COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Supplementary Budget Estimates)

TUESDAY, 1 NOVEMBER 2005

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Tuesday, 1 November 2005

Members: Senator Payne *(Chair)*, Senator Crossin *(Deputy Chair)*, Senators Bartlett, Kirk, Mason and Scullion

Senators in attendance: Senator Scullion *(Chair)*, Senator Crossin *(Deputy Chair)*, Senators Allison, Bartlett, Bishop, G. Campbell, Conroy, Evans, Hurley, Kirk, Ludwig, Nettle and Webber

Committee met at 9.03 am

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

In Attendance

Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs

Department of Immigration and Multicultural and Indigenous Affairs

Executive

Mr Andrew Metcalfe, Secretary
Mr Wayne Gibbons PSM, Associate Secretary, Office of Indigenous Policy Coordination
Mr Bob Correll PSM, Deputy Secretary
Mr Abul Rizvi PSM, Deputy Secretary
Mr Bernie Yates, Deputy Secretary, Office of Indigenous Policy Coordination

Internal Products

Financial Services

Ms Louise Gray, First Assistant Secretary, 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
Mr Andrew Tongue, First Assistant Secretary, Change Management Taskforce
Ms Wendy Southern, Assistant Secretary, Change Management Taskforce
Ms Sally Babbage, Assistant Secretary, Change Management Taskforce
Mr Bruce Mackay, Assistant Secretary, Change Management Taskforce
Mr Damian Carmichael, Acting Assistant Secretary, Change Management Taskforce

Parliamentary and Legal Services

Mr Des Storer, First Assistant Secretary, Parliamentary and Legal Division
Mr Douglas Walker, Chief Legal Officer, Legal Coordination Office
Ms Michelle Frew, Acting Assistant Secretary, Ministerial and Communications Branch

Information Technology and Office Services

Ms Cheryl Hannah, First Assistant Secretary, 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

Ms Arja Keski-Nummi, Acting First Assistant Secretary, Migration and Temporary Entry Division

Mr Gregory Mills PSM, Assistant Secretary, Migration Branch

Ms Marie-Louise Smith, Acting Assistant Secretary, Temporary Entry Branch

Mr Malcolm Paterson, Acting Assistant Secretary, Business Branch

Mr Peter Job, Director, Business Branch

Ms Julie Campbell, Director, Agent Initiatives and Monitoring Section

Ms Jacki Hickman, Assistant Secretary, Delivery Information 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 Robyn Bicket, Assistant Secretary, Humanitarian Branch

Mr Barry Welsby, Acting Assistant Secretary, International Cooperation Branch

Output 1.3: Enforcement of immigration law

Ms Lyn O'Connell, First Assistant Secretary, Detention Services Division

Ms Lynne Gillam, Acting Assistant Secretary, Detention Services Framework Branch

Mr Dermot Casey, Assistant Secretary, Detention Health Taskforce

Mr David Doherty, Assistant Secretary, Detention Infrastructure Management Branch

Mr Jim Williams, Assistant Secretary, Detention Contract and Services Branch

Mr Vincent McMahon PSM, First Assistant Secretary, Border Security Division

Ms Janette Haughton, Assistant Secretary, Identity Branch

Mr Scott Matheson, Acting Assistant Secretary, Border Intelligence and Unauthorised Arrivals Branch

Mr Todd Frew, Assistant Secretary, Entry Policy and Procedures Branch

Mr Stephen Allen, Acting Assistant Secretary, Border Security Systems Branch

Mr Neil Mann, First Assistant Secretary, Compliance Policy and Case Coordination Division

Mr John Bloomfield, Acting Assistant Secretary, Character, Cancellations and Investigations Branch

Mr Garry Fleming, Assistant Secretary, Case Management Support Branch

Ms Sally Babbage, Assistant Secretary, Case Management Framework Taskforce

Ms Yole Daniels, Assistant Secretary, Compliance Framework 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 John Okely, Assistant Secretary, Property and Corporate Support 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, Settlement and Multicultural Affairs Division

Ms Kate Pope, Assistant Secretary, Settlement Branch

Output 2.2: Translating and interpreting services

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

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

Mr Chris Greatorex, Director, Translating and Interpreting Service National

Output 2.3: Australian citizenship

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

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

Outcome 3: Innovative whole-of-government policy on Indigenous affairs

Output 3.1: Whole-of-government coordination of policy development and service delivery for Indigenous Australians

Ms Helen Hambling, General Manager, Policy Branch

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

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

Ms Kerrie Tim, General Manager, Leadership Development Branch

Mr Brian McMillan, Manager, Investigations Unit,

Mr Adrian Brocklehurst, Manager, Administration Unit

Ms Kathryn Shugg, Manager, Policy Innovation Unit

Output 3.2: Services for Indigenous Australians

Mr Greg Roche, Acting General Manager, Land and Resources Branch

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

Refugee Review Tribunal

Mr Steve Karas AO, Principal Member

Mr John Blount, Deputy Principal Member

Mr John Lynch, Registrar

Mr Rhys Jones, Deputy Registrar

ACTING CHAIR (Senator Scullion)—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. The committee today will commence its examination of the Immigration and Multicultural and Indigenous Affairs portfolio, proceeding according to the order on the circulated agenda. The committee will begin proceedings by examining the Refugee Review Tribunal, which will be followed by general questions to the department.

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 16 December 2005 for the receipt of answers to questions taken on notice and additional information. The committee requests that answers be provided to the secretariat in electronic format where possible.

I welcome Senator Amanda Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs. I also welcome Mr Andrew Metcalfe, the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs, and other 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 resolutions agreed to by the Senate on 25 February 1988, 'Procedures to be observed by Senate committees for the protection of witnesses', and in particular to resolution 110, which states in part:

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

I also draw attention to resolution 116, which states:

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

Witnesses are reminded that the evidence given to this committee is protected by parliamentary privilege. I also remind officers that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I note that there are no outstanding answers to questions on notice from the budget estimates round. I thank the minister and departmental officers for their responses.

Senator CROSSIN—Mr Acting Chair, I seek a point of clarification. Is it the case that this committee is not standing adjourned between three and four o'clock this afternoon?

ACTING CHAIR—I understand that to be the case.

Senator CROSSIN—I would like to move an amendment. I know the general public probably think we all do not have a life in this house, and if we do not stop for the Melbourne Cup, that will absolutely confirm it. In the interests of sanity, I think we should take at least a half-hour break and go and watch the cup.

ACTING CHAIR—I am quite happy to have a private meeting at the start of the lunch hour to discuss that. Do we have some questions for the RRT?

Senator Vanstone—Could I also raise a point. It is entirely up to the committee what it does in respect of that matter. I am tempted to express my view, but I will not.

Senator LUDWIG—That would be the first time, Minister.

Senator CROSSIN—Wait on, Senator Ludwig. I might have an ally here. That would be the first time too, probably.

Senator Vanstone—Both the secretary and I have opening statements to make, but I think they flow into the departmental issues rather than the tribunal, so I just mention that we think it is better to do that when the tribunal is finished.

Senator CROSSIN—I thought you were going to support my request to break for the cup, Minister.

Senator Vanstone—It is a temptation to interfere with the proceedings of a committee, and if you accept it on this occasion you have to accept it on others. I would not want you to appear fickle.

Senator CROSSIN—Never.

Senator Vanstone—I might have a word privately with the chair before the lunch break.

Senator CROSSIN—Good idea.

[9.08 am]

Refugee Review Tribunal

Senator BARTLETT—Firstly, in regard to the pledges that were made by the Prime Minister in June, following the reasonably public negotiations with some members of his own party about time limits et cetera being put into law, which I think has now happened: can you give me an indication of how comfortable the RRT is with being able to meet those guidelines and how much a change that means for you from what was happening previously?

Mr Karas—As you are aware, time lines in relation to the tribunal finalising its cases has been raised at the previous estimates hearing, and it is something which the tribunal has been working on. Since the Prime Minister made the announcement in June, the tribunal has put into effect a number of changes and alterations to its procedures and processes to try to meet the 90-day limit in relation to the finalisation of cases from the time of lodgment to the time the decision is made.

At the time of the announcement by the Prime Minister, there were a number of cases in compactus, if we can use that expression, and the tribunal is steadily working through them. Up until recently, I think there were only some 132 cases still awaiting constitution and there were no unconstituted cases older than 90 days since the DIMIA file had been received, and there are about 49 cases awaiting the DIMIA file. In relation to the cases that have been allocated to members, about 822 cases are with members, or 86 per cent or thereabouts of the caseload, and 193 cases are older than the 90 days since the DIMIA file was received—that is as at 27 October 2005.

Generally, in relation to the tribunal's activities, prior to the announcement by the Prime Minister a number of cross-appointed members who had an RRT exclusivity in their work prior to their being cross-appointed were being trained and had taken on a number of cases on the Migration Review Tribunal. Those members have now been brought back to the Refugee Review Tribunal, and a number of members of the Migration Review Tribunal are being trained and do have cases from the Refugee Review Tribunal.

In addition, the principal member of the tribunal has issued directions which were made in consultation with stakeholders as to its procedures and processes to ensure that the 90-day

limit is met in the majority of cases. We are aware as well that we will have to report to the minister, who may then have to report to parliament on those cases that have not been completed within the 90-day period. As for the numbers, I might just ask the registrar.

Mr Lynch—Just to add to what the principal member has said, we certainly were challenged some months back by an increase in lodgments; through the months of April, May and June this year there were high lodgment rates. We have now broken the back of those backlogged cases and, from a high in excess of 350-odd cases at the end of July, we have now brought the number of cases on hand that are older than 90 days, which are all with members, down to the figure of 193 that the principal member mentioned. We are confident, with the range of measures that the principal member mentioned, as well as the recruitment of additional staff and the cooperation of the industry, that we will continue to reduce that figure of 193 through to early next year, when we believe that we will be able to reallocate some of the member resources that we have brought from the MRT to meet this challenge and return them to the MRT before the end of the financial year.

Senator BARTLETT—With the new laws that have just been put in place—they are now operational, as I understand it; is that correct? It is now a legislated requirement, that 90-day limit?

Mr Karas—I do not know whether or not royal assent has been given yet to the legislation. I understand it was introduced on 15 September, but I am not too sure—it is with the House of Representatives, I am advised.

Senator BARTLETT—They have not finished with it yet, okay. Can I just clarify something. There will be a new requirement for you to produce a report for tabling in parliament; will that only apply to new cases that come online after the law is operational, or will you immediately produce a report on any that are currently over the 90-day limit, as you have just outlined?

Mr Lynch—For the first report, we will be reporting, according to the terms of the bill as it stands, on all cases outstanding and outside 90 days as of the date of royal assent.

Senator BARTLETT—Right. So that would include the numbers that you have just outlined to me?

Mr Lynch—If they are not completed by the date of royal assent.

Senator BARTLETT—Are you able to give me an indication of what the main countries of origin are that you are currently dealing with?

