. Are you aware of those specific concerns?

Mr Davis—I am not specifically aware of those, no.

Senator BARTLETT—It might be best if I put them in writing and get you to respond to them on notice—

CHAIR—Thanks, Senator.

Senator BARTLETT—given the time and given how keen I am to be cooperative.

CHAIR—How grateful we are, Senator!

Senator BARTLETT—Thank you; I feel much better now! Can I ask about the allegations that have been in the public arena for a little while now, made by the Edmund Rice Centre regarding the deportation of people allegedly into situations of danger and also, in part, allegations that in some of those situations that was done on documents of questionable validity.

CHAIR—I think we have other officers coming to the table for these questions.

Senator BARTLETT—I think my questions mean people move backwards and forwards with a regular shuffle.

CHAIR—It is reasonably full at the inn, so to speak!

Senator BARTLETT—I am trying to be quick and zip through things—it keeps them on their feet. I know this next matter has been raised before, including by myself in question time as well as here. It has been stated a number of times that the Edmund Rice Centre have been

asked to provide further information and it has been suggested that they have not done so. I have subsequently seen statements from them saying that they have done so and have had meetings and those sorts of things. I am just trying to get a bit more of a picture of what actually has been done to follow up on their allegations or findings and what specific things are impeding any further examination of some of those concerns they have raised.

Mr Moorhouse—Perhaps I can assist in that regard. Staff that work with me in the Values and Conduct Section of the Corporate Governance Division have met with staff from the Edmund Rice Centre on a number of occasions in order to try to enable us to pursue the allegations that have been made. As you may be aware, the department follows up any allegations with regard to departmental staff. The challenge that we have faced with the Edmund Rice Centre has been their reluctance to provide the personal details of the people with whom they have dealt for fear of impacting on those people.

Senator BARTLETT—So they have been providing other material to you. Is it just that specific type of stuff?

Mr Moorhouse—They have met with us on a number of occasions. After the release of their interim report on 7 October 2003, we contacted them for further information. The ERC at that time provided some limited information about a departmental officer, indicating that, on legal advice, they would refer other evidence in their possession to the AFP. I understand that was done. The AFP have conducted an investigation and, as far as we are aware, they have not provided us with any information that indicates improper or other such behaviour by departmental staff. At the same time, the department also examined the report to see whether it was possible to identify any particular matters that we could pursue. We were able to identify two of the cases from the information in the report and we have conducted a thorough investigation of the circumstances and processing of those two cases. That resulted in a finding that no departmental officer or contractor had engaged in either criminal conduct or misconduct.

After the Edmund Rice Centre released their final report, they met with a number of staff from the department, including me. They indicated again that they were unable to provide us with personal details in relation to the people with whom they had been dealing. We have maintained contact with them over that period. One of my staff met with them as recently as Monday of this week. Mr Glendenning from the Edmund Rice Centre indicated that he thought it might now be possible to provide us with some more details. As far as I am aware—I have been involved in estimates hearings for the last two days—we have not yet received that information from him. If we are able to receive any further information, we will of course pursue that thoroughly. Obviously, if there is any improper behaviour, we are interested in identifying it and dealing with it, and if there is not we want to be able to clear the name of our departmental staff.

Senator BARTLETT—So would it be fair to say that the department is maintaining an interest and still following up on such issues as it can from what the Edmund Rice Centre has provided and published?

Mr Moorhouse—We actively pursue any allegations or information that is provided about improper behaviour by departmental staff.

Senator BARTLETT—Are you still following up some of the issues?

Mr Moorhouse—We are not actively conducting any investigations at the present time, but we remain available to do so if the ERC are able to provide us with any further details or any substantiation.

Senator BARTLETT—Given there has been a meeting just this week, I guess we will watch this space and follow it up. Thank you for that. Specifically with regard to the Bakhtiyari case that obviously got a large amount of publicity, I want to get a clearer picture of what actually happened with their removal when they arrived in Pakistan. There were certainly some statements made in the public arena that they were offloaded in Pakistan, and then there were problems at that stage with their identity being verified and a range of other allegations.

Senator Vanstone—Including that they were dropped off penniless.

Senator BARTLETT—As I said, there are a range of other allegations which I could go into detail about. Given the time and everything else, rather than air all the allegations I just want to get any extra information that you can provide to the committee about what actually did happen with that case. I do not think we have had an opportunity to do that in the context of this committee since that event happened.

Mr Williams—When they arrived, we understand they were questioned for a while by the border authorities and detained for that purpose for the space of the day, I think, when they arrived. I do not think we are really aware of the full nature of that questioning. It may have been about their identity or it may have been about other things. Yes, we do know that they were interviewed and, in connection with that, detained for most of that day.

Senator BARTLETT—What actual identity or other travel documents did they have that enabled them to leave here and get into Pakistan? Was it the titre du voyage, as I think it is called?

Mr Williams—No, they were travelling on what is called an emergency passport, issued by the Pakistan High Commission in Canberra. It is a travel document that I understand they issue in emergencies where they do not usually have the time to issue a full passport or that kind of thing.

Ms Godwin—That is in a situation where they had previously confirmed that they accepted that the family were Pakistan nationals.

Senator BARTLETT—Yes, Pakistan had confirmed that. Are you able to confirm that they were accepted into the country?

Mr Williams—Yes, they were.

Senator BARTLETT—Do you have any idea what has happened to them subsequently?

Mr Williams—We can positively confirm that they did enter Pakistan on that occasion. Some members of the family visited the Australian High Commission in Islamabad some weeks later—I think it was about a month. Since then, we have not have much contact with them, although we do know that some of their supporters in Australia have. There are some

issues around some property that we are liaising over. We do know that people appear to be in contact with them.

Senator BARTLETT—Is it your understanding that some of the family are now in Afghanistan?

Mr Williams—We are being told that they are in Afghanistan, but we have no way of knowing whether they are or not.

Senator BARTLETT—Did they raise specific issues when they went to the Australian High Commission?

Mr Williams—It was mainly about their property remaining in Australia and arrangements for that to be forwarded.

Senator BARTLETT—Is that something that is still being worked through at the moment?

Mr Williams—Yes, we have been talking with Centrecare people about that because there is a fair bit of it and there is some that they believe they may not ultimately want. They are offering to help sort that out and let us know where it is to be forwarded on, subject to us getting some sort of formal authority from the family in due course to dispose of the property.

Senator BARTLETT—It is still a work in progress, basically.

Mr Williams—Yes.

Senator Vanstone—Perhaps Mr Williams might like to add something about the arrangements that were made for the nuns to meet them.

Mr Williams—Through suggestions from supporters in Australia, we did arrange for them to be met on arrival by a group of nuns who were willing to help them on arrival. My memory is failing me now as to what actually happened. It seems like years ago, that is all.

Senator BARTLETT—It was quite a while ago now. If you want to give us something in writing—

Senator Vanstone—It does give me the opportunity to put on record my gratitude to Sister Judith Reddern, who is the principal of St Aloysius College where the Bakhtiyari girls went to school. You may not have known that, because the Bakhtiyari girls did not get as much publicity as the boys. I am not saying that is a function of the schools they attended. That may be the case—I cannot say. Sister Reddern clearly did not want the girls to be sent back either to Afghanistan or to Pakistan. We had not much common ground between us on that issue—I can assure you—but where we did have common ground was on her commonsense approach if her view were not to be the case.

The order of nuns that runs that school—I do not remember the name of it—apparently has nuns in Pakistan. The first question was whether we could let them know when the Bakhtiyaris were going to be removed so that they could make arrangements. The answer to that was clearly no, because we do not give advance warning to people in states. I am certainly not suggesting Sister Reddern would try anything ridiculous to frustrate a removal, but someone else might. We came to a sensible arrangement that, if she gave us the names of people to contact, at some point after they had taken off, we would make that contact, and we

did. Obviously, Mr Williams and I cannot remember what happened at the expiration of that day, but I raise that because that is a very useful and practical example of what advocates can do—that is, even when you have disagreements, keep lines open with the government so that some good idea that you have can be taken up and used.

She further deserves credit for running a school that does not spoon-feed its students letters so that I get 20 letters all the same and I am meant to believe that the children have independently thought of the phrasing, the grammar and the text. She does teach values, which is important for schools, but she teaches values in the sense of what the schools does—that is, coming to your own conclusion on the issues—and certainly encourages the students not to take a black-and-white approach or to personalise issues. In that respect and to my knowledge, that school stands out from all others with which I am familiar. I thought I would put it on the record. I am sorry, Madam Chair, for taking the time, but it is an important issue to put on the record.

Ms Godwin—We can take on notice exactly what happened. My recollection is that we were in contact with the people who were offering to assist at the other end on the day of the arrival, but I think we just need to take the details on notice and make sure we get it accurate for you.

Senator BARTLETT—Thank you. I would appreciate that. Back in February, I asked a question which was taken on notice that I do not think we have an answer to yet, unless it has been given in the last day or so.

CHAIR—We did get answers late on Tuesday night.

Senator BARTLETT—Okay. It was about reports of an ACM guard that had been convicted of the assault of a detainee. Did we get an answer to that?

CHAIR—I do not specifically remember. We do not have any outstanding answers, though, so it must be in that last pack.

Mr Farmer—I do not know whether that was amongst the list. If it was on the list that we were asked to answer, we have done it.

Senator BARTLETT—I was once again trying to rush through a lot of things late at night after a day of less than valuable and optimal use of time in questioning from others, if I might editorialise briefly—

CHAIR—Why not? Everyone else does.

Senator BARTLETT—It was about a report that I had received that an ACM guard had been convicted of assault of a detainee. I was asking if you were aware of it and whether that was actually the case—you were not aware of it at the time—and I handed over a bit of paper et cetera.

Mr Davis—I recall it. You approached me after the hearings and we discussed it briefly. I have talked with the minister's office and they have indicated to me that perhaps there should be a conversation between you and them, and we can provide some information to you on the matter, unless you would like to ask me some more questions here. I will see what I can assist with.

Senator BARTLETT—I have a bit of paper in front of me now. I will read that and perhaps come back to that issue if I need to.

CHAIR—Or take up Mr Davis's suggestion.

Senator BARTLETT—Probably, but I will just read this. I want to ask, separately to that, about another enforcement matter. An issue that has been raised with me a few times relates to when compliance teams go onto farms or into businesses looking for people who are suspected of working illegally. Nobody has a concern about that, but the concern that has been raised a couple of times is about the way that that is being done and what is done sometimes with the business owner, the farmer or whoever. The allegation that has been made to me is that the farmers or business owners are basically kept and are not allowed to leave while the raid is being conducted and those sorts of things. Is that acceptable practice? It would seem to me to be a bit problematic if that were the case.

Mr McMahon—It really depends on the circumstances of the compliance operation and the nature of the situation that they find themselves in. It can also go to the nature of the warrant before they go in. There are some cases where, for example, the warrant might actually relate to staff. For example, it may be unclear when you go into a brothel, say, who are the staff and who are the clients. That may mean, for example, that they do need to be sorted and held until the distinctions can be made. In other cases where those sorts of distinctions would be very clear from the beginning, it would not be lawful, for example, to interfere with people going about their business. But there is a significant logistical issue in going in and trying to ensure, for example, that an unlawful person does not leave the premises. It really depends very much on the circumstances and the nature of the intelligence that actually gave rise to the warrant in the first place.

Senator BARTLETT—If somebody was clearly the business owner or whatever and there is no question in the compliance officer's mind about that being the case then it would not be appropriate for them to be kept and not be able to keep going about their business for a couple of hours while the raid occurred.

Mr McMahon—It really depends again on the circumstances. For example, I participated in an operation in which we went into a restaurant. The business owner insisted on continuing to cook when it was dangerous for that cooking to take place with so many people in the kitchen. So we insisted that they stop the operations on occupational health and safety grounds and duty of care grounds. But the general guidelines which apply to compliance staff are that they are to conduct themselves in a way that minimises the impact on businesses. Certainly a lot of the planning and the expected planning is about how they go into and come out of that operation as quickly as possible.

Senator BARTLETT—Thank you; that will suffice on that at the moment. Can I return to the question that I was asking earlier.

CHAIR—Of Mr Davis?

Senator BARTLETT—Yes. The example I was asking about back in February was of a guard—an ACM guard, not one of the current GSL mob—who had already been investigated, found guilty and charged. I wanted to clarify what you were saying about that now. Are you suggesting that my having a private conversation about that would be more desirable?

Mr Davis—With the minister's office, yes. They are aware of the matter and I have discussed it with the minister and her office.

Senator BARTLETT—And you recommend that would be the way to go?

Mr Davis—I am happy to seek to answer it without perhaps some aspects. I may or may not be able to answer but if you want to ask I will seek to answer as best I can.

Senator BARTLETT—The only thing I really wanted to ascertain was, firstly, whether or not that had occurred, that somebody had been found guilty—

Mr Davis—Yes, it did. I can confirm that.

Senator BARTLETT—Secondly, I wanted to ask if the department was aware of that, which obviously you now are.

Mr Davis—Yes.

Senator BARTLETT—The third question is then: were you aware of that when it happened or did you become aware of it only following my raising it?

Mr Davis—I personally became aware of it only following you raising it, although I cannot speak for other officers as to whether anyone else was aware of it. I do not know if Mr Williams was. But we have checked our records and can confirm, as you have indicated, that that occurred.

Mr Williams—As I recall, we were aware of it fairly close to the time of the incident, if it is the incident that I believe it is.

Senator BARTLETT—Because it raises a question for me. It is not a matter of point scoring or trying to finger a particular person; he has been found guilty and got his sentence and all that. That is all well and good. The issue for me is that, obviously, it is a reasonably serious matter for a guard to be convicted of the assault of a detainee—although it is good to see that these things can be properly investigated and followed through. Given that that is a fairly serious matter, was there any action on the part of the department towards the then service provider or anybody else in relation to the incident?

Mr Davis—I would have to take that on notice to try and provide information as I can to you on that.

Senator BARTLETT—I might again leave it at that, given the circumstances and the time. The only other question I wish to ask verbally in this area—which I think is output 1.3 or maybe it is a bit of 1.2; I do not really know—

CHAIR—Output 1.2 suffered a nasty fate!

Senator BARTLETT—is on the issue of the return pending visa. We have not had much questioning on that yet, I don't think, or not in much detail. I did hear a comment in passing from the minister yesterday or today that there were perhaps 21 cases that were suggested for her to look at as possible applicants. Can you give me an indication of whether anybody has been offered that visa now?

Ms Godwin—Can we just clarify—I apologise, because this is one of those arcane things the department does; do you mean the return pending visa?

Senator BARTLETT—The removal pending visa, sorry.

Ms Godwin—The removal pending visa. Okay, thank you.

Senator BARTLETT—My mistake.

Mr Williams—The question was whether there had been any offers?

Senator BARTLETT—Yes.

Mr Williams—Not at this stage.

Senator BARTLETT—Have there been any people firmly identified as qualifying for an offer yet?

Mr Williams—We have been through the whole detention case load to look for people who would qualify under the criteria, and we have identified a group. I think the minister made an announcement about that at the time, and that has been put to the minister for consideration in due course.

Senator BARTLETT—So it is still under consideration, whether or not to make an offer?

Mr Williams—As I understand it, yes.

Senator BARTLETT—Thank you for that. I do have more on that but I will put it on notice.

Senator Vanstone—I can help you with that. That is a visa that was gazetted some time earlier this month, and the department—I put out a press release on this—have given me some details on 21 people, I think it is. I think there are 14 who are in detention and seven in alternative detention—I think that is right—who may well be candidates. If I had not been sitting here all of yesterday and was not sitting here today I might well have been able to do them. That is not to say they will all get made an offer, but I think there is a reasonable expectation that the department's list is not far off the mark that fit that criteria, if not spot on.

Senator BARTLETT—I will put the rest on notice in that area. Could you also take on notice, unless you are able to answer this off the top of your head, whether there have been any people who have been issued with witness protection trafficking visas since they were brought into operation, and if so how many?

Mr McMahon—There have been no such visas issued yet. No-one has qualified. There have been 42 bridging visa Fs issued and 20 of those have translated into criminal justice stay visas. Some of those are continuing to cooperate and be involved in a process that could ultimately lead to the conditions of that visa being met, but to date there has been none.

Senator KIRK—I had a few questions on the removal pending bridging visas.

CHAIR—That is the visa we were just talking about.

Senator KIRK—Correct. I want to follow on from what Senator Bartlett was asking. I understand that the criterion used in order to define whether or not a person is entitled to such a visa is the inability to be removed. Is that correct?

Mr Williams—I cannot remember the exact words but where the removal is not immediately reasonably practicable. I think we were try to get words which equated with what is in the act.

Senator KIRK—What does that encompass?

Mr Williams—It is really where in our assessment we know that there are going to be significant negotiations required with the country of origin or we know that the person is just for logistical or physical reasons not able to travel. It is some sort of overriding factor which prevents removal occurring in the foreseeable future.

Senator KIRK—What about being stateless? Is that one of the criteria?

Mr Williams—Not explicitly, because being stateless does not necessarily prevent removal. Statelessness is a fairly narrowly defined sort of concept in the first place. Secondly, just because someone is stateless does not mean they do not have right of residence somewhere. So it is not really in itself an impediment.

Senator KIRK—Is there a list of criteria against which you assess individuals?

Mr Williams—In the regulations that we gazetted recently.

Senator KIRK—I understand that you are still in the process of determining whether or not the 21 are eligible.

Senator Vanstone—That comes to me. The answer to Senator Bartlett was that this visa was gazetted earlier this month, somewhere around the 12th. I had a few things occupying my time since then but I expect to be able to do it very soon.

Senator KIRK—You mentioned the 21. Are those people in any way aware of the fact that you are considering their application?

Senator Vanstone—I certainly have not spoken to them. The department can indicate whether they think they are or not.

Mr Williams—No, we have not spoken to them yet. We are not in a position to do that under the way the regulations are structured until we are in a position to make an offer.

Senator KIRK—Would those persons be likely to know that they are probably the ones who will be considered?

Mr Williams—We do not know because we have not spoken to them, have not asked them. We do not have a basis on which to do that.