Mr Blount—Certainly. A major component of the caseload in terms of those cases being finalised now and over the last year or so have been Iraq and Afghanistan, but that is now changing. The rate of lodgments with the tribunal from those two countries has been relatively low this financial year, and I would expect that they would start falling down proportionally in the overall caseload. The largest single country at the moment is the People's Republic of China and there are significant numbers of cases from countries such as India as well. After that, it is very scattered at the moment.

Senator BARTLETT—With regard to the Chinese cases, I had understood that the numbers there were increasing, or the proportion at least. Going back to country information

as well, I know that you always have to take each individual case on its merits, but I know that many of those Chinese cases relate to people who claim to be Falun Gong practitioners and at risk of persecution. My understanding is that the evidence about the veracity of the claims of persecution has been mounting up. How updated is the country information on China that you are using in assessing those sorts of claims?

Mr Blount—It is ongoing. As new information comes to hand, it gets added to the database that is available to members. That comes from a number of sources, such as international non-government agencies and the annual update from the US human rights reports. When we are looking up something specific with regard to a particular case, it might even be material that is available on the Falun Dafa web site itself. It depends very much on what the matter is in the particular case. Falun Gong is an issue where the country information has in fact varied somewhat over time, and I think that is reflected in some of the approval rates for those countries. Certainly, that is something that is ongoing. There is not some fixed body of information on a particular date that is relied upon for a period henceforth.

Senator BARTLETT—It has been put to me a number of times—and I realise that information can change over time—that there has been a problem with some of the appeals before the tribunal about the veracity of the claims of persecution that people would be risk of if they are returned and whether or not they are just able to be safe if they keep their head down. I know it is difficult for you to make a definitive statement to a blanket question, but is it now the case that there is a recognition by the tribunal that there is significant substance to the general prospect of persecution of people who are known to be Falun Gong practitioners?

Mr Blount—There are two things that impact on the kinds of responses to those situations. Firstly, as I say, the country information has changed over time, including with regard to that. Secondly, there was also some guidance from the courts which goes directly to the issue of the extent to which people can be expected to avoid persecution by modifying their profile or their overt acts. Those impact on it.

I think that at one stage it was a simpler matter to look at whether a person had more public activities or not. I think that is less the case, both in terms of the particular information with regard to Falun Gong and with regard to the law. I have not personally been doing Falun Gong cases recently, but I understand the issue in many instances is simply whether the person is in fact a Falun Gong practitioner. The Falun Dafa Association of New South Wales has advised us that, from their perspective, the number of people claiming to be Falun Dafa practitioners through the protection visa system seems to be much larger than the number of people that they know of who are Falun Dafa practitioners who are seeking protection.

Senator BARTLETT—I appreciate that.

Senator LUDWIG—When is the annual report due?

Mr Karas—It was tabled in the Senate on 25 October.

Senator CROSSIN—Out of session.

Mr Karas—Yes, out of session. I have got a copy here which I am happy to hand up if you would like it.

Senator LUDWIG—No. I was just making sure that you have got one there in front of you. I will not ask about the normal statistical information that you provide, because you have got it there. Sometimes in the past we have been challenged by having estimates a little bit earlier, when the annual report has not been finalised in time. We are fortunate this time around. You have had now an opportunity to look at both the Palmer report and the Comrie report, and particularly at how they might impact on the decision-making of the RRT. Have you examined those reports and reflected upon some of the statements that have been made? I know that they are predominantly to do with the migration area and not so much to do with the RRT, but I think there was criticism of a lot of areas and the way DIMIA functioned and the way the processes worked. Was there anything that you could learn out of that and did you take on board some of the processes and procedures that needed to be looked at?

Mr Karas—We have looked at the reports. The impact or the effect basically has been in relation to information, so far as we can see, in relation to the tribunal, and the availability of information to DIMIA to enable perhaps officers in the field and others to be able to see whether people who allege that they do have an application to the tribunal do in fact have one. My understanding is that the relevant officers of DIMIA, as well as those of the tribunal, are working closely together in the formation of the case management system which the tribunal is looking to adopt early in the new calendar year. In relation to the general philosophy, if I can use that expression, behind both of the reports, in relation to the tribunal, as has been said on a number of occasions now, ongoing training with members and the initial induction is skewed in a way where members, given their experience, training, background and qualifications, are able to bring a mind to the requirements of the legislation to enable them to ensure that our mechanism of review is fair, just, economic and as quick as required by the legislation.

Mr Lynch—If I might add to that briefly: we are sensitive to some of the learning that can be obtained from those reports, not only in terms of IT enhancements, which the principal member has mentioned also on previous occasions before the Senate, but in terms of the cultural issues, the decision-making mindset that others have raised with the Senate in other circumstances—for example, in the inquiry. We do, as the principal member says, engage in professional development. We maintain that at a high level. But we have also invited the secretary of the department to share his thoughts on change management within DIMIA with us at our members national conference in August this year and we are closely aware of the learning that can be obtained from the lessons of those two reports. So we do not believe that we have a single mindset within both tribunals in terms of our decision-making culture.

Senator LUDWIG—I want to come back to case management. You are introducing a new case management system. Is that based on any other system? I know that the Federal Court has a new system.

Mr Lynch—We have been developing the prospect of a joint case management system to enable the two tribunals' application processes and decision-making regimes to be undertaken in a much more effective and focused way. We have been working on that development over the last two to three years. Through the services of Volante, a firm that we have brought on board to assist with this development, we produced a scoping study earlier this year which is now being built on with a systems development that we hope will be in place by March-April

next year. In the course of that development, we have been closely engaging with DIMIA to ensure that our needs for data from DIMIA and vice versa can be met. So we are well advanced and on budget with that particular development.

Senator LUDWIG—Is that out of your existing funding or have you received additional funding to support that?

Mr Lynch—We made provision for that in our appropriations earlier this year. The total capital budget is $2.289 million. We have an ongoing service and maintenance arrangement which should cost about $770,000. We are in dialogue with DIMIA about this particular development and we may engage further with them as their system needs develop.

Senator LUDWIG—So that is coming out of your existing appropriations. In other words, you have made allowance for that. I think that is the answer that you gave?

Mr Lynch—Yes.

Senator LUDWIG—You are in talks with DIMIA, as we drive towards the next budget, to make allowance for that, so I will leave it for questioning in February or May, as the case may be. Have you looked at compatibility with other systems—the Federal Court and the AAT? Obviously you are now working jointly in this regard with the MRT.

Mr Lynch—Yes. I should have clarified earlier that we have consulted with other tribunals in selecting Volante. We have used the resources of the AAT. They very kindly lent us their IT director to assist with the tender process and the development of our specifications for the system. So there has been a two-way learning process, at least with AAT. We have looked at the Federal Court system, but for our particular portfolio needs we have decided on a brand new concept which meets our requirements to not only manage the caseload that we have, and the very volatile caseloads in both tribunals, but also our interaction with DIMIA, the parliament, the minister and so forth. For example, with the 90-day time limit reporting requirement to the parliament, we anticipate we will meet all the requirements of the parliament in answering questions and issues about where the caseload is at a given time, whether children were represented or not represented and so forth—issues like that. It will be a system that will assist members in managing their own caseloads much more effectively than is the case at the moment. It will be very user friendly. We are thinking of calling the new system 'Casemate' because it will be so friendly to the user.

Senator LUDWIG—In your annual report, you normally provide statistical analysis of the number of cases, the number of cases that are outstanding, how many you are meeting and how many have been refused. But the area I want to look at is in the student visa area particularly. I am not sure whether you depack your figures down to that level—that is, where a student visa has been breached and the student is then either detained or moved, whether they end up in the RRT, they then look for an exercise of ministerial discretion or they make other claims? Do you track to that level?

Mr Lynch—Because of the close operations of the two tribunals, clients of the one tribunal can be more readily tracked today than, say, 18 months ago. Because of the co-location of the tribunals, the same staff are now across-appointed to services both tribunals. So tracking individual applicants from one tribunal to the other is much more readily undertaken. But I

could not give you any figures today about how many students are applicants before the RRT. We do have some information on the applicant rate of students before the MRT, of course.

Senator LUDWIG—What I do not want to do is put you to a lot of significant analysis. But if you do have rates of student visa breaches that appear before the MRT and the RRT and the reason for it—if it is MRT, the reason for and type of application and, if it is the RRT, whether it is for ministerial discretion, whether they have been through the MRT first and whether there has been second application made in the RRT.

Mr Lynch—The present case management system would not record that. We have a system of referrals of cases for ministerial consideration, which we have spoken about previously. But we would not be able to provide that sort of data to you right now.

Mr Blount—Could I add, though, that anecdotally I think that the incidence of protection visa applicants who were already in Australia on student visas is probably significantly lower than it perhaps was in the early and mid 90s, when that was a very significant source of applicants. My impression is that it is significantly less today.

Senator LUDWIG—I will go back to the department at some point in the relevant output. There are a number of cases that seem to be highlighted. We are obviously increasing our educational presence overseas; we are attracting a significant number of overseas students to Australia. I was just wondering where they then might end up—some of them have excellent education and are in employment in Australia or overseas, but some do not. I wanted to know where they were going.

Mr Blount—Certainly in the past—in the early and mid 90s—there seemed to be something of a nexus between the streams.

Senator LUDWIG—You can take it on notice and have a look, but if it is going to significantly soak up some resources then I will abandon it and go back to DIMIA.

Senator NETTLE—I just wanted to go back to your opening comment about the number of cases. If I look at the Prime Minister's media release in June, he said:

> DIMIA will complete all primary assessments of applications for Permanent Protection Visas from the existing caseload of Temporary Protection Visa holders by 31 October 2005.

That is Monday. I was not 100 per cent sure whether the figures that you gave us of the outstanding 193 cases were TPV holders making permanent protection visa applications or whether they were a broader category.

Mr Lynch—I will answer that. The Prime Minister's announcement relating to the date of 31 October for completion of those TPV matters applied in respect of the department. The requirement on the tribunal was to aim towards completing its cases within 90 days. The 193 cases that the principal member mentioned as still outstanding and which are older than 90 days are a mix of cases, both community and further protection visa—TPV—cases. Probably the larger proportion of those would be community cases—cases which were drawn from the community—rather than cases where people may have originally arrived unauthorised without a visa.

Senator NETTLE—Is it possible to get that breakdown of the 193 left of which are TPVs and which are community cases?

Mr Lynch—Certainly.

Senator NETTLE—I was listening to your answer to Senator Ludwig about what things the RRT has done in response to the criticisms of the Comrie and Palmer reports. I was trying to pinpoint what practical action had been taken. I noted your comments about 'Casemate', your new IT system, and I noted the comments about inviting Mr Metcalfe to come and speak at your conference. Are there any other practical measures that the RRT has taken to address those criticisms? Certainly, in those two inquiries, and in the recent Senate inquiry, there has been some pretty damning criticism of the way in which the RRT is making decisions. Apart from a new IT system and asking Mr Metcalfe to speak at your conference, what other concrete steps are you taking to address those criticisms?

Mr Lynch—The principal member has addressed the ongoing professional development of the members of the tribunals. We do that in a very focused way. At our national conference we had a former Chief Justice of Victoria address members on how to deal effectively with applicants for review in terms of assessing credibility, conducting proper questioning techniques, understanding the ethnic diversity and gender backgrounds of our applicants. We employ that sort of training on an ongoing basis, exploring opportunities for any person with expertise, whether it is in country information or in some other aspect of the conduct of a review.

The conduct of members—their behaviours and that type of thing—is certainly something that is very much on the minds of the tribunal. We draw from judicial criticism and community criticism and take that on board. At our senior management group meetings we discuss quality control issues and senior members are tasked to deal directly with the members who work under their supervision. It is an ongoing task and it is one for which there is no quick fix, if there was a quick fix needed. Certainly, we are sensitive to the criticisms that have been made by the community and the principal member does meet the community, either at formal meetings or informally. He recently met with the Law Institute of Victoria to discuss some of their concerns about member behaviours.

I should emphasise that the criticisms that flow are very few compared to the large number of cases that are heard and the large number of interactions that members and staff of the tribunal have with applicants before the RRT. The principal member manages the complaint process very effectively. We have personal supervision by the principal member of any complaint against a member. He personally listens to the tape recording of the hearing and makes an assessment on the advice of the deputy principal member and the senior member responsible for the member who is the subject of the complaint.

So we feel we have a comprehensive strategy, which is sensitive to reports such as the Comrie and Palmer reports, to continue to enhance the capacity of members to act professionally at all times. It is part of their code of conduct and they are assessed annually against their performance, in terms of not only quality of decisions but also number of decisions, timeliness of reviews and that type of thing.

Senator NETTLE—Thank you. I note you began by saying you invited a judge to come and speak at your conference for the training. What assessment do you do of whether or not

having the judge speak at your conference has resulted in any change in the way in which members are addressing credibility issues, for example, which you mentioned?

Mr Blount—I am not sure that there is something which picks that up in a very specific way. As the registrar mentioned, there is, and has been, a whole ongoing process where people speak and interact with regard to credibility, traumatised applicants, latest legal developments and country information—a range of things. So to do some kind of assessment of one particular thing would require a totally artificial process of somehow holding all other factors and isolating the one. It is not a neatly controlled scientific experiment. As I said, it is an ongoing process for people to maintain professional standards. There is an ongoing appraisal process, but there is so much variability in outcomes of various sorts—caseload, composition, size of caseload, the changing legal, judicial environment and so on—that it is simply not the kind of controlled experiment where you can take one thing out and track the consequences. I do not think it is something for which I can really provide a precise or meaningful answer in that respect.

Senator NETTLE—So you do not assess how effectively tribunal members are dealing with the issues of credibility?

Mr Blount—Yes. You asked how we tracked the effect of the particular presentation. With the issues of credibility, there are a number of feedback mechanisms. I have mentioned the ongoing appraisal process, where senior members listen to a selection of hearings, read decisions and so on. But of course, ultimately, the control feedback mechanism for us, to a large extent, is the feedback in the courts, the judicial loop, in the same way as the purpose of an administrative review system is to provide feedback to the primary decision makers. I also think that one does not necessarily assume that there is some large, wrong thing happening with regard to credibility. Credibility is an area where people need ongoing training and ongoing judgment. But we would not accept that there is some large black hole that needs to be remedied. Credibility is, of course, always an issue because, at the end of the day, we are determining facts and what is said to us is a large part of the claims that are being put in front of us.

Mr Lynch—It might be worth while reflecting on the number of finalisations that the RRT has undertaken since 1993 and how many applications have been overturned in the courts for credibility and a vast range of other reasons. There were nearly 65,000 decisions taken since 1993 and nearly 88 per cent of those applications for review before the Federal Court or the High Court were dismissed.

Mr Karas—As you are aware, the courts have said that, given the subject matter which the tribunal deals with, credibility is an issue. They have given markers, if I can use that expression, as to how credibility should be tested and the way in which members should deal with the applicants that appear before them. That is reflected in the member's code of conduct. Recently there was a liaison meeting with community people in Melbourne. It was decided from that meeting, given the concerns that were being expressed in relation to credibility and how it was being tested, that the tribunal would move to producing some guidelines which will be made available publicly in relation to credibility as such. There was a loose subcommittee, if I can refer to it that way, arising from a previous liaison meeting where matters like credibility were raised. At the last meeting it was suggested by people

there from non-government organisations that, if there were guidelines of this nature, it would assist them in preparing applicants for their appearances before the tribunal.

They referred to Canadian guidelines which are available in a similar area. We have now charged the policy and procedures section within the tribunal with looking at this. The senior member of the Refugee Review Tribunal in Melbourne is overseeing it, given the fact that it arose out of a meeting down there. So we do hope that in the new year we will have some guidelines produced which will be of assistance not only to members but also to the public, so that the public has an idea of how the tribunal deals with credibility, given the fact that, as you say, it is raised from time to time. The courts have also made comment in relation to it. As has been explained by the registrar and others, out of the total proportion of cases that the tribunals complete, there are very few cases that are overturned by the courts and even fewer in relation to credibility findings. The training of tribunal members is such that, in the majority of cases, when they do test credibility, they do it within the confines indicated by the courts, and they do it in a way which does not detract from the dignity or respect that they are to show to applicants and others who appear before them.

Senator NETTLE—Mr Lynch, you talked about whether or not a quick fix was needed to the operations of the RRT. Do you want to clarify whether you think a quick fix is needed?

Mr Lynch—I used that term, Senator, in response to the manner in which you framed your question. I think the deputy principal member, John Blount, in his response articulated in a much clearer way my sentiments on the culture of decision making. We do not believe there is a malaise, so there is no quick fix needed. Perhaps the question that you posed caused me to respond that way. I do not think there is a need for any sort of quick fix. It is not the way we do business. We consider our operations and our quality control mechanisms carefully and introduce them over a period of time. We are dealing with very senior decision makers who are drawn from a range of different backgrounds. Half of them are qualified lawyers and half are from a range of other disciplines. These are all very independent minded people who have their own professional views about how to conduct their own applications for review. They are trained on the code of conduct and the credibility aspects of conducting interviews and so forth.

We believe that we have a system that is not suffering any particular malaise. Certainly, there will be disappointed applicants. You have heard about some of those in the inquiry into the act. As the principal member said, we do try to respond to those. There is recognition that the community would like to see some written guidelines, and that is something that we are adopting, notwithstanding that we do have very comprehensive guidance through legal issues papers on how to conduct credibility assessments, what the courts are thinking, what their thoughts are on how to assess credibility and so forth.

Senator NETTLE—It certainly seems that having some guidelines would be a good idea. Whether that is part of a quick fix or not is open to interpretation. The timeframe for those guidelines: did you say that at the beginning of next year there might be some guidelines?

Mr Karas—Without putting a definite time on it, yes, it is being worked on now. We will want to consult with interested parties in relation to them, as we did with the principal member directions. I expect that we would like to circulate them to members to get an input

from them as well before they are finally made available publicly. But we are happy to let you have a copy of them in due course, Senator.

Senator NETTLE—Thank you. Would it also be possible to get a copy of the code of conduct that you mentioned for RRT members?

Mr Karas—Yes.

Senator NETTLE—Thank you. You also mentioned the complaints mechanism; I just wonder if we could get some figures for complaints. From the way in which Mr Lynch, I think it was, was describing the system, do you make a determination about whether you overturn decisions that are based—

Mr Karas—We do have a protocol in relation to complaints. There is a process which is set out within the tribunal as to how they are dealt with. To date, from 1 July 2005 to 30 December this year, there have only been three complaints against members—none against staff—and the three complaints were dismissed. Usually the process is that a letter of complaint is received; that is made available to the senior member in charge, so to speak, of the member, and to the member, to get their initial comments. If necessary, depending on the nature of the complaint, the deputy principal member will confer with the senior member, perhaps with the member as well, about making a report to me, not as to how the complaint should be dealt with but as to the outcome. I might accept that, or if I want to go a bit further, as I do on occasions, I call for the tape and listen to it. If in fact there is a suggestion that the person has acted in an overbearing manner and perhaps not treated the applicant with respect then the matter is considered. I then draft a letter of response, show it to the member, the senior member and the deputy principal member for them to make any comments and then that is sent to the complainant. A record is kept of the complaints that we do receive and also of the responses that we make.

Senator NETTLE—Is the record of the complaint, and the responses, made available to the complainant?

Mr Karas—Yes. After the process has been completed by the tribunal, a letter is sent to the complainant about the complaint, saying how it is being dealt with, what is usually done and the conclusion that we have come to. On occasions, given what might have occurred, they may think that the case should be deconstituted from member A and constituted to another member. If I come to that conclusion, it will be done; if I do not, I give them the reasons for it and say that the matter will proceed with that particular member.

Senator NETTLE—Is there any external complaints mechanism? You have described the internal process; what avenues are there for any external complaints to be dealt with?

Mr Karas—Complaints are also sometimes made to the Ombudsman, and the community and the courts would usually be the other sources, I would think. In our liaison meetings—if I could just add this—people do come along and raise matters there. We encourage them to do so. We also ask them to give us agenda items. Often they do not, but, when we are talking to them about our procedures, processes, developments and matters of that type, sometimes they will then say, 'Well, we've had this situation,' and on they will go and we will address it there. And, if need be, we will also give them an appropriate response to it.

Senator NETTLE—Which of those external complaint mechanisms can force the RRT to act on any recommendation that is made as a result of the complaint?

Mr Karas—The courts, of course—we are bound by decisions of the courts. If the Ombudsman does give us some directions on how something should have been done in relation to a particular matter that they may have had, then we would be taking that on board as well. But in my understanding we have not had that sort of detailed direction, if I can use that expression, from the Ombudsman.

Senator NETTLE—You mentioned the annual assessment of members.

Mr Karas—The appraisal of members, yes.

Senator NETTLE—Can you provide us with the criteria by which that assessment is carried out?

Mr Karas—Yes.

Mr Blount—It is quite detailed, so would you like us to provide that in writing, on notice? There is a lengthy document which sets out the expectations, the materials that might be drawn upon and then the actual criteria.

Senator NETTLE—That would be helpful, thank you. Mr Lynch mentioned that, of the current RRT members, half have legal qualifications. Have I got that right?

Mr Lynch—Approximately half, yes. We did some interesting analysis the other day to establish what level of remittals from the Federal Court related to members with legal qualifications and what level related to members without. We found that there was no significant difference between remittals in respect of members' decisions where members had legal qualifications and where they did not. That is perhaps one of the good indicators of the level of training and the consistency of quality of decision-making: that there is not a noticeable difference.

Senator NETTLE—I want to ask about your video links with detainees when an RRT member is making a decision. Have you been having any problems with maintaining those video links? I have had instances raised with me where a video link, for whatever reason—we all know there are technical reasons for such things—shuts down. Is that a regular occurrence? What happens in that instance? Does the RRT member continue to make the decision, without being able to complete the interview with the detainee? Can you explain that to me?