Senator Vanstone—There might be someone who has got an advocate who is very savvy who has gone on to explain the criteria and who is mentally alert and thought, ‘That must be me.’ There might be someone else who has looked at the criteria and said, ‘I can’t figure that out.’ We have no way of knowing.

Senator KIRK—It is just that you referred to 21 detainees as being eligible, as I understand it, when you announced it. So you must have some idea as to the group that was involved.

Senator Vanstone—The department has put forward for my consideration 21 people who they believe may well be considered as fitting the criteria. It is up to me to have a look at that—a second look. I have had one look. I needed a bit more information on some. So I have already had a look. There is not much extra information. That may now be back with me, or

my advisor might have sorted that out of our own files; I am not sure. But I do not expect that that will take very long at all.

Senator KIRK—Once the decision has been made as to whether or not to grant one of these visas, is that a decision that will be reviewable?

Senator Vanstone—No, that is an offer.

Senator KIRK—You would have made a decision in accordance with the criteria.

Mr Farmer—In logic, the people who are not given the visa will not know that they were under consideration.

Senator KIRK—But I guess they would have circumstances which they may believe fit the criteria. So my question is whether or not it is going to be subject to review.

Senator Vanstone—Do you imagine that anyone who gets an offer is going to say, ‘I want it reviewed that I’ve got this offer’?

Senator KIRK—No. Of course it is the people who have not got the offer.

Senator Vanstone—There is not a decision with respect to the other people. So there is no decision there to review.

Senator KIRK—I guess that will be tested in due course. I will now move on to another matter. This time it is the case that was reported, as I understand, last week—the Chinese-born Australian citizen who was detained at Villawood. Are you familiar with the case I am referring to? I am not sure to whom I am directing my questions.

Senator Vanstone—We had questions on this earlier today.

Senator KIRK—In that case they may have been covered. If they have, forgive me and just indicate that. Under what power was the detention exercised?

Mr McMahan—It was section 189. It was reasonably suspected that the person was unlawful.

Senator KIRK—Was the individual informed of the reasonable suspicion or circumstances under which the department reached that decision?

Mr McMahan—Correct.

Senator KIRK—Did he in any way try to contradict that or suggest that it was incorrect?

Mr McMahan—This is a somewhat complex case which is about to go before the courts. So there are limits on how I can respond.

Senator KIRK—Why is that? The matter is not before the courts yet.

Mr McMahan—A hearing date has been negotiated so the matter is in fact in a court process.

Senator KIRK—So there have been papers issued?

Mr McMahan—To the best of my knowledge, yes. I would not want to prejudice the Commonwealth case.

Senator KIRK—Of course not. However, I am just wondering what sort of claim you are making here—what sort of privilege. What is the basis of your claim here?

Mr McMahon—It is something that is going before the courts.

Senator KIRK—That is why I asked whether or not papers have been issued and what the nature of the proceedings is.

Mr McMahon—I have just been advised that the statement of claim was filed on 23 April.

Senator KIRK—By the individual concerned?

Mr McMahon—Yes.

Senator KIRK—What is the nature of the claim? Can I ask that? What is the content of the statement of claim? I am just interested in the type of proceedings that he has brought.

Mr McMahon—I gather that the nature of the claim is that they were unlawfully detained.

Senator KIRK—I think somebody is going to assist us here.

Mr Eyers—The claim is a claim for trespass to the person and damages for unlawful detention.

Senator KIRK—So are there proceedings issued in the Victorian Supreme Court or something?

Mr Eyers—The New South Wales Supreme Court.

Senator KIRK—I might move on, then, to East Timorese individuals.

[9.15 pm]

Mr Farmer—Madam Chair, while the officers are getting ready: this is, as I understand it, a 1.2 question. It was not clear to me whether the senators had finished with 1.3 or not.

CHAIR—I was not sure whether Senator Nettle had finished with 1.3, I must say.

Senator NETTLE—I think I can put most of them on notice. I will just check.

Senator KIRK—Madam Chair, I understood that this is 1.3. I do have one other question in 1.3 if you would prefer me to do that before returning to 1.2.

CHAIR—I think the officer roundabout is probably wearing a little thin; so, now that the officers are at the table, why don't you ask the question and then we will go back to your 1.3 question.

Senator KIRK—Thank you. It is my understanding that some 1,500 East Timorese arrived in Australia 10 years ago and were assessed to be refugees at the time of their arrival. Is that correct?

Mr Illingworth—A group of that order arrived in Australia over a number of years. There was an influx around 1994 and subsequent arrivals up to 2001-02.

Senator KIRK—I understand that a number of them have been granted permanent residency.

Mr Illingworth—That is correct. The overwhelming majority of that group are now permanent residents. A number of them obtained mainstream visas through the normal

migration program, and the vast majority had sought protection in Australia where they were found not to meet the criteria for the visas. Subsequent to that, they obtained permanent visas through ministerial intervention.

Mr Hughes—Senator, just to pick up one point that you made at the beginning, when you said that you thought that they were found to be refugees. In fact, that was not the case, and ultimately the very large number that were allowed to stay had been through the protection visa process. They were found not to be refugees and then, through the RRT process, were found again not to be refugees. There might have been a very small number who were found to be refugees by the RRT, so some 1,440 who have been granted permanent visas to date were granted through the ministerial intervention process, as Mr Illingworth said. I think there were a small number also who obtained permanent visas through various normal visa processes.

Senator KIRK—Thank you for that. I understand that there are approximately 50 who have had their applications rejected. I suppose each case is different, but I am wondering whether or not there is something in common with each of these cases and why it is that they have had their claims for permanent residency rejected.

Senator Vanstone—I think I can answer that. The rejections are basically a function of ministerial interventions, not something the department does, albeit they prepare the briefs. This case load has been done over a number of years. I cannot say whether Mr Ruddock did most of it or whether I have done most of it. It might be a pretty even split. The department might know that, although I do not think there is much in it. The point is that it has been done over a number of years because of the size of the case load and has therefore been done by two ministers.

There were two things that were taken into account in relation to those who would get a no, and the government gave advice to the ministry that it wanted to see a very generous treatment of these people, and I think that has been reflected in the figures that you have been given. The number that got a no is very small. The bases on which they were decided by Mr Ruddock—and I followed those bases to try to give relatively the same decisions as between people in the whole group—were any bad character issues, and there were some of those, and, secondly, balance of family. If you were a person here and you had your mum, dad and everyone else back in Timor, you would probably get a no on that basis, because that is where I think, arguably, your future is if you are not a refugee.

Obviously there has been some disquiet, because, as often happens when people manage by one reason or another to stay in the community, they make friends and some of them get jobs. Each of those people look at a no decision through the personal eyes of the person they know, the unhappiness they have at possibly parting with them and the unhappiness they have with the prospect of the person not getting what they want, which is to stay in Australia. All of that has been taken into account. In particular, with the time it took to do the whole case load over, things will have changed. And there is the fact that two ministers did it. Even though, as I say, I tried to do it on the basis that Mr Ruddock did it, I am a different person and there may be differences. On that basis, we have decided that we will take the people who got a no and I will redo that case load.

Senator KIRK—On that last point, did you say that the persons who got a no would be reconsidered?

Senator Vanstone—Yes. I do not suppose the people who got a yes want to reconsider. I certainly do not want to redo the case load, I can assure you of that.

Senator KIRK—I am sure they would be very happy. You said that character and family issues were the two main—

Senator Vanstone—Balance of family, yes. ‘Where is most of your family?’ If you were looking at nothing else but family: where are your family?

Senator KIRK—I am more interested in the character issue. In what percentage of those who had their applications refused was character an issue?

Senator Vanstone—My intuitive response is around 25 per cent. There are the same intuitive feelings by the officers, but if it is anything vastly different from that we will get back to you.

Senator KIRK—When we are talking about character, are you looking at—

Senator Vanstone—Criminal convictions. Serious drug offences.

Senator KIRK—Not any minor driving offences or something small?

Senator Vanstone—No.

Senator KIRK—Serious offences.

Senator Vanstone—I have always been interested in—do you think drink driving is a criminal offence?

Senator KIRK—I think I am asking the questions, Minister.

Senator Vanstone—I am not trying to put you on the spot; I am quite genuinely interested. Don’t you regard a criminal offence as something that you are entitled to ask for a jury trial on? Is that the point at which we say—

Senator KIRK—Indictable versus other types of offence.

Senator Vanstone—Sorry?

Senator KIRK—I think this is not terribly relevant to this.

Senator Vanstone—You asked me.

Senator KIRK—No, you asked me.

Senator Vanstone—You know what my mother used to say, don’t you: ‘Fill your mouth right up and then we really will understand.’

CHAIR—It was irresistible, Senator Vanstone. If we operated on the basis of what was illuminating and what was not, we would have gone home at about 9.30 yesterday morning.

Senator Vanstone—With that I completely concur, but, to be fair, I was asked a question: ‘What does bad character mean?’

CHAIR—I understand that.

Senator Vanstone—I said ‘serious criminal convictions’. And the response was ‘Do you mean driving offences?’ I said, understandably, ‘No. Do you think they are criminal?’

CHAIR—I heard the exchange. I was riveted and it was illuminating.