Mr Blount—The hearing would be completed. It does not happen very often. It was more frequent when we were first using those kinds of links some years ago and with regard perhaps to some particular remote locations. Nowadays the link seems to be more robust. When it does cut out there is normally a break for five or 10 minutes. That is the most common thing. I am not personally aware of instances where we have lost it completely, but, if it was not the end of the hearing and if the link could not be restored, the hearing would have to be adjourned and it would be resumed. We would not simply abandon a third of the hearing because we had lost the link on a particular day.

Senator NETTLE—Could you take that on notice for me: whether you are aware of any circumstances where the links have not worked, for whatever reason, and the hearing has not been adjourned.

Mr Blount—Do you mean where the link has been lost completely and the hearing is therefore terminated at that point rather than being completed?

Senator NETTLE—Yes. I have had occasions described to me where the link has failed, for whatever reason, and a determination was made in the case rather than there being a continuation of the rest of the hearing by getting the video link back up again. I just wanted you to have a look at that and find out whether you are aware of any circumstances where that has happened.

Mr Blount—I am certainly not personally aware, but we can see what we can find out about that.

Mr Lynch—That was in relation to the RRT, not the MRT?

Senator NETTLE—It was the RRT, yes.

Mr Blount—You do not know what the location was?

Senator NETTLE—I do not have that with me now; I am sorry.

ACTING CHAIR—Thank you very much. I now call the officers from the Department of Immigration and Multicultural and Indigenous Affairs to the table.

[10.01 am]

Department of Immigration and Multicultural and Indigenous Affairs

ACTING CHAIR—Minister, would you like to make an opening statement?

Senator Vanstone—Indeed I would. I just want to briefly make a couple of points. I am sure the committee understands that the government recently committed nearly a quarter of a billion dollars over five years outside of the normal budget process to address both specific and broad ranging concerns raised by Palmer and Comrie. Many of those initiatives are under way—I am sure senators will have some questions about those—and some were under way in fact before the government received either of the reports to which I have referred. I welcome Mr Metcalfe, our new secretary, to his first estimates as the secretary. It is not his first immigration estimates by a long shot, but it is certainly his first as the secretary. He is now supported by three new deputy secretaries. I think it is clear that more human resources were needed at the top of the department. I put on record my gratitude to the people who handled a workload that we now see should have been spread between three. In particular, I thank Philippa Godwin. As a deputy secretary, she took an enormous amount of the burden of work that needed to be done, and I am very grateful for that.

A blueprint for change was tabled in parliament, as we indicated at the time of the Palmer report that we would do. It relates to openness, accountability, client focus and better health facilities for detainees and a much better trained and supported staff. They are the key aspects of the response. I have great confidence in that. Of course, that is just the outline of the response. We now have to put that into practice and that will happen over the coming months.

I have been overseas recently, but I did notice some reports in relation to the Ombudsman. While overseas, I was interested to read the apparent new news in some media that the Ombudsman was looking at circumstances of a further 221 cases of possible wrongful detention—at least we have the word 'possible' in there now. I mention this because I am a great supporter of a free press. They are the only link really between parliament in a big country like Australia and the people and the only way for people to get an idea what is happening. But they do have an obligation to report with some perspective. To present something that was announced in April or early May as new news in October is somewhat surprising. I will just leave it at that.

Those cases were referred to the department, as I have said here before. Having established the Rau case, it was immediately obvious that, while we could not believe something like that could have happened, that assumption was not one that one should rely on. Therefore, I asked the department to go back and look at every case. I have made the point before but it bears repeating that it is only since 2000 that the department has been able to go back and ascertain who later became lawful. As I have said before, that may be because they were found to be lawful all along and took some time to find their visa, passport or whatever documents they wanted to rely on. That may be because they later were made lawful as a consequence of a court decision or, for example, a child becoming a citizen, having clicked over the 10 years.

Nonetheless, it bears repeating that the Ombudsman made the point that in all those cases there are people who were detained for a short period of time while their identity and legal status was ascertained. Of course, there are people whose status changed while in detention as well. The handling of the additional cases appearing on systems reports is still the subject of discussion with the Ombudsman's office. I have made it clear in the Senate chamber that I want all cases referred until we are happy that we have a system we can rely on. That will require discussion because, as I have indicated, if someone was detained at 10 at night and released at two in the morning they will still have been detained for a day, technically speaking, and their case will still have to be referred. We have to find some way of not overloading the Ombudsman but also of making sure that these are properly looked at.

From July to October this year, there were some 16 cases that fit into that descriptor. The majority, I am told, are a consequence of legal rulings—that is, someone presumably later becoming lawful. We are looking at the use of that descriptor. I have pointed this out on numerous occasions in press conferences, in estimates hearings and in the chamber. It just does not seem that the media are able to grasp the detail behind this. It may mean, therefore, that we have to change the descriptor to make it clearer because it is, I think, quite a damaging thing to a department that in all other respects is doing a very good job to consistently have the media writing up that 200 people have been wrongfully detained when it is not at all certain that that is the case. I have made the point in the Senate chamber, and I continue to make it, that rightfully detained is only one issue. It is a small part of it. You can be rightfully detained and then not properly dealt with after that. It is the 'after' that was the consequence in the two cases that we are referring to.

I would also like to make sure that we keep things about this department in perspective. It is a busy department, a big department, that handles a huge volume of work. As an example, in the 2004-05 financial year the department finalised hundreds of thousands of temporary

and permanent visa applications. To break that down a bit, the skilled stream outcome was nearly 78,000. That figure includes visas granted to people sponsored by an Australian employer, a state or territory government or an Australian relative. It includes business migrants, people with special talents and independent migrants with an occupation on the skilled occupation list. I give that breakdown within that because some people might think that that is a skilled migrant visa and that's all you have to do—tick the form and we let you in. There is a lot more work behind those nearly 78,000 people.

Just over 33,000 visas were granted to partners of Australian citizens or Australian permanent residents, and I wish their relationships well at the expiry of their two-year temporary spouse visas. Over 3½ million visitor visas were granted, 430,000 of which were by way of grant rather than ETA. This is a tremendous amount of work happening every week, every day. There were 104,000 working holiday maker visas and over 174,000 student visas. I am very pleased to note some 13,178 visas under the refugee and humanitarian program—confirmation yet again that this government has consistently opened its doors to refugees but has refused to accept as a first priority people who can afford to pay a crim and a spiv to get on a boat to bypass the UNHCR refugee system.

Over and above that, for the people coming in, 98,000 people were granted citizenship. That means that, on average every week, the skilled component of the migration program delivered about 1,500 skilled migrants and families. This year the annual migration program in total will be about 140,000. That will mean 2,800 a week, roughly, if you work it out that way, need to be done—over 3,000, nearly 3½ thousand, student visas and about 67,000 visitor visas. So there is a tremendous amount of work happening. I put that on record because there is a tendency amongst some in the gallery to go on a witch-hunt for a department and to write only the negative things. I have no complaint about the negative things being written; they should be. That is what the press is there for. But they also should be kept in perspective so that the public get a true picture.

Lastly, as I indicated, I was overseas; I was in the United Kingdom. Given the nature of state and federal relationships—even when the governments around Australia are of the same political persuasion, it is not normally the case that great praise is heaped on the federal government by state governments—I was frankly quite awestruck by the unanimous praise from the agents-general from each of the states to the Australian Needs Skills expos that were held, particularly in London, but in Amsterdam, Berlin and Chennai in September and October. Pre-screening done by the department made them very useful occasions. I understand the employers are also happy. Forty employers and state and territory reps attended. Nine thousand people attended: 4,000 in London, 900 in Amsterdam, more than 2,000 in Berlin and 2,000 in Chennai.

These people, as I said, as a consequence of pre-screening, had some of the skills and general requirements that we were looking for. It was not just a stand with a bit of fuss, some balloons and some packets to give away. This was a very professionally organised campaign. The results exceeded the expectations of employers and the state and territory governments. One state commented that they would have sufficient contacts from the expos alone for more than a thousand migrants over the next two years, which is tremendous. I have a couple of references from employers. One, from David Hinder of MACS heavy vehicle products in

Queensland, said that he would strongly urge other employers to go and to be involved in the future expos. He said that they have been delighted to get a female sheet metal worker on board as a result of the expos and that it is a very positive outcome for the company in a very male dominated trade. Mark Vining, from Mowlem asset services in New South Wales, commented that the expos were a great initiative. He said that they were very positive and effective overall and that they got a large number of high-quality candidates for employment. He said that they would definitely be interested in attending next time.

On other matters, the new head of the UNHCR, Mr Guterres, noted, in my meeting with him in Geneva, that Australia was a very valued partner, that we do take a lot of refugees in the Refugee and Humanitarian Program. I took the opportunity to point out to Mr Guterres the irony that not necessarily all Australians would believe that and that perhaps the UNHCR could be encouraged to say this other than in private circumstances. I feel sure Mr Guterres will take that opportunity. We met with the Vatican to discuss a range of topics but, importantly, World Youth Day coming up in 2008. Many people perhaps have not focused on this, but 2008 is not far away. We had a very successful immigration program covering the Olympics, with, as I understand, less than 50 of the Olympic family as overstayers. Sadly, that was not the case with the last World Youth Day. One country, Canada, had 2½ thousand overstayers. Germany held the next one. I am not sure if they are able to tell us at this point how many overstayers they had. That is not our intention, to have that many overstayers from World Youth Day. But it is our intention to work with the Vatican and representatives of the church here in Australia to make sure we have the smoothest and friendliest access for this very important occasion for them. They have indicated a willingness to work with us on that matter. They are aware of the risk for host countries and want to work with us on that, and I am happy about that.

There are offices in other places, but I particularly wanted to mention the office in Shanghai, because it is the biggest immigration office overseas. There was a lunch hosted primarily for tourism representatives, who could not stop themselves coming and saying that Australia was doing a better job than any other country. This is very significant both for China in getting good access to Australia and for Australians in getting access to China. I am very pleased to be the minister for a department that gets such praise in a developing and large market economy which is going to be so important to Australia. To have your biggest office selected as doing the best is pretty good, and we can all be proud of that.

Lastly, I want to refer to the *Malu Sara*. It appears as the days go by that it is going to be a tragedy. We cannot accept that it is going to turn out any other way. It has deeply affected the Torres Strait community and of course many people within the department. Our thoughts and, I am sure, those of committee members and others are with the family, friends and local communities, who must be very anxious in having a view about what has happened but not being certain. Certainty in these issues is much sought after, primarily by families and also by the department.

We and other agencies are dealing with this apparently tragic event. I recall that once some children were found 10 days after a similar event. We all hope for that, but we have to say it does not look good. It does appear that it is going to turn out to be a tragedy. We will take all the steps necessary to determine the facts. We are not the only people engaged in that process.

The Australian Transport Safety Bureau have their own investigation—as is appropriate—which will go, as I understand it, to the seaworthiness of the boats. The Australian Maritime Safety Authority will look at the search process to make sure that the people involved did their job properly. Comcare, as the Commonwealth's insurer in this matter, will have matters to investigate and, as the situation becomes clearer, they will be investigated by the Queensland coroner.