Senator KIRK—What about some of the East Timorese who, as I understand, have had their visas refused? You talked before about balance of family. As I understand it, there are quite a few who have built lives and who have families here—in fact, have children who have been born in Australia. Can you explain to me how, in those circumstances, balance of family, as you describe it, could lead to a refusal of the permanent residency?

Senator Vanstone—I hesitate, because you might have particular cases in mind, and I do not. As we consistently say in relation to these cases, each one is looked at individually. You can only have general guidelines, but I can assure you of this: we do not have a general guideline anywhere that says, ‘If you come to Australia, you are female and you manage to get yourself pregnant and bear the child here or if you are a man and are lucky enough to father a child here, that is a ticket to stay in Australia.’

Senator KIRK—I am not suggesting that.

Senator Vanstone—I can tell you that they are very, very sad and hard decisions, but if you give a yes to all of them you are saying, ‘We have a rule that, if you father a child born in Australia, you can stay.’ We do not have such a rule.

Senator KIRK—Then can you tell me what rights the children have who will be left behind?

Senator Vanstone—It depends on what status the children have. If they are Australian citizens, it has been the case, I think, in the past—and it is certainly an option—that they can travel, luckily, nearly all over the world and, if the family ties are sufficiently strong, they will of course travel with the person from whom they are being separated.

Senator KIRK—So for a child who may be 10 years of age and whose mother or father is told that they do not have permanent residency and therefore must leave Australia, you are suggesting that they do not really have a choice. They cannot really stay by themselves and be left without their parents.

Senator Vanstone—If you are telling me that there is an example of where a child would be left by themselves, I would be very grateful for you immediately raising that with me privately. If that was not apparent on the file, it should have been.

Senator KIRK—All right. Thank you. I have a few more questions on 1.3 about children in detention. I begin with the question that I always ask: how many children are currently being held in detention centres and can you give me a breakdown of those in each of the centres, both in Australia and offshore.

Mr Davis—I am trying to work out which way to go. I have information from several dates. I will pick a date and go from there.

Mr McMahon—While Mr Davis is getting the information, the offshore stuff is 1.5, but I will quickly take it here. There are six children offshore, three minor males and three minor females—and, just to put it beyond doubt, that is on Nauru.

Senator KIRK—Thank you.

Mr Davis—Sorry, I am just trying to find my notes.

Senator KIRK—I will ask Mr McMahon something, seeing as Nauru was mentioned. Are there any unaccompanied minors on Nauru amongst those six?

Mr McMahon—No, there has not been for quite some time.

Mr Davis—I am not 100 per cent sure I have got the centre-by-centre breakdown but, as at 18 May, which was last Wednesday, the latest figures I have are 64 children in immigration detention, with 25 children in alternative detention arrangements, so that is in the residential housing project or in the community; 31 children in mainland immigration detention centres; and eight children on Christmas Island. Since 18 May, we have been talking about several children, including some going out and some coming in, but that is as at last Wednesday.

Senator KIRK—Are there 31 on the mainland?

Mr Davis—In immigration detention centres.

Senator KIRK—And the rest are in the housing projects.

Mr Davis—Yes. I have got consistent detail per centre. Of those 31 in detention facilities, 28 are in Villawood, two are in Baxter and one is in Maribyrnong. In the alternative detention, of the 25, 19 are in the residential housing project. The others are in alternative detention in the community somewhere.

Senator KIRK—How many unaccompanied minors are there amongst those numbers?

Mr Davis—None.

Senator KIRK—Of the children that you have mentioned—the 64—how many of those, if any, were detained during raids on schools?

Mr Davis—I do not know. That would be a matter of looking at individual cases, and I do not have that information.

Senator KIRK—How many recent raids have there been on schools, entering schools and detaining children? How often does that happen?

Mr McMahon—There are only two examples that I can think of recently in which we have entered schools. I would not call them raids, by the way. I think that is a bit of an overstatement. In the first case, there was a family of four. The father was deported as a result of some criminal activities. The mother had disappeared into the community. She also was deported. She did not identify to us that she had children left in Australia. She then illegally entered the country, illegally exited the country and came back in again. She got caught coming back in again the second time. When she was caught she identified that she had two children. She asked to be reunified with those children. The compliance staff were concerned about going to a house in which there might be no adults. They thought that the most sensible approach to take was to go to the school towards the end of the school day so that there would be fewer children around by the time they had detained the children.

They went to the school and asked to see the principal. They went to the office of the principal and explained the situation—that the children were unlawful in Australia and that

the mother wanted to see them. The principal went and got the two children and brought them back. The child said, 'So you caught Mum,' coming back in, so the children were quite aware of their own status and that of the mother. There were two compliance staff members, one female and one male. They then agreed to accompany them back to their unit to pick up some possessions and then they went back to the detention centre. If that can be described as a raid, as it has been in the paper, then I would be quite astonished. In the second case—

Senator KIRK—On the first case, how old were the children involved?

Ms Daniels—Those children were six and 11, if I remember correctly.

Senator KIRK—Had they been in detention before?

Ms Daniels—No.

Senator KIRK—Please continue, Mr McMahon; I am sorry to interrupt you.

Mr McMahon—As for the second case, I am not sure whether Ms Daniels has the details of the way in which we approached the school but I do know that it was the same practice of going to the principal first and then dealing entirely through the principal.

Senator KIRK—And so in both cases the children involved were not Australian citizens, I take it?

Ms Daniels—That is correct.

Senator KIRK—They were reunited with their mothers, in both cases, in detention—is that what happened?

Mr McMahon—No, in the second case the circumstances were somewhat unusual in the sense that, while the mother had breached the visa conditions, in fact the children had visas in their own rights and had not breached their visa conditions. As I recall it, after we had satisfied ourselves that their visas would be ongoing, we did not detain them—we certainly did not detain them. As I recall, I think the mother had a preference that they remain outside the detention centre. I recall that one of them was 16 and certainly outside of the age in which you could engage children's services, for example. They normally would not look at a 16-year-old. The other one was slightly younger.

Senator KIRK—You might have to clarify that for me, but, from what I understood you just said, both those children were not in breach of their visa conditions.

Mr McMahon—Correct.

Senator KIRK—Why then was any sort of compliance action necessary?

Mr McMahon—In that particular case, the initial understanding was that their visa would be cancelled along with the mother's. They took legal advice and did not formally take them into detention.

Senator KIRK—How long did it take to get that legal advice and decide whether or not they ought to be taken?

Mr McMahon—A matter of hours, as I recall.

Senator KIRK—What happened to the 16-year-old and the 14-year-old in the meantime? Did they have to sit there and wait until you guys got the correct legal advice?

Mr McMahan—I do not know whether I have that level of detail as to their actual disposition during that time.

Senator KIRK—I think it seems quite extraordinary that two young people under the age of 18 have to sit and wait. Whereabouts were they held during that time?

Mr McMahan—I suspect that they were brought back to the mother.

Senator KIRK—They were reunited with their mother in detention during that time?

Mr McMahan—No, not in a detention centre.

Senator KIRK—Whereabouts then?

Mr McMahan—I just said that I do not have the detail of that here.

Senator KIRK—But they were taken from the school? That is what I am trying to establish.

Mr McMahan—That is my understanding, yes.

Ms Daniels—One child was located at the school; the older child was not.

Senator KIRK—Where was the older child located?

Ms Daniels—I cannot remember that detail; I am sorry. But I can say that, according to my notes, the elder sister accompanied compliance officers to the school where the younger brother, as I think it was, was located. My notes do not cover this, but my recollection is that they then took the children back to their home and that this clarification of the visa status took place at their home.

Senator KIRK—With the mother present?

Ms Daniels—I am not sure that the mother was present.

Senator KIRK—What inquiries were made during these two hours that could not have been made prior to the compliance officers going into the school and taking the two of them out of school? What further information came to light that enabled you to decide that there had not in fact been any breach of the visa conditions?

Mr McMahan—I think it was internal advice about the nature of the relationship of the bridging visa to the mother.

Senator KIRK—You did not have that advice prior to going in and picking up the kids?

Mr McMahan—I think that is a statement of fact, yes.

Senator KIRK—You say there have only been two recent examples. How recent were these two examples?

Mr McMahan—I do not know of any other examples, to be quite frank. It is quite rare for us to go into a school—

Senator KIRK—Thankfully.

Mr McMahan—and it will probably be rarer still after this.

Senator KIRK—I hope so.

Mr McMahon—I think the instincts and judgments in the first case were probably right about (a) an imperative to actually get the children back to the mother and (b) a concern about how they might affect children in going into a house when there may not be adults there. The preference was to attend while there was an adult there. We have subsequently put in place some guidelines so that, if we do go into a school in those sorts of circumstances, if it is at all possible we will try to bring one parent with us. We have also had discussions with the New South Wales education authority to make sure that they had no concerns about the way in which we would approach a school.

Senator KIRK—I can understand that, if you only have a 50 per cent strike rate, you would be looking to improve upon it next time. Can we have a copy of those guidelines you just referred to?

Mr McMahon—Yes. There is not a problem. As I recall, it was simply a note from me to state and territory directors.

Senator KIRK—How many children have been born in detention centres in the past four years?

Mr Farmer—We can take that on notice in order to save some time tonight.