All I can say at this point, apart from expressing my deep regret to the families for what has happened and my sympathy to them in this time of not knowing what has happened and therefore not being able to proceed, is that at some point our report will be made public. I just want to take some advice from others, including other parties that have investigations going on, as to when that will be appropriate. I want to give the committee the assurance that at an appropriate point it will all be made public, but certainly not before it is raised with the families.

CHAIR—Thank you. Would you take this opportunity for a very short statement, Mr Metcalfe?

Senator Vanstone—I note the words 'very short'. I think there might be some angst amongst the committee. I am not trying to take up their time, but this is a two-way thing.

CHAIR—I appreciate that, minister, I was just giving the secretary—

Senator CROSSIN—We would like a chance to ask some questions.

Senator Vanstone—'Some' questions? You have until 11 o'clock tonight. We do not have to knock off for the horse race if you do not want to.

CHAIR—Senator Ludwig, do you have a contribution to make?

Senator LUDWIG—I do in one respect. I do from at least the committee's perspective want to join with you in expressing our deepest regret and sympathy for those people whose whereabouts are unknown at this time. It is a tragedy, there is no doubt about that, and I wanted to join with your statements. The committee does feel for the Immigration people, who have worked particularly hard through some tough times over the last couple of years. I think it is worth mentioning here, and I thank the minister for bringing that to our attention. I do not intend to ask questions in relation to that today. It is a matter for another time.

Senator Vanstone—That will come. I have a Torres Strait Islander in my office who has already been up there once and is going again soon, and I will make sure, Senator, that your remarks are passed on.

Senator LUDWIG—Thank you.

ACTING CHAIR—Mr Metcalfe?

Mr Metcalfe—Thank you for your welcome. I did have a reasonably comprehensive opening statement prepared because of the significant number of developments that have occurred in the portfolio since my appointment just over three months ago but perhaps, with the indulgence of the committee, I might limit my comments to around five minutes. Would it be possible to table the full text of the statement and have it incorporated into the *Hansard*?

ACTING CHAIR—That would be most useful.

The statement read as follows—

Senator Vanstone has already expressed her sorrow for the loss of the Malu Sara and her passengers, and her sympathies for the people of the Torres Strait Islands affected by this tragedy. I would like to reiterate her sentiments and convey my support to the families, friends, local communities, the Torres Strait Islanders and departmental officers during this difficult time. This is clearly a tragic event and given the length of time that has now passed, we fear the worst. This would be the first loss of departmental employees in the course of their work since that of Michael Herwig, who died in an air crash near Bangkok in 1988. For cultural reasons it is inappropriate to mention the names of those involved in the Malu Sara incident and I ask that we all respect that during any discussion of the matter during the course of this hearing.

I commenced as Secretary of DIMIA on 18 July 2005. The circumstances of my appointment are well known so I do not intend to go into the detail again today. Suffice it to say my appointment followed a period of focused public scrutiny of the Department.

The agenda which has been set for me is substantial and one of my first actions was to establish a Change Management Taskforce in DIMIA to lead the Department in a process of administrative and cultural reforms. This process is focused on shifting DIMIA from an organisation that was described by Mr Mick Palmer as 'process rich and outcomes poor' to one that is client-focused, and effective in its decision-making and operational roles. The Taskforce has been an effective mechanism, working closely with me and the other members of the senior executive to develop both the responses to the Palmer Report on the Circumstances of the Immigration Detention of Cornelia Rau and the Comrie Report on the Circumstances of the Vivian Alvarez Matter and to develop initiatives to address the broader concerns both Mr Palmer and Mr Comrie expressed about the culture in DIMIA.

My initial task was to develop a costed Implementation Plan responding to the 49 recommendations in the Palmer Report. As you know, this Implementation Plan was tabled in Parliament on 6 October 2005. I have also provided a report to the Minister in response to the Comrie Report and this too was tabled in Parliament. I have copies with me today that I can table should members of the Committee so wish.

Three major themes emerge from the Palmer Report. In order to meet the expectations of the Government, the Parliament and the wider community DIMIA must:

- become a more open and accountable organisation;
- deal more fairly and reasonably with clients; and
- have staff that are well trained and supported.

These key themes go to the heart of the recommendations in the Palmer Report but for me and my senior executive they go further. Leadership, governance, values and behaviour; our dealings with clients; a lack of openness; a lack of clear instructions, insufficient training and support for staff, including the need for better integrated systems are all areas which need attention in DIMIA. I am addressing these through over 60 initiatives developed to respond to the Palmer Report and through my broader change agenda.

As you know the Government accepted the findings and recommendations of the Palmer and Comrie Reports and I fully accept the criticisms made. Let me quote from page XV of the main Findings of Mr Comrie's Report: "DIMIA's overall management of Vivian's case can only be described as catastrophic." I can only agree. I have publicly apologised to Ms Alvarez. I do so again now.

Changing an organisation of around 6000 people will take time, resources and ongoing commitment. I recognise that, quite correctly, we will be under close scrutiny. This is not a task that I can do alone. It will be successful because of the strong support and commitment I have from my Minister, Senator the Hon Amanda Vanstone. Over the last three months Senator Vanstone has openly engaged with me in the change agenda. She has clearly articulated her expectations of me and the Department and together we

have established a process of open dialogue. The Government has committed over $230 million over five years to achieve the change process.

I have also been encouraged by the strong support I have from DIMIA staff, in Australia and overseas, and colleagues across the Australian Public Service. I am heartened by the enthusiasm and drive shown by existing and new staff. One of my key goals has been to harness that enthusiasm and the range of ideas that have been put forward to improve the way DIMIA operates. Both I and the Change Management Taskforce have discussed the issues facing us widely with staff and with many key people and organisations who have a legitimate interest in the activities of DIMIA.

To assist with this agenda for change I quickly moved to restructure the organisation and to build the capacity of the senior executive to both lead and embed the change process. Three new Deputy Secretaries were appointed to assist me and provide clearer lines of responsibility and accountability for the Department's activities. Just last week, the Acting Secretary, Mr Correll, announced over 40 promotions, transfers and appointments to DIMIA's Senior Executive ranks. These include a number of new positions I established under the new structure and will involve many appointments from outside the Department. I was overwhelmed at the number of officers at these senior levels who sought to join DIMIA and am encouraged that they too recognised that with challenge comes opportunity.

I would also like to take this opportunity to put on record my thanks to Bob Correll and Abul Rizvi for their support, their professionalism and their enthusiasm over the past 100 or so days. Andrew Tongue has been a key driver of the Change Management agenda and has my thanks for his outstanding effort over the last three months and I wish him well in his new position as Deputy Secretary in the Department of Transport and Regional Services.

Bob, Abul and Andrew have shown the benefits of bringing together capable, experienced people from different portfolios to work across difficult key policy issues. Each is a respected leader and together they demonstrate the depth of experience and skills we have across the Australian Public Service.

The Change Agenda

So, how am I going to change a large, diverse Department and how can I demonstrate to you and the wider public that change is happening?

First let me say what I have been doing.

Each Monday and Friday I send an all staff message to let people know about a current issue. In return I am asking staff to contribute their ideas, their energy and their commitment to rebuilding DIMIA and its reputation. Hierarchy is important in any large organisation, but great organisations go beyond hierarchy to encourage engagement across all levels of the organisation. This is how I work. That is how I want people in the Department to work.

Over the last few months I have been to several DIMIA offices around Australia and, among other things, had the great pleasure of sitting down and talking with many of our staff and some newly arrived refugees from Africa and Afghanistan. I have had some very good discussions with our clients, our critics and people we work with in other organisations. The feedback has been wide-ranging and constructive. We are taking it into account.

I have presented three keynote addresses to all staff to outline to them the thrust of the criticisms in the Palmer and Comrie Reports and to set the vision and tone for the responses to these reports and the broader change agenda.

It might be useful here if I use our three key themes to demonstrate what the initiatives underway.

An open and accountable organisation

Becoming an open and accountable organisation is multi-layered objective. Part of the solution is to improve departmental structure and governance arrangements. As I mentioned earlier, this process is well underway and will be fully implemented by the end of December 2005. A high level Values and Standards Committee with external representation, including from the Commonwealth Ombudsman's Office and the Australian Public Service Commission, has been established to ensure that the Department is meeting community expectations and focusing on meeting the Australian Public Service values.

I have created a new branch led by a Chief Internal Auditor to manage an enhanced internal audit programme that will strengthen compliance checking. The auditor will be checking whether DIMIA officers are actually doing what the law and instructions require. In addition, a new national quality assurance framework, particularly around decision-making will be developed. $12.9 million has been set aside to improve quality assurance and decision-making in DIMIA.

A Strategic Policy Group will monitor and report on the implementation of the Palmer program and will play a pivotal role in the coordination, development and delivery of policy in DIMIA.

I have also established DIMIA National, a project to examine State and Territory office arrangements, including current internal funding mechanisms. I need to have the resources where the work is being done. The DIMIA National team is working with State and Territory offices to examine these issues and will report before the end of the year.

Fair and reasonable dealings with clients

DIMIA has a diverse client base. It is therefore important that we listen to our clients and provide them with a range of choices to contact us. Some people like face-to-face contact, others prefer telephone or email. Visa applicants can apply in paper and in a number of visa categories over the internet.

It is because of the range of services we provide, the monopoly we hold and the diversity of our clients that we must provide the best service that we can. We must be fair and reasonable dealings with clients and provide clear, commonsense and lawful decisions that are properly recorded.

To put DIMIA on a much better footing to respond to client needs a newly created Client Service Branch will develop and introduce new tools so that clients can let us know how we are doing. $25.5 million has been allocated for Centralised Client feedback response management, the finalisation of a Client Service Charter and Strategy, overseas call handling arrangements, Client Surveys and Integrated email/telephony enquiries.

There has already been wide community consultation on the draft Client Service Charter and Client Services Strategy for Visa and Citizenship Services. Much of the feedback received has been positive and constructive. Both documents, along with improved client feedback handling arrangements, will be finalised in the near future. A program of client surveys will start in early 2006.

Senator Vanstone has already outlined the many projects we are undertaking to improve the delivery of health services to detainees so I won't go into more detail here, except to advise that in all some $17.9 million will be directed at improving immigration detention health services.

$19.2 million has been allocated to improving immigration compliance and detention case management and coordination, including the pilot of a community care model. A national case management framework will be developed in the new Compliance Policy and Case Coordination Division. In keeping with my objective to drastically improve governance and accountability arrangements, this new division will have better organisational arrangements, better systems support and a more clearly defined role for the non-government sector. The framework will be developed by the end of 2005 for implementation during 2006. The community care pilot study will run in Melbourne and Sydney for 12 months, commencing early next year.

$15.7 million has been made available for improving detention facilities, including in Queensland. A detention services strategy, developed by the end of 2005 will examine infrastructure issues in light of the changing detention population. The Minister has already announced a major development program for Baxter and spoke to you earlier about her concerns around the lack of an appropriate facility in Queensland.

Well trained and supported staff

Additional funding will provide a very significant boost to training. As you know both Mr Palmer and Mr Comrie were critical of the leadership with the Department and the apparent lack of specific training for staff to undertake their roles.

$50.3 million will be provided for the establishment in 2006 of a College of Immigration Border Security and Compliance. This will not be a bricks and mortar site, but we will partner with training providers and educational institutions to ensure that we can provide all new compliance and detention staff with a comprehensive induction program across five streams:

- compliance,
- investigations,
- detention management,
- border management, and
- immigration intelligence.

Existing staff in these operational areas will complete regular refresher training each year. Importantly, the funding is based on increasing staffing capacity so that staff on initial training can be back-filled, meaning that there will be no reduction of operational capacity while that training is being delivered.

What does all this mean? It means that each year, some 200 or so of our State and Territory network staff will spend 15 weeks learning the business of DIMIA operations. In the interim, enhanced training will be provided focusing on the application of 'reasonable suspicion', emerging legal issues, identity investigations, search warrant training and capacity to search and interrogate all DIMIA systems.

A further $16.6 million is being provided to support training initiatives beyond the College. I have appointed an SES level National Training Manager to head the newly developed Training Branch. One of the early tasks for new Training Branch will be to develop a national training strategy for DIMIA. In the meantime, a number of training initiatives have started.

An Executive Leadership Programme started on 19 September. This course is mandatory for every ELI and EL2 in the department and all staff at these levels will have undertaken the course by mid-2007.

A Development Programme for APS6 level officers will start before the end of November with three courses planned each year. This course is intended to increase participant's knowledge and awareness of the complexity of DIMIA's business, and increase skills in the development and implementation of policy and legislation, and better prepare them to perform their jobs.

A records management improvement plan is being developed and $10.3 million has been set aside for this task. The plan will be developed in consultation with the National Australian Archives and will include a training component so that DIMIA staff understand their role and responsibilities in relation to records management.

Both Mr Palmer and Mr Comrie stressed the need for better information management systems. DIMIA has taken this criticism on board and an independent review of information requirements and systems is underway and expected to be completed by the end of January 2006. Medium and long term actions will be presented for consideration by the Government. We have also commissioned a review which I call a 'health check'. This review will examine whether we have the right mix and deployment of our technical platforms to support the work we are doing now and our future business needs.

How will you know that we have been successful?

We have been given a significant budget for our task. Last month the Government agreed to a budget of some $230 million to make the changes in DIMIA. $165 million is new funding. I have committed a further $44 million in existing funding to the task and my Department will work to make savings of some $22 million.

I accept that this money comes with an equally serious commitment to deliver and an expectation that we will be closely scrutinised as we do so.

To monitor progress on the implementation of the Palmer Projects I have established a Palmer Program Office. To ensure that DIMIA staff, including those in the Senior Executive Service understand the principles of project management, a series of information sessions and one and two day workshops are underway. Response to project training has exceeded my expectations and regular project management training will be part of the long term training strategy.

There will be regular reporting to the executive via the Executive Management Committee. We are required to report quarterly on implementation to the Cabinet Implementation Unit (CIU) of the Department of the Prime Minister and Cabinet. This task will be facilitated by the Program Office who have been working closely with the CIU to develop an appropriate reporting model.

I am also required to report to the Minister on progress, for tabling in Parliament in September 2006.

Our success in achieving change will be measured by improvements in reputation and the confidence the Department is able to inspire in the broader community. This will be achieved through the development of national strategies for client service, case management, detention health service delivery, detention infrastructure, and staff training and their implementation through the remainder of the 2005 and 2006. Success will be reflected in the fact that our decisions are fair and reasonable, that implementation of policy is open and there are clear lines of accountability through the DIMIA executive, to the Minister and Government and to the Parliament and the broader community.

The Comrie Report - action under the Public Service Act

You would be aware that on 6 October 2005, I announced that a senior external consultant would be appointed to undertake an investigation into the conduct on two officers who were referred to adversely in the Comrie Report.

It is important to ensure the integrity of that process and a fair and just outcome for the officers under investigation. It is also important to preserve the confidentiality and privacy of the process. I am therefore concerned to ensure that I, or senior staff of the Department, are not drawn into making comments:

- that identify, or have the potential to identify, officers under investigation – that may include identifying officers who are not under investigation;
- on the conduct of staff or the circumstances in which they were involved in the Vivian Alvarez case that might suggest pre-judgement of the issues.

To do so could put at risk the decision-making of the members of the Executive who will be exercising delegations in relation to this matter and could also compromise the independent investigator.

It may be necessary for me to request that particular officers not answer questions in this hearing and for some questions to be taken on notice pending legal advice. In that circumstance, it may be possible to provide confidential answers to the Committee in writing subsequent to the hearing as I believe has been the case with other departments providing evidence in relation to code of conduct investigations that were underway.

DIMIA's successes

The deserved criticism in some areas should not mean that we lose sight of the very real and significant achievements of the Department and the substantial programs it manages. In his announcement regarding administrative reform in DIMIA on 14 July 2005 Dr Peter Shergold noted that "those who work in DIMIA do a difficult and demanding job". I can only agree.

We are a Department serving people both in Australia and overseas, 24 hours a day, 7 days a week. The Minister has outlined for you some statistics on the scale of activity undertaken in the Department. Beyond statistics, I would like to share with you two significant examples of the excellent work DIMIA is doing for the national benefit. Senator Vanstone and I have recently returned from an overseas trip where we had first hand and very positive feedback on some of our programs. I will mention two examples.

Australia Needs Skills Expos

As you know Australia is experiencing strong economic growth in a number of areas. This means that in some industries we are facing skill shortages. To assist, the Government announced an additional 20,000 places in the Skilled Migration Program for 2005-06. The additional places will be targeted through three visa options – employer sponsored, state/territory sponsored and applicants with an occupation on the national skill shortage list – we call it the MODL.

To assist in matching prospective employees to Australian employers, the Department recently arranged a series of 'Australia Needs Skills' Expos in London, Amsterdam, Berlin, Chennai, Brisbane and Melbourne. The Expos were arranged to provide Australian employers and State/Territory Governments with an opportunity to meet people who may have the skills and experiences they need to meet their skill shortage gaps.

The response to the Expos has been overwhelming. Senator Vanstone and I met with State Government representatives in London for a formal debrief on the recent Expos. The Agents' General and other State representatives were effusive in their praise of the professionalism and positive attitude of the DIMIA staff that organised the Expos. The response from employers was outstanding and they too were impressed with the level of organisation and the enthusiasm of participants and DIMIA staff.

The Expos also demonstrated the benefits of a whole-of-government approach to a problem. The involvement of staff from the Department of Employment and Workplace Relations and Trades Recognition Australia provided participants with an opportunity to learn about wages and conditions in Australia and about the skill assessment process.

Approved Destination Status (ADS) Scheme

In 1999 DIMIA made arrangements with the China National Tourism Administration which provides an avenue for large numbers of PRC tourists to enter Australia.

Since 1999 we have seen some 167,000 PRC tourists arrive under this program with some 45,000 people arriving during 2004-05. The benefit of the ADS scheme is that it ensures high levels of integrity and compliance with visa conditions. For example, the non return rate for this group in 2004-05 was 0.34 per cent in comparison to the global non return rate of 1.22 per cent.

The scheme currently operates in nine provinces in China. During our visit the Minister announced that the scheme will be extended to tourists from all provinces in the PRC. Chinese tourism to Australia is forecast to grow at more than 16 per cent per annum to reach about 1.2 million visitors per year by 2014, with substantial benefits for the national economy.

By any measure, this has been an outstanding success. The benefits to the tourism industry include substantial growth. The program is an opportunity to bring about people to people contact between countries. It was innovatively conceived and has been very well managed.

Commitment to change

Clearly the task facing DIMIA is substantial and I do not underestimate the commitment necessary to achieve the changes necessary. I have mentioned the high level of support I have from the Minister, staff and the wider public service. We have been given the necessary financial resources and the recent recruitment rounds give me access to a diverse and capable SES to lead the change process. While under no illusions about the scale of the task, I am very confident that we have the capacity to deliver on the change agenda.

Mr Metcalfe—The minister has already expressed her sorrow for the loss of the immigration response vessel the *Malu Sara* and her passengers and her sympathies for the people of the Torres Strait Islands affected by the tragedy. I would like to take this opportunity on behalf of the department to reiterate her sentiments and convey our support to the families, friends, local communities, the Torres Strait Islanders and indeed our own officers during this very difficult time. It is clearly a tragic event and, given the length of time that has now passed, we fear the worst. This would be the first loss of a departmental officer or officers in the course of their work since the death of Michael Herwig, who died in an air crash near Bangkok in 1988. For cultural reasons, it is inappropriate to mention the names of those involved in the *Malu Sara* incident and, if there is any discussion about it today, we would refrain from mentioning the names of the people concerned.

I commenced as secretary of the department just over three months ago, on 18 July 2005. The circumstances of my appointment are well known and I do not intend to go into the detail of that today. Suffice to say, it followed a period of focused public scrutiny of the department. The agenda which has been set for me is substantial. One of my first actions—indeed, it was on my first day—was to establish a change management task force within the department to lead us through a process of administrative and cultural reforms. This process has focused on shifting the department from an organisation that was described by Mick Palmer as 'process rich and outcomes poor' to one that is client focused and effective in its decision-making and operational roles. The task force has been an effective mechanism, working closely with me, the minister and other members of the senior executive to develop responses to both the Palmer report on the circumstances of the detention of Cornelia Rau and the Comrie report on the circumstances of the Vivian Alvarez matter. The task force has also developed initiatives to address the broader concerns that both Mr Palmer and Mr Comrie expressed about the culture in the department.

My initial task was to develop a costed implementation plan responding to the 49 recommendations in the Palmer report. As you may be aware, the implementation plan was tabled in parliament on 6 October. I have also provided a report to the minister in response to the Comrie report. This too was tabled in parliament on 6 October. I have copies of those reports with me today that I can table if the members of the committee wish to refer to them.

Three major themes emerged from the Palmer report. In order to meet expectations of the government, the parliament and the wider community, we believe the department must, firstly, become a more open and accountable organisations; secondly, deal more fairly and reasonably with clients; and, thirdly, have staff who are well trained and well supported. These key themes go to the heart of the recommendations in the Palmer report but, for me and my senior executive, they go further. Leadership, governance, values and behaviour, our dealings with

clients, a lack of openness, a lack of clear instructions and insufficient training and support for our staff are all issues that need attention. We are addressing these through over 60 initiatives we have developed to respond to the Palmer report and through my broader change agenda.

As you know, the government accepted the findings and recommendations of the Palmer and Comrie reports, and I fully accept the criticisms made. To quote from page 15 of the main findings of Mr Comrie's report:

DIMIA's overall management of Vivian's case can only be described as catastrophic.