Senator NETTLE—On the Edmund Rice Centre report that we were asking about before, I am checking where it ended. You said that you were actively pursuing the issues raised concerning allegations in relation to the activities of DIMIA or service provider officers. When Senator Bartlett asked the question about whether you are continuing the discussion involvement with the Edmund Rice Centre, I want to be clear about whether it was only in relation to the cases in which allegations had been made about the activities of the department or the service provider or whether you were continuing to be in discussion with the Edmund Rice centre about the other cases as well? Does that make sense?

Mr Moorhouse—I think so. I will answer and you can tell me whether I make sense. We are not actively engaged in investigations of matters relating to improper behaviour by DIMIA staff at the present time. There are no current investigations going on. We were able to identify two cases from the earlier reports. We have investigated those and come to a conclusion that there was no improper or unlawful behaviour by DIMIA staff or contractors.

There were quite a number of matters raised in the report, and we have remained in contact with the Edmund Rice Centre and indicated that we are prepared to investigate any further matters if they are able to give us the information that would enable us to do so. So we remain in contact but we are not actively investigating cases at the present time because we are unable to do so.

Senator NETTLE—On the two that you have looked at and for which you have concluded there were no illegal or improper activities of DIMIA officials, were you looking at those cases simply for the activities of DIMIA officials or were you looking for other conclusions reached in those particular cases about what may have happened to the person returned? So were you looking only at the DIMIA part of it?

Mr Moorhouse—My particular responsibility is in relation to the values and conduct area of the department—looking at the probity or lawfulness of actions by departmental staff. The

other dimensions of the issues that were raised in the report are the responsibility of Mr Hughes and Mr Illingworth.

Senator NETTLE—Thank you. Is there a continuing investigation into the other claims around the safety of the detainees?

Mr Hughes—There is not, really, for the same reason. I will make a couple of observations around the report. The report had some interesting and useful potential and when you look at the material provided there are references to people having experienced difficulties of various kinds on return to countries of residence or citizenship, but it tends to be bits and pieces. To relate the claims of the individuals in any way to any consideration of people's cases in Australia—and to see if there are any lessons to be learnt—we would, for a start, need to know who they are. On one occasion I met with someone from the Edmund Rice Centre who was presenting this report at a meeting of the UNHCR executive committee in Geneva and said that we would be in a position to learn more if we actually knew the names of the individuals concerned—which we do not have.

Therefore, there is not really anything that we can investigate other than to note that people claim to experience various difficulties. In some cases, the returns were voluntary, as I noted in the report, but it is hard to learn much if it cannot be related to any known cases where we can examine papers in Australia. So without that information or identification of the individuals, it is really hard to learn much.

Senator NETTLE—So there is no ongoing discussion with the Edmund Rice Centre, for example, about the capacity for any further details—

Mr Hughes—We have had a discussion with them, but it is not ongoing. I seem to recall at the time that they felt they could not give us the names of the individuals concerned.

Senator NETTLE—Has the department prepared any response to the Edmund Rice document?

Mr Hughes—We have not prepared a response in terms of any public document, because there is just not enough there for us to go on.

Senator NETTLE—I think that answers my questions in relation to that. I had one more question on the memorandum of understanding. I have on previous occasions asked that both of these documents be made public, and my understanding of the response was that the reason they could not be made public was that they were signed on the basis of confidentiality. So perhaps I should just check that first, as a starting point.

Mr Hughes—That remains correct.

Senator NETTLE—Can I ask which country initiated the confidentiality clause?

Mr Hughes—I do not think it is possible to say which country initiated it. The agreement was reached on the basis that it would remain confidential to the parties. I do not think it is reasonable to say that it was one country or another.

However, quite often countries of origin, in reaching agreement about the return of their nationals with a variety of countries, would prefer that the arrangements they reached with a particular country were not known to other countries. So, without particularly saying that it

was the other country that was the main driver of confidentiality, it is often a very important consideration to countries of origin in reaching agreement.

Senator NETTLE—Did the Australian government enter the negotiations for reaching that agreement with the intention of ensuring that there was a confidentiality clause in the agreement?

Mr Hughes—It is not really a central issue of concern, but it is the basis on which such agreements are usually negotiated.

Senator NETTLE—And therefore the basis on which the Australian government went into the negotiation for that agreement.

Mr Hughes—The basis on which we go into the negotiation is to achieve an agreement, not to achieve confidentiality.

Senator NETTLE—But your previous response—I do not remember the exact words that you said—left me with the impression that you were saying it is standard that that kind of clause is in that document. I thought it was therefore reasonable to say, if that were standard, and presuming the Australian government went in with the standard approach and your definition of standard includes the confidentiality clause, you were going in with the confidentiality clause being a part of, whilst not the primary, argument for going into the negotiations.

Mr Hughes—I think that is joining too many dots. I said that it is usually very important to countries of origin that, when they reach agreement with a variety of countries seeking to return people, they are able to reach separate agreements with a range of countries; therefore it is understood that that is going to be an issue. But it is not the outcome we seek to achieve; the outcome we seek to achieve is that, for people having no lawful basis to remain in Australia, there is a mechanism enabling them to be returned to their country of origin. That is the outcome. The fact that it may end up being confidential is incidental.

Senator NETTLE—My last question is to the minister in relation to this. Is the minister raising, in relation to the provision of this document, a public interest immunity claim and, if so, on what particular grounds?

Senator Vanstone—I will take some advice on that.

CHAIR—That deals with 1.3.

Mr Farmer—I think those were on 1.2.

CHAIR—We have no more questions in 1.3, as I understand it. I apologise for the confusion.

[9.53 pm]

CHAIR—Senator Bartlett has some questions in output 1.4 safe haven.

Senator BARTLETT—Can you give me an update of how many people are on safe haven visas?

Ms Bicket—There are currently 14 persons on subclass 449 temporary safe haven visas.

Senator BARTLETT—Are they all Ambonese?

Ms Bicket—Yes.

Senator BARTLETT—When does this current manifestation expire?

Ms Bicket—The visas for the current holders of that visa class are due to expire in September of this year. Obviously prior to that date there will be a further consideration by the minister as to their future stay options or other options for them.

Senator BARTLETT—When did those people first get a grant?

Ms Bicket—I cannot remember the exact date—

Senator BARTLETT—You can take it on notice if need be. How many rollovers have we had now?

Ms Bicket—I believe that they have been considered on nine separate occasions for extension for further stay since their original arrival. I am afraid I do not have the original arrival date here but I believe it was somewhere around 2000-01.

Senator BARTLETT—If you can take that on notice it would be handy. If this does bleed across into other programs I do not really want to cause any more trauma for people by dragging people back to the table, but I raise this so I can put it on notice if need be. I am thinking of the Kosovo people who originally came I think in 1999. The majority of those have of course long returned. There are a small number who are still here but they have been transferred across onto other sorts of visas. Do you have detail or are you able to provide how many of those that originally came on safe haven are still in a pending phase?

Ms Bicket—I do not have that breakdown immediately available. I can certainly take it on notice. The reason I do not have it immediately available is that the individuals obviously have different visa outcomes. Many of them have moved into the protection stream and have perhaps come out the end of the protection stream and are awaiting ministerial intervention consideration or other visa options. We can certainly give you a breakdown of that in writing.

Senator BARTLETT—Including which visas they are on. I understand there are some on bridging visas as well.

Ms Bicket—That is right.

Senator BARTLETT—That is not your bag, I presume.

Ms Bicket—No, Senator.

Senator BARTLETT—Once they are across into that sphere, bridging visas or elsewhere, they are not able to come back to you, are they—or they are not likely to?

Ms Bicket—They are not likely to. There is always a possibility of that if the minister so chose to put them back onto that option, but it is unlikely that that would occur.

Senator BARTLETT—Given my desire to have as much time as possible for 1.5, I think I might leave it there.

[9.58 pm]

CHAIR—We move to 1.5, ‘Offshore asylum seeker management’.

Senator BARTLETT—Firstly, can I clarify the status of the facility on Manus Island. Is that still being maintained in operational readiness—I think that is the appropriate phrase.

Mr McMahon—There are certain parameters around how quickly it could become ready, but the main thing is that the assets are being maintained and, yes, it would be able to gear up reasonably quickly.

Senator BARTLETT—Are you able to tell us what the estimated cost is for the year for maintaining it in that state?

Mr McMahon—Of the \$2.2 million, I think we have spent \$1.5 million on it for the year to date. We have got a little bit of expenditure at the end of the year.

Senator BARTLETT—Sorry?

Mr McMahon—\$2.2 million is our best guess at the moment.

Senator BARTLETT—There has not been anybody there; the last person left the previous financial year.

Mr McMahon—Correct.

Senator BARTLETT—I notice that in your annual report you have offshore territories—Christmas Island IRPC mentioned—but the operation of that comes under 1.3, doesn't it?

Mr McMahon—It is actually divided. It depends on the nature of it—whether or not they excise people in the operation or not.

Senator BARTLETT—And currently they are not?