I can only agree. I have publicly apologised to Ms Alvarez, and I take this opportunity to do so again today. Changing an organisation of around 6,000 people will take time, resources and commitment. I recognise that, quite correctly, we will be under close scrutiny. This is not task I can do alone. It will be successful because of the strong support and commitment I have from the minister. In the last three months, the minister and I have openly engaged in relation to the change agenda. The minister has clearly articulated her expectations of me and the department, and together we have established a process of open dialogue. As the minister has indicated, the government has committed over $230 million over five years to the change process.

To assist with the agenda for change, I quickly moved to restructure the organisation and to build the capacity of the senior executive to both lead and embed the change process. Three new deputy secretaries were appointed to assist me and provide clearer lines of responsibility and accountability for the department's activities. Just last week, Mr Correll, as acting secretary, announced over 40 promotions, transfers and appointments to our senior executive, which is, I suspect, unprecedented in terms of the amount of change in a public service organisation at the one time. Personally, I was overwhelmed by the level of interest shown in those positions by people wanting to join the department. It gave me a very strong sense that people believe that with challenges come opportunities.

In closing, I would like to place on the record my thanks to Bob Correll, the new deputy secretary, and Abul Rizvi, who has recently been confirmed as a deputy secretary, for their support, professionalism and enthusiasm over the past 100 days or so. Carmel McGregor has also been appointed as a deputy secretary. Today is her very first day in the department and, although she joins us in this room, we have not sufficiently tested her by asking her to join us at the table. Finally, I place on the record my thanks to Andrew Tongue, who was seconded from the Department of Transport and Regional Services to lead the change management task force. He leaves us next week to return on promotion to that department as a deputy secretary. He has provided exemplary public service in assisting us through this most important period. As I indicated, there were some further things I was going to say, but I have made that document available for incorporation into the *Hansard* record.

Senator Vanstone—I join with the secretary in thanking Mr Tongue. His department is very lucky to get him and we are unlucky to lose him.

Senator LUDWIG—Minister, I did reflect on the homily about the media. I was wondering if you are considering moonlighting as a media journalist at some point.

Senator CROSSIN—Mr Correll, who is replacing you in the employment area?

Senator Vanstone—That is a question for another committee.

Senator CROSSIN—I know it is a question for another committee.

Mr Correll—Mr Carters is acting in the position of deputy secretary in the employment area in DEWR.

Senator LUDWIG—The difficulty I have, Minister, is that, in the response from the secretary to the Ombudsman's report, in the 'background' section the following phrase is used, in the third paragraph down:

> ... there will be ongoing discussion with the Ombudsman regarding any cases which appear to involve unlawful detention.

That is the phrase that the department now uses. I recall discussions with previous officers of the department when I suspect the committee was taken to task for using that phrase. It is the phrase that I will use. I am happy to use the phrase 'involve or appear to involve unlawful detention'. That seems to be the phrase that the department has adopted. That is the phrase that you also use to describe it, Minister. We can always put an adjective in front of it.

Senator Vanstone—I think the secretary has something to say about that. There is always a risk in taking part of a whole comment and attributing it to a particular focus.

Mr Metcalfe—I think the sentence stands as a complete sentence, Senator:

> Until improved arrangements are in place to ensure cases of particular concern (out of those cases recorded in the system as 'released not unlawful') can be more easily identified, there will be ongoing discussion with the Ombudsman regarding any cases which appear to involve unlawful detention.

So, as the minister explained in some detail earlier, our record-keeping systems are such that people may come into detention and then may subsequently be released quite quickly, or there may be other factors, such as a child—not that there are any children in detention at the moment—who has been in Australia for 10 years and thus becomes an Australian citizen in those circumstances, or some other circumstances. Rather than simply automatically referring any such matter to the Ombudsman, we have had discussions on this matter with the Ombudsman and will continue to have discussions with him so that those matters which might appear appropriate for investigation are in fact referred. The Ombudsman and I have had an extremely good working relationship on these issues, and we and our officers are working very cooperatively, with the very strong intention of ensuring that any cases which give rise to concern are identified and appropriately investigated.

Senator LUDWIG—So the number of cases that have been referred to the Ombudsman now is, what, 221? I am trying to get a total.

Mr Metcalfe—221. There were 201 originally referred and a subsequent 20 have now been referred.

Senator LUDWIG—Do you call those cases of detention that appears to be unlawful?

Mr Metcalfe—This is the point the minister made earlier—that currently the classification in the departmental record computer systems is 'released, not unlawful', but sitting behind that is a much more complex series of circumstances. Until we can come up with better descriptors and perhaps a disaggregation of that classification, we will continue to discuss any matters with the Ombudsman to ensure that cases are appropriately scrutinised where he believes that is necessary.

Senator Vanstone—So the files may have in them—no-one denies this—people who are unlawfully detained. It is my view that they are more likely to have people who were lawfully detained but then not subsequently dealt with appropriately, because if you have a reasonable suspicion then it is a lawful detention. But if you do not deal with the issue promptly and resolve it in accordance with—

Senator LUDWIG—I think I have made this point.

Senator Vanstone—Yes. I would not say to you, 'You can't say they may,' because they may.

Senator LUDWIG—That leads to the next question I was going to ask: are you able to say at this point how many cases of unlawful detention the department considers there are among those 221, or are you awaiting the Ombudsman to advise you of how many they say are unlawful detention and then break them down by nodes?

Senator Vanstone—We do not want to second-guess the Ombudsman. I made the point in the chamber in the last sittings that he was going to do these in groups, and I think that has been teased out a bit in one of the committee reports while I was away. I think that is a sensible way for the Ombudsman to deal with these matters. I do not think it is sensible for us to send something to the Ombudsman and then pre-announce what we think. The Ombudsman has a job to do and we should keep out of it and let him do that.

Senator LUDWIG—So we can refer to the 221 cases which have been referred to the Ombudsman for investigation and report as 'appearing to involve unlawful detention'?

Senator Vanstone—No. You can say they may contain that.

Senator LUDWIG—Well, they appear to involve that—otherwise, you would not have sent them.

Senator Vanstone—No, that is not quite right. We have sent all of the ones that were later found lawful, even though they may have been people who were found lawful because they were granted a visa by a court. We have sent them all to be looked at.

Senator LUDWIG—Can you break those down into the latter category and the former category?

Senator Vanstone—I do not know that we can. But, as I said in answer to your question just before this, I think it is appropriate to let the Ombudsman do his job. You cannot have it both ways: you cannot have departments seeking to box the Ombudsman around publicly and get into trouble for that, and then get into trouble for not seeking to box the Ombudsman around properly.

Senator LUDWIG—You are not inviting me to comment on that, Minister! Moving on to the next area, in response to a question I put on notice last estimates, you have provided the figures on how many of those people were advised that they may have been, in my words, unlawfully detained. You have provided effectively three figures. Did the dates come from the department? That is, there were three boxes with numbers of days. Do you recall the way you expressed that information to the committee?

Mr Metcalfe—Would it be possible for us to have the question reference?

Senator LUDWIG—It is question 078 and it says:

Some 201 individuals during the period July 2000 to April 2005 were released from detention and recorded under the code 'not unlawful'.

… … …

Of the other 97 persons in this group, the periods of detention are as follows:

4-7 days: 28

8-21 days: 13

21+ days: 56

Senator Vanstone—I recall seeing some figures like that. Whether it is the question you are talking about or some other, I do not know.

Senator LUDWIG—When the Ombudsman subsequently provided a more detailed analysis, it was provided in the form: number of cases; less than one day, 36; one to three days; four to seven and iterations all the way through to six to 12 months and eventually six to seven years through each year. It provided clarity as to the length of detention. Who made the original decision to provide it to the committee in the form of those three tables rather than in the form provided by the Ombudsman?

Senator Vanstone—I cannot tell you who—

Senator LUDWIG—The department might be able to.

Senator Vanstone—They might.

Senator LUDWIG—That is where—

Senator Vanstone—If I may, I have something to say on this. The department might be able to, but I hope you will understand that it was not an easy thing to pull this figure out. It did not just jump out. We have now had a lot more time and the Ombudsman has had more time to look at each of these files and get further detail on them. While I was away I did not see in the press reports—and I have not had a chance to look at the *Hansard*—whether the Ombudsman broke down any of the cases that were of a longer period of detention and whether that was one period or a number of periods. I am aware of one case where a person came back on three separate occasions and, I think, on each occasion that person was brought to immigration detention by the state police. Once you start to get down to the detail of things and you have time to look, you get a better picture. Unless that is clear in what the Ombudsman said, simply to say X number of years without indicating that the person might have been a return visitor brought by the state police does not necessarily give you a full picture either. The department can give you such answers as it chooses in relation to this.

Mr Correll—The department provided that information in that format in the response prepared for the minister to the question. Yes is the answer to the question.

Senator LUDWIG—The department provided that format and then the minister released it in that format?

Mr Correll—Yes.

Senator LUDWIG—Why did you provide it in that format? If we look at the way the department provides statistical tables, they have always been provided in a month-year format. The annual report has maybe tripled in size from last year, so I am sure that it contains the same sort of statistical information that has always been provided. Why was the decision made to provide it in that limited fashion? When it was released by the Ombudsman, the minister might say that it was not new news but the break-up and the length of detention was.

Senator Vanstone—I do not deny that. That was news. I am thinking of stories that indicated nothing more than what I said; that it was somehow news that these people were being looked at.

Mr Correll—I cannot comment on the historical perspective to the question. In terms of presenting the information and the break up of the 201, it was presented simply on the basis that it was a reasonable way to present the overview of the statistics. There was no other reasoning behind it. The subsequent release of information by the Ombudsman simply disaggregated that same information into a greater level of detail. I am not aware that there was a supplementary question raised following the provision of the information to your question, Senator. The department had no indication that I am aware of that a greater level of detail was being sought.

Senator LUDWIG—But how did you provide it to the Ombudsman? Did you provide the statistical break-up in that way?

Mr Correll—The Ombudsman had been given all of the files, Senator.

Senator LUDWIG—And the Ombudsman disaggregated it?

Mr Metcalfe—Well, he prepared statistics according to the way he wished to do so, I think.

Senator LUDWIG—It looks like you were trying to put your best foot forward, in the first instance, because you put '21 days plus' and '56', whereas that was not the true picture at all. I must say I am still concerned about the culture of the department when it provides tables in that way. I have got to say that it does nothing to dispel from this committee's mind that the department is trying to obscure the true position.

Mr Metcalfe—I think it would be a difficult proposition to suggest that the department is doing anything other than seeking to cooperate with this committee. The department has, on record, one: an exemplary record of providing responses to questions on notice, and two: in other forms of this committee, provided enormous amounts of detail as to its operations. I have not had the chance to read the question that was written or provided by you, so I do not know if you asked for a disaggregation according to days, months and years. Perhaps, in hindsight, there could have been further disaggregation, but to suggest that this is indicative—that we're trying to somehow put our best foot forward—is something I cannot agree with. I would have thought it was always the case, in relation to these cases, that the government referred these matters, of its own volition, to the Ombudsman. It has, with the cases of Cornelia Rau and Vivian Alvarez, published in full the results of those inquiries. So to suggest that by presenting tabular information that way we are somehow seeking to put things in a better light, is something I just do not agree with.