Mr Davis—Sorry, could I perhaps correct Mr McMahon, with respect. Within the output structure, the operation of Christmas and Cocos islands are actually in 1.5 as a subcomponent of that, but, given that they essentially run under the same contract as the 1.3 contract, we have just tried to deal with the issues as they have arisen. Technically the operation of Christmas Island and Cocos island is in 1.5. That is a technicality.

Senator BARTLETT—Does the money for building the new facility on Christmas Island come out of 1.5?

Mr Davis—No. The money—

Senator BARTLETT—Is that totally out of DOFA?

Mr Davis—That is totally within DOFA's portfolio, yes.

Senator BARTLETT—I understand that officers have just travelled to the island again to meet the Afghani people there to explain the MOU one to one. Is that right?

Mr Farmer—Are we talking about Nauru—travelling to Nauru?

Senator BARTLETT—Yes. I understand that DIMIA officers—or some officers; I presume DIMIA ones—are meeting people on Nauru tomorrow to talk with them about the new MOU with Afghanistan. Obviously, Mr Okely was there last week explaining it to them as a group. Can you confirm that there are more explanations being given to people at the moment or tomorrow about the MOU?

Mr Okely—There are two officers presently in Nauru. They will at some stage talk individually to the claimed Afghans in Nauru about the possibility of them accepting a return reintegration package. As to just when that will be done, I am not sure, but certainly within days.

Senator BARTLETT—Just to be as precise as possible, explaining the possibility of them accepting the package is not the same as offering them the package; that has not been done to anybody as yet. Is that right?

Mr Okely—They will be formally offered a package. They will be given information and the clock will effectively start ticking from that time.

Senator BARTLETT—From the time they are—

Mr Okely—From the time that they are formally offered the package.

Senator BARTLETT—The meetings they have will be explaining the MOU and basically starting the clock ticking. Is that right?

Mr Okely—That is correct.

Senator BARTLETT—And you do not know when that is going to occur?

Mr Okely—Most likely it will be in the next couple of days.

Senator BARTLETT—Based on the answer I got earlier from, I think, Mr Williams, about those in Australia who will be offered the MOU, I think the terminology used was ‘those who were available for removal or did not have any aspects of their case currently under consideration’. That would be the case for all of these people as well, would it?

Mr Okely—I might pass that to Mr Hughes.

Mr Hughes—As you know, we have from time to time re-examined matters in relation to individuals on Nauru as new information becomes available—a change in country circumstances, changes in the individual circumstances—and that is an ongoing process. We have been doing that for some new information in relation to Afghans there at the moment. That process is also nearing completion. That will affect who is formally offered the reintegration package. That will mean that some will not be. It is our expectation that the two processes will be meshed together.

Senator BARTLETT—So those that won’t be presumably would be those that will either have continuing consideration or be given some other option?

Mr Hughes—Yes.

Senator BARTLETT—When you say ‘reasonably soon’, that must be quite soon, given that we already have officers there?

Mr Hughes—Yes, within the next few days.

Senator BARTLETT—Can I get a clear explanation of the status of the cases of the people on the island. My understanding is there are 52, minus two who are currently in Maribyrnong for medical reasons, and also two who have cases pending due to a character or security assessment. So there are 50 others. What is the proper description of the status of their cases? You have just mentioned that things are being looked at in the case of those

Afghanis, but their cases have not actually been formally reopened and reassessed. I am aware that further information has been provided to the department about people of other nationalities other than the Afghanis. What is the formal status of their cases?

Mr Hughes—If we look at the process that has been followed since the beginning and perhaps divide it into those cases looked at by Australia and those looked at by UNHCR, we had an initial examination of the cases, followed by—if they were found not to require protection—a review by another officer. Subsequently, if something new arose which affected the fact that they were found not to require protection—some new information—then we examine them. As you know, we did a major re-examination of the Afghani cases in 2004 after significantly changed country information in the southern provinces, and we also did a re-examination of the Iraqis. It has always been our position that if something new comes to light then we will re-examine the cases. So, as it does, if there is something that clearly affects a case and moves the person from a position of not requiring protection to something that we feel has to be examined, then we would regard them as being in a process of some sort.

Senator BARTLETT—With respect, it sounds a little bit less precise than the characterisation of people in Australia that you were saying are in a process of some sort. How—

Mr Hughes—They are processed then.

Senator BARTLETT—How does that definition operate with regard to the Afghanis, for example, who you may shortly offer this return package to? Are they people for whom you do not believe there is any current information that makes their situation likely to need significant re-examination in the foreseeable future, or something like that?

Mr Hughes—I think that is right. You have done well, Senator, thank you!

Senator BARTLETT—What is the department's current view of the appropriateness of people returning to Iraq, even voluntarily?

Mr Hughes—As you know, we are not promoting returns to Iraq. As always, it is open to the national of a country to choose to return to their country of origin.

Senator BARTLETT—When you say you are not promoting that, that is different to the situation, obviously, with the Afghanis—because you have got an MOU and everything with Nauru—but also with a small number of others in the camp to whom you could say you are promoting return should they wish to take it. What is the distinction between not promoting return and promoting return; what is the practical difference between those?

Mr Hughes—The practical difference, if you look at the Afghans, is that they are being offered a reintegration package and encouraged to take that up. That is not the case in relation to the Iraqis.

Senator BARTLETT—What about the five from other countries: the Pakistani guy, the Bangladeshis or the Iranian?

Mr Hughes—I might ask my colleagues about any discussions on return in relation to the handful.

Mr Okely—The composition of the population is: two Iranians, two Bangladeshis and one Pakistani. One of those has not sought refuge status at all and is available for return to the country of origin.

Senator BARTLETT—Are they available for return?

Mr Okely—They would be available to return at any time or could, if the government of Nauru so decided, be deported to that country. The Iranians can return voluntarily, but my understanding is that the same issues that Australia came across before the conclusion of the agreement on involuntary return with Iran would apply with Nauru, in the sense that they probably could not be deported by Nauru to Iran. The others—the two Bangladeshis and the Pakistani—would be available for removal if Nauru decided to do so.

Senator BARTLETT—Why wouldn't Nauru decide to do so?

Mr Okely—Simply that they are effectively in limbo. There is no process outstanding with any of them. They are not going to be staying in Nauru long term, so one option for Nauru would be deportation.

Senator BARTLETT—Why wouldn't they take that up?

Mr Okely—I do not know. You would have to ask that of the government of Nauru.

Senator BARTLETT—The distinction with the Iraqis compared to everybody else is basically that they are 'not promoting return'. Would it be fair to say that that is not dissimilar to recognising that it is not realistic or desirable at present?

Mr Farmer—I think it is taking account of the quite specific circumstances in Iraq over the last year or so.

Senator BARTLETT—The department has the capacity to grant visas to this group of people on Nauru even if they are not assessed as being refugees. Is that correct? They do not have to be refugees for you to grant them visas; you can give them a visa of another sort if you so desire.

Mr Hughes—That is correct.

Senator BARTLETT—The question that continually strikes me with the group from Iraq is the dilemma they are in of not realistically being able to return, even voluntarily, at the moment, nor are they able to get anywhere else.

Senator Ellison—I am not sure, as a matter of fact, whether it is accurate to say that people are not returning voluntarily to Iraq. That is quite a separate matter from any action that we might take because our position there has been made clear. On that particular point of fact, I do not think that that is the case.

Mr Hughes—I can add some facts to that that might be useful. There have been movements of people to Iraq from mainly neighbouring countries. Since 2003, I think 250,000 people have returned from Iran to Iraq. I think that about 19,000 of those were facilitated by UNHCR, and I think smaller numbers do return from other countries in the region and smaller numbers internationally. I think that is perhaps the point that the secretary is making—that it is not inconceivable for a person to choose to return to Iraq or for it to be arranged.

Senator BARTLETT—I am trying to be precise with my language—I might be slipping up slightly—but the point that is and was raised with me by many of the people in this situation is that we are not encouraging them to return to Iraq and they are not able to go anywhere else, so they basically stuck where they are. They have obviously been there for 3½ years already and are wondering how much longer that situation might continue. The department has no particular thought on the dilemma that they are in—that is just the way it is until things change?

Mr Hughes—I think you have raised the question in the past of the idea of complementary protection in Australia. I think I have said that is a choice that government could choose to make; it is an option that is open. Equally, I think the fact that there is now an open centre arrangement in Nauru gives the people much more freedom that they had. Arguably, they have a form of complementary protection there.

Senator BARTLETT—I will not get into that argument, because I think we already mentioned at some stage earlier today that the definition of complementary protection is an area in which different people have different views. My question was more about how long the current situation is likely to continue. I think you have answered that as much as you are able to. I suppose the question becomes a little bit higher up at the moment because of the pending expiry of the existing MOU with Nauru. I understand that there is an intent to negotiate a fourth MOU with Nauru to commence at the start of July—is that correct?

Mr Okely—The Department of Foreign Affairs and Trade of course have carriage of that particular issue. But I understand that there is an intention for negotiation to begin on the fourth memorandum of understanding some time late in June.

Senator BARTLETT—I will endeavour to follow that up with them next week during that estimates experience. I understand, Mr Okely, that you are the DIMIA representative on those negotiations; DIMIA has a foot in the arrangements.

Mr Okely—Provided my secretary allows me to go, yes.

CHAIR—He is nodding!

Senator BARTLETT—What are the aspects of the MOU that interest DIMIA, particularly with a new MOU? Are there any aspects that are likely to be different from what is in the current one or are you just looking basically for more of the same, just from the DIMIA perspective?

Mr Okely—The MOU has always been linked to the continuation of the OPC. As time has gone on and the nature of Nauru's own situation changes and difficulties change, the nature of the negotiation of the MOU will change. But the fundamental issue as far as DIMIA is concerned is obviously the continuation of that offshore processing centre. But what is linked to that very closely is the assistance that may be provided through the aid package that is associated with the MOU to support the operation of the OPC with the provision of infrastructure services such as health, power, policing, port facilities and those sorts of things, which will possibly come into the negotiation of the MOU.

Senator BARTLETT—I would assume from statements by the minister, apart from anything else, over quite a period of time that, even if all the people currently in the camp

were to not be there any longer, wherever they might end up, there would be a desire to maintain the facility in operational readiness, in a similar way to how Manus Island is. Is that right?

Mr McMahan—A decision has not really been taken on that. The government will consider that at the time. At the moment we are positioning ourselves for the next agreement.

Senator BARTLETT—So the next agreement is more just a matter of ensuring you will be able to keep it going should the government wish to do so rather than—

Mr McMahan—There are still people there at the moment, so we are simply negotiating on the basis that we have an ongoing centre.

Senator BARTLETT—So you are not expecting to have any anticipation of time lines built into people not being there any longer? I am thinking back to what I understand was part of the original agreement with Nauru, which was that people would not be retained there once their claims had been assessed. Obviously that has not panned out to be the case. They are still there and their claims have been assessed and reassessed a few times, so the new MOU is not likely to have—from your point of view anyway—any component of some end point or end process for the people there currently.

Mr McMahan—There are no time lines built into it in that way. Obviously the government will want to consider it in the light of the availability of the Christmas Island detention centre when that becomes available. But it has not really turned its mind to that yet.

Senator BARTLETT—What length of time is the new MOU likely to go for?

Mr McMahan—Two years.

Senator BARTLETT—I will return to the question I was asking before of Mr Hughes about the status of the cases of the various people there. I think we have examined the Afghani situation to some extent and obviously that will become clear quite soon. I am not sure if I am getting my terminology right; I think the whole scene is a bit fuzzy. Are any of the non-Afghanis there also in a situation where their cases are being reconsidered to assess whether or not their status may merit alteration?

Mr Illingworth—We are receiving and obtaining information constantly from a wide range of sources in relation to essentially all of the case loads that we are responsible for. The case load on Nauru is no different from that. We have been receiving and obtaining information in relation to people who are not in the Afghan case load. We expect we will be receiving more information, which is being provided to us by an advocate supporting some of those people. We have received some information—a considerable amount of information—from that source already. We are looking closely at what we have received and we will look closely at the material which we expect will be coming shortly but we are not ruling any particular case out.

I would not characterise it as a review in as much as setting everything back to nought and starting afresh with the cases; it is more about recognising that these cases have been through an exhaustive series of examinations already. These cases represent the small residual number of refusals that started out as a much larger group of people, many of whom have been approved, but it is starting from the point that these people have been through a process.

There is always a possibility that something will arise that will lead us to decide that the previous decision needs to change. So it is a possibility.

Senator BARTLETT—I note what you have said about not saying that any of them are being reassessed—I think I am quoting you correctly—in a formal sense of *de novo*, from scratch assessment. But are any of them being reviewed along the lines of what has obviously happened with a number of the Afghanis?

Mr Illingworth—Whenever we receive information—we have some information which we have received and some which we have obtained in relation to those other cases, cases outside the Afghan group—we look at that information very, very closely to see what implications it might have. Some cases are in that category. My comment about distinguishing it from a formal review was merely to recognise that these cases have been through a process that involved an assessment and then a review which had certain characteristics. Having gone through that process, we are in a different situation with the cycle of that case. We are looking to see whether there are grounds to change a decision that has already been made rather than setting everything back to zero and starting afresh with a review opportunity arising again and those sorts of things.

Senator BARTLETT—So looking for grounds to change a decision that has already been made—I quite like that term; that is better than what I came up with earlier—is basically what has been done with some of the Afghanis. Is that right?

Mr Illingworth—That is right.

Senator BARTLETT—And the same is being done with some others?

Mr Illingworth—That is right. It depends on the individual features of the case. It is not something that is unique to the Nauru case load. It has a domestic manifestation—the same principle—in the 48B powers that the minister has and the department's constant alertness for changes which might warrant us bringing cases to the minister's attention domestically where there might be something that warrants consideration.

Senator BARTLETT—You look for those sorts of grounds, but isn't a 48B where you allow a fresh claim to be put in and then reassessed. That is not necessarily what happens here.

Mr Illingworth—That is correct. In the offshore process, it is a process that is not operating in the same visa processing framework that is established under the Migration Act. I am sure the way in which the principle manifests itself is different from the way in which it operates offshore, because it is operating in that statutory framework.

Senator BARTLETT—Given what you have outlined—which is partly why I am trying to get a more precise picture of the process, because it is outside that framework—when you examine people's situations and information to see if there are grounds to change a decision, are those decisions then made by DIMIA officers rather than by the minister? As I understand them, 48B and 417 are ministerial decisions.

Mr Illingworth—That is another difference, yes. We conduct the examination and form a view; when we have reached a view, if we feel that there is a need, we will raise that with the minister.

Senator BARTLETT—So you can then raise it with the minister for the minister to make a decision? Is that the way it works?

Mr Illingworth—We make the assessments in the department but, in terms of processing and approval processes for our administrative work, we keep the minister briefed and seek her approval at appropriate points where we feel we need to seek approval to engage in activities.

Mr Hughes—In many respects, it is analogous to how UNHCR does its business. They make determinations and they are examined by another officer in an administrative process. It is just a two-step process. My understanding is that they can then re-open them any time if there is new information. The interesting thing—looking back at the whole assessment process on Nauru—is that our outcomes—and we had an interesting situation there where UNHCR assessed part of the caseload going back to the original days and we assessed part of it—were very similar to their outcomes in broad terms, showing the comparability of applying those decision making processes. We got about the same result as UNHCR. An example of their confidence in the process occurred last year when we decided to have another look at the Iraqi cases, a re-examination of the Iraqi cases. Instead of UNHCR choosing to re-examine those cases which they had assessed originally, they asked us to do it—said that they would be perfectly happy with our outcome and that they would choose not to do it. I think it is a process that has achieved virtually the same results as the UNHCR process over time and one where also, for a particular case load, they asked us to do it instead of their doing it.

Senator BARTLETT—Mr Illingworth, I think you used the phrase ‘seeking the minister’s approval’. Is that the minister’s approval to grant a visa? Is that what you mean?

Mr Illingworth—It is more to engage in the various administrative steps that we need to engage it. There is a whole range of logistical arrangements and other steps that need to be taken. As is our normal practice when we have issues of importance that relate to department activities, we keep the minister informed of that and, where appropriate, seek her guidance or her approval.

Senator BARTLETT—So the decision to grant a visa is made by the DIMIA officer rather than the minister?

Mr Illingworth—Yes.

Mr Hughes—There are two different processes there, if I could just intervene for a moment. There is a refugee status determination process, which is made by a DIMIA officer; if we look back at the history, that could result in a resettlement outcome and it could have been in another country or it could have been in Australia. The decision as to whether the resettlement took place in Australia was one that the minister was involved in. There are two quite different things—a resettlement status determination and, if there is a positive determination that a person is a refugee, a separate question as to what is the durable solution that arises for them and, if they are to be resettled, where.

Senator BARTLETT—What about other humanitarian issues if they are not determined to be a refugee but you assess that there are other humanitarian issues? Is that then referred to the minister for possible humanitarian visa—

Mr Hughes—It is something that there would be consultation with the minister about, yes.

Senator BARTLETT—And, following that consultation, the decision to grant that type of visa would be one that the minister could make?

Mr Hughes—It just depends on the circumstances.

Senator BARTLETT—It can be either? Is that what you are saying?

Mr Hughes—I cannot hear you very well at the moment.

Senator BARTLETT—It could be either. The minister could decide or it could be a DIMIA officer.

Mr Hughes—It could be.

Senator BARTLETT—Just on that humanitarian aspect of things, if, in assessing these grounds and these cases, there are strong humanitarian grounds or issues that are raised, particularly if there are questions about other convention obligations potentially being engaged—other than the refugee convention—what happens then? Is that referred to another DIMIA officer for further assessment or is that made out as a case for the minister in a similar way to the way it might be here under a ministerial intervention situation?

Mr Illingworth—The processing guidelines for the offshore refugee status assessment arrangements ask the review officer—in the case of a person who has been unsuccessful originally and sought a review—if they have formed the view that the person, at review, is not a refugee, to note where there may be a possibility of some CAT or ICCPR issues. They also ask the review officer to note where there might be a family link with Australia and those sorts of issues—family disposition issues. Those matters are essentially information gathered for consideration as and when it becomes appropriate.

The processing guidelines indicate that, essentially as and when or if necessary, those matters are considered in DIMIA central office and the minister would be provided with appropriate advice—bearing in mind that the people who are on Nauru, if we are focusing on issues of convention against torture and ICCPR, are receiving appropriate protection. So if they have concerns about refoulement on those grounds, they are receiving adequate protection already. So the issue of what to do for a person who has those sorts of aspects to their case arises at the point where the potential for their involuntary return to their homeland is actually being confronted.

Senator BARTLETT—Are you saying that, in assessing somebody's claim, if an officer felt there were CAT or ICCPR issues, they would note that; and then you said that would be looked at as and when it becomes appropriate or necessary. So there is no automatic follow-up action required unless there is a prospect of them being returned.

Mr Illingworth—The guidelines reflect the fact that what was being conducted offshore was a refugee status assessment process, which took the opportunity to canvass the landscape in respect of some of the obvious other areas that we thought we might need to gather information about in relation to the individuals there—recognising that when they first came to our attention they were a blank sheet of paper. We knew nothing about them, so we had to gather as much information about them as we could. The refugee status assessment procedures map out a pathway to reach a conclusion on the refugee assessment issue, but they map out a mechanism to gather and note information and record it for future consideration as

and when it becomes necessary—because it does not relate to the refugee protection issue. That judgment about gathering only and stopping then does not mean that there would be no further consideration later; it merely recognises the fact that we were conducting a refugee assessment process and there was no immediate need to confront those other issues, if they existed, until that prospect of involuntary return was an immediate one.

Senator BARTLETT—You said that what was being conducted was an assessment of the situation at the time. Obviously, unless return was an immediate situation, that would not come into play. What about now? For those where there is still no immediate situation of return happening, when do the issues relating to CAT and ICCPR or other humanitarian issues get considered? You did use the term ‘as and when it becomes appropriate’. I guess my question is: when does it become appropriate?

Mr Illingworth—It is part of the continuing oversight that we have of the case load there that we remain alert to anything that might be of relevance to decision making in the broad about the individuals on Nauru. That may involve issues that relate to a potential other convention issue that has arisen or indeed had existed in the past and may since have abated just as much as it might be about issues that directly affect our refugee assessment outcome. So it is constantly monitored.

Senator BARTLETT—Mr Okely, I think I heard you last week on Nauru when you were explaining the situation to the Afghans about the MOU, saying that there were going to be some people from the Afghani embassy or Afghani government or identity checking people going to the island. Is that right?

Mr Okely—That is likely to happen sometime in the next several weeks.

Senator BARTLETT—How does their role fit into the MOU situation if they are going there partly to deal with identity issues for people that you have already offered the package to?

Mr Okely—They effectively will be going to confirm identity. I think there is likely to be a member of the identity checking unit with that delegation. Essentially that is the objective: to check identity and to pave the way to the issue of documents.

Senator BARTLETT—So you are sending people there to check the identity of people who I presume will have been offered the reintegration package, I think is the term. Is that right?

Mr Okely—Yes.

Senator BARTLETT—That does raise a question of why you are offering return packages, particularly ones which obviously have the sting at the end of 45 days of involuntary return, to people whose identities you still need to verify.

Mr Okely—Mr Illingworth might correct me if I am wrong, but the package would be being offered to claimed Afghans—people who claim Afghan nationality.

Mr McMahon—In the end it is quite reasonable for the country concerned to satisfy themselves about identity before they issue a travel document. That is what that part of the process is.

Senator BARTLETT—I understand it is certainly the case up till now with some of the claimed Afghanis that in part at least the reasons why their claims for protection were not accepted was that they were not believed to be Afghani. What happens with those people you do not believe are Afghani? How can you offer them a return package to Afghanistan?

Mr Illingworth—The arrangements with the Afghan government give us an opportunity to actually resolve one way or the other claims that people have put, bearing in mind that these people came to Nauru with very little in the way of documentation to substantiate who they were or where they were from. One of the major challenges in dealing with asylum seekers in that sort of environment is to reach conclusions about who they are and where they are from in the absence of anything external to give one steer as to that. The IDCU checking unit provides a good opportunity to put claims to the test.

Mr Hughes—It is perhaps also worth saying in that context that, in some cases, it may result in a positive refugee determination. It might be the decisive factor, if there is an assessment that people are not owed refugee protection because the person making the assessment cannot be satisfied about the nationality. The identity checking unit's confirmation of Afghan nationality might in fact be the factor that helps give people a positive refugee determination.

Mr Illingworth—It might also find that people whom we have accepted as Afghans are not and would therefore be ineligible for the package.

Senator BARTLETT—Obviously it is no secret what my preferred outcome is for all the people there but, beyond getting visas to Australia for all of them, the other broader concern I have, even if that is not achievable at the moment, is the wellbeing and apprehension of the people there. I can certainly say from being there last week that it does not take much to raise the anxiety levels again. The presence of DIMIA officers on the island to talk to them some time soon—which was going to be tomorrow but is now apparently not—is raising concerns and anxiety again. Similarly, this low-level continual looking at whether or not there are grounds to change decisions translates in people's minds to, 'My case is being reconsidered and I am waiting to hear about it.' Leaving the Afghans to one side, because it sounds like they will hear that pretty soon, is there any scope to give any clearer indication of where each person, the Iraqis and others, is at in their situation? Is there some way to make what is happening more clear cut for each of their individual situations?

Mr Illingworth—Certainly we will think further as to whether there is any other formulation we can use which will minimise unnecessary concern for the individuals. We are very aware that it is an environment there of a group of people who, as you said, can have their levels of interest and excitement elevated very quickly if they perceive that there might be something happening which is not happening. There is a potential to be misunderstood in everything we say, so we do spend a lot of time trying to think of ways in which to try not to raise false hopes but then not unnecessarily dash people's spirits. It is a difficult challenge, but we will keep thinking of ways to do it. The best formulation is to draw on the fact that these people actually have had a status outcome. Really, it is a case of that decision standing unless something happens to change it. That is probably the clearest way of putting it. But then we have to be careful that blunt presentations like that do not cause people unnecessary upset.

Senator KIRK—I have a few questions on the Nauru detention centre, in particular the travel costs of individuals. Of the staff at the Nauru detention centre, how many are locals and how many are nonlocals?

Mr Okely—Are you talking about Australian staff or IOM staff?

Senator KIRK—Australian staff.

Mr Okely—We have one departmental liaison officer and a visa officer located in Nauru. That is the total DIMIA staffing. The Department of Foreign Affairs and Trade have two: a consul-general and special representative, and a consular officer. That is the Australian staff.

Senator KIRK—What about the non-Australian staff?

Mr Okely—There are no locally engaged staff employed by either DFAT or DIMIA. There are of course Australian Federal Police officers on Nauru; the number I think is about 22 at the present time. They have no locally engaged staff either.

Senator KIRK—What are the arrangements for those Australian staff—I guess I can only ask you about those employed by DIMIA—in terms of the time that they spend in Nauru and the time they spend back in Australia? Is there are some kind of rotational roster whereby they spend two weeks there and three weeks back?

Mr Okely—Both the departmental liaison officer and the visa officer have three-month terms in Nauru. There is no break in that three months. They simply go to Nauru for three months.

Senator KIRK—For what period of time do they then return to Australia?

Mr Okely—When you say it is a rotational thing, it is a different person every time. We do get some instances where people want to go back for a second time and we are very happy to send them a second time. It is a place that grows on you and people who do spend three months there quite often are very happy to go back.

Senator KIRK—Obviously once they have been there for their three months, they are flown back to Australia.

Mr Okely—That is correct. It is a lot easier than swimming!

Senator KIRK—I was just thinking what the other alternatives might be. Flying is really the only way to go. What is the cost of the travel arrangements for those non-locals? What is the cost of a flight?

Mr Okely—I do not know the exact cost. My recollection is that it is around \$5,000 or \$5,500 return.

Senator KIRK—Is that business or economy?

Mr Okely—Business.

Senator KIRK—How many asylum seekers are there still on Nauru?

Mr Okely—There are 54. Two are in Australia as transitory persons whom we count for the purposes of our statistics as being in Nauru.

Senator KIRK—I think those are all the questions I have on Nauru.

CHAIR—Thank you very much, Senator Kirk. That then concludes output 1.5. In the face of great adversity, Senator Bartlett, we have considered the outputs in outcome 1.

Mr Farmer—Mr Williams, earlier on, believes he may have made a slip. He is not sure, but he thinks he may have said that the Afghan package was being offered to all those onshore awaiting removal. That phrase ‘awaiting removal’ would not normally include those at the Federal Court. The fact is that the package is being offered onshore to those except those who are at primary and review stage.

CHAIR—Thank you very much for clarifying that, Mr Farmer. To outline matters in relation to tomorrow, it is my understanding and most certainly my contention that we will begin at 9 am with the Torres Strait Regional Authority and then proceed through the other aspects of the Indigenous part of the portfolio—the Office of Indigenous Policy Coordination and so on. I had been given guidance in relation to the time of conclusion tomorrow. It has been estimated for me to be 1 pm. I do not have that from the specific senators involved in the Indigenous area, just their colleagues. Let us hope that that is what actually happens. Mr Farmer, I thank all of the officers from the immigration and multicultural affairs component of the department.

Committee adjourned at 10.54 pm