Senator Vanstone—Senator, it is important to bear in mind that, at that date, I am pretty sure these things had already been referred to the Ombudsman. So it would be a bit of a folly to sit down and say, 'Right; how can we make this look better?', when you have the sure-fire knowledge that it has all gone off to the Ombudsman. I think someone has simply just done a job and I really would not attribute any bad faith to it. If things had not gone to the Ombudsman—if it was not all going to come out—you might have a case, but it was all going to come out. I made that very clear: that there would be a full bandaid rip-off; that it is all going off and it is all going to be looked at, and it is all going to be made public. That has been very clear, from me and from the secretary at the time.

Senator LUDWIG—Do we know, then, of those that—sorry, did you have a follow-up question, Senator Crossin?

Senator CROSSIN—I refer to the revelation, perhaps, of the Ombudsman's figures. You say 221; we have actually got 222 in the numbers that were given to us during the inquiry, but one does not make all that much difference, I suppose.

Senator Vanstone—It does if you're the one! But it is in the ballpark.

Senator CROSSIN—But it is not really new news, is it? It is just a re-presentation of the material in a different format. Are you saying to us that it would have been possible, back in May, to provide, in the answer to the question, a disaggregation of the figures, as the Ombudsman has provided it—that the department would have been able to do that, back in May, if they had been specifically requested to do that?

Mr Metcalfe—I would have to check, Senator, as to whether that was the case or not.

Senator Vanstone—Whether they could give you the answer. Obviously, they would be able to do it, because you have got the files. Whether they could do it for you at that time, as opposed to now, when the files have had time and plenty of people and resources going over them, is another matter.

Senator CROSSIN—That is true, but it is not exactly new news, is it? The information was always there. That figure of 221 or 222 was there in May; it was just a matter of whether or not it was extracted in the same way as the Ombudsman has done it.

Senator Vanstone—Getting out all the files; but I just refer you to the Palmer report in particular: I think there is one case where there were something like nine files—Mr Correll might be able to help you there. I wish it was the case that you could just go to a person's immigration file, get it up on screen and it would all be there and you could sort by the various criteria you might want to search by. But it is not like that, and Mr Correll might be able to give you some more information. Yes, you can identify a person, but whether you can then easily go and extract all the information about them that you need is another matter. Could you add to that, Mr Correll?

Mr Correll—Yes, Minister. The process of extracting information is not an easy one. It is one of the things we are attempting to address, and it was picked up in the Palmer report recommendations. It involves searching through considerable information—the ICSE system—and then going in and tracking down hard copy records as well. The process is quite a manually intensive and cumbersome one to draw information together. Having said that, in

answer to your question earlier about whether the information was available in May, there was information available in May relating to the 201 cases, which was the number at that time. The additional 20 cases emerged during the period 1 May to 30 June. At that point in time, in May, the figure was 201.

Senator LUDWIG—Just looking at that, does the department think that three weeks is a long period to be in detention? I am just trying to understand the rationale for why you stopped at three weeks. Is that a long period?

Mr Correll—I guess the bulk of people go into detention for relatively short periods of time. Therefore, in disaggregating the numbers, the figure of greater than three weeks is a reasonable benchmark to be used. Out of a figure of 201, 56 were in that category. Basically, in answer to the question, the numbers were effectively broken up into four broad categories: nought to three, four to seven, eight to 21, and then 21 days plus. There was nothing sinister about that; that was just a judgment call made at the time as to the presentation of the information. It could have been presented in many different ways.

Senator LUDWIG—Do we know where those people are now?

Mr Correll—Yes, we have information on where those people are located now, so we can provide some detail if you wish.

Senator LUDWIG—In terms of those, are you able to break down whether they have been granted a visa, whether they have been removed or otherwise? Are any still in detention?

Ms Daniels—Our records show that of the 221 people, one person remains in detention. After the 'released not unlawful' event, that person's visa was subsequently cancelled and they were redetained.

Senator LUDWIG—Why are they still in detention? I do not want to get individual names but perhaps an explanation.

Senator Vanstone—I think the answer is that apparently the visa was cancelled, so they are unlawful.

Senator LUDWIG—I am curious why the visa was cancelled. How long were they initially detained for, and then they were released, then their visa was cancelled, and then they were redetained. Have I got that right? You can correct me and tell me what happened. That might be a better way of doing it.

Ms Daniels—Sorry, I did not quite follow what you were saying, but the person was 'released not unlawful' and was taken to be holding a visa. That visa was subsequently cancelled on character grounds, and the person was redetained.

Senator LUDWIG—Where are they being held now?

Ms Daniels—That person is in Baxter.

Senator LUDWIG—Under which character grounds? Was that 501 or another provision?

Ms Daniels—It was section 501.

Senator LUDWIG—Are you tending to remove them?

Ms Daniels—That person would be subject to removal—

Senator LUDWIG—That is under 196, or is that another section?

Ms Daniels—The normal removal provisions would apply.

Senator LUDWIG—How long were they detained for in the first instance?

Ms Daniels—I do not think I have that information. We could provide it for you.

Senator LUDWIG—And then the subsequent detention—when was the visa cancelled?

Ms Daniels—Maybe we should take that on notice.

Mr Correll—We can report that back later today.

Senator LUDWIG—How long were they detained the second time? I know that will advance per day, but could you indicate when the visa was cancelled and when they were then detained?

Ms Daniels—When they were redetained?

Senator LUDWIG—Yes.

Ms Daniels—We will be able to get that information for you.

Senator LUDWIG—And could you tell me the country that you intend to remove them to.

Ms Daniels—Okay. That person is a PRC national.

Senator LUDWIG—Of those in the group, there is one still in detention. Perhaps you could provide an outline of what visa the remainder have been granted or whether they have been removed, by year of detention, so we can at least be consistent as to the groupings and the nationality.

Ms Daniels—Okay.

Senator LUDWIG—That would be helpful. I have a broader question, which I guess should go to you, Mr Metcalfe. It is really a matter which has come up through the line of questioning this morning. How many separate computer systems do you have in place?

Mr Metcalfe—I will probably take that on notice. The system that is the primary decision-support system in the department in Australia is known as ICSE, Integrated Client Services Environment. Overseas, the primary visa-granting or visa-consideration computer system is called IRIS, and it is quite an old system. Sitting next to and below and alongside those systems are numerous other systems which provide management reporting or particular functions—for example, security functions or whatever. If you would like a detailed answer, I can provide you with a detailed answer, but our principal systems that an officer would utilise in supporting a decision or checking on a visa are ICSE and IRIS, and then sitting below that there are significant systems such as the movements database and systems that support that—the movement alert system and so on. I would have to get a technical response as to how many computer systems actually are used.

Senator LUDWIG—It just struck me that it has been quite a few years—it has been nine years, I think—that this government has been in power. Why don't you draw the systems together into an integrated IT solution?

Mr Metcalfe—That is an excellent suggestion and that is exactly what we are trying to do. The ICSE system was originally developed quite a few years ago and it brought together many stand-alone systems that supported decision-making in Australia. For example, there were separate decision-making systems or computer systems relating to permanent visa consideration and temporary visa consideration—names like Resi 2 ring bells for me. Those had been in place for some years and essentially ICSE brought many of those things together. ICSE had a Y2K problem, and some of those legacy systems have Y2K problems, so ICSE was the subject of substantial modification, and many of the legacy systems were abolished in 1999.

That system supported what many people regard as the best Olympics ever, for example, so it is not as if the system has been a failure. But there are clearly issues that go to what I, as a layperson, would describe as the clunkiness of the system. It has grown bigger. We are dealing, as the minister indicated earlier, with many millions of applications and decisions each year and it is clear that a new system or improved systems are needed. Some time ago the department began work on the successor to ICSE, which is intended to bring all of these issues together. That work is now under way. In the meantime, we are undertaking some one-off projects to hopefully simplify some of the issues that have been around here. For example, if a departmental officer wants to access all records on an individual, it is, as Mr Palmer and Mr Comrie have noted, a very difficult thing to do.

Senator LUDWIG—It is a challenge, I would have thought.

Mr Metcalfe—It is more than a challenge. It is, I suspect, almost impossible because we are dealing quite often with multiple files, multiple paper based applications and multiple computer screens for the complex cases. For the simple cases where people who simply come, have a holiday and go home, things are much more simple.

One of the Palmer projects is to create a single client search facility—a bit like a Google facility—where you can type in a name and it will search all of the databases for people with that name. Again, it is easier said than done. As you know, we have many millions of people on our records. Many names are identical or very similar, as are dates of birth. There are names from countries from all around the world. So, in building that type of system, those sorts of complications do need to be taken into account. That is one of the clear, immediate priorities.

Senator LUDWIG—Can I give you a salutary warning to be careful and have a look at Customs.

Senator Vanstone—The cargo re-engineering project?

Senator LUDWIG—Yes, Minister.

Senator Vanstone—Honestly—

Senator LUDWIG—I do not want to go there.

Senator Vanstone—I know you do not. That project has been a long time in the building. Your warning could say: look at any big IT project.

Senator LUDWIG—From this government; thank you, Minister. The other area I was interested in, among a range of others, is: why has the annual report doubled in size?

Mr Metcalfe—There are couple of reasons. Firstly, the Office of Indigenous Policy Coordination is incorporated into the report as part of the department but because it has unique, different features and is essentially a different line of business there is an element of duplication. One of the early decisions I had as secretary was whether we would produce two separate reports—one for the immigration and multicultural affairs aspect of the department and the other for the OIPC. I thought that it was ridiculous to suggest we were anything other than one department. Someone looking for information about us should be able to go to one report. That has necessarily meant that the report is bigger. Of course, it does not mean that many more trees are being felled to print the report because so many reports these days are distributed electronically rather than on paper.

Something else that has been changed; this only accounts for a few pages but I think a few important pages. Certainly in the last two or three years the department's report has contained all the information that it was require to have but really no more. You will see as a feature of this report that I have asked that we showcase half a dozen examples of our clients. Of course we chose clients who were happy with their migration or visa outcomes—refugees or working holiday makers. We have just had a single page which provides a bit of a human interest aspect to what otherwise can be seen as a fairly dry document.

What is particularly interesting, I think, is the reference at pages 198 and 199 of the report where we thought it would be appropriate in this particular year to simply record that the Australian of the Year, the Senior Australian of the Year and the Young Australian of the Year were all born overseas. In terms of inspirational leadership to all Australians, it just happened that the three Australians of the year for 2005 were some of those 25 per cent of the population who were born overseas. The stories of Antonio Milhinhos, Khoa Do and Fiona Wood are inspirational and we thought that our annual report was an excellent way to record that fact.

Senator LUDWIG—I managed to get a copy of the question—

Mr Metcalfe—If there is anything you would like me to leave out, please let me know.

Senator LUDWIG—That is not my job. It is the minister's job, I suspect, to be the final—

Senator Vanstone—We welcome feedback. If you do not find the report useful—if you find it too cumbersome and contains a lot of stuff that you do not think anyone is interested in—I think it is fair enough for you to make comment about that and we will take it into account.

Senator LUDWIG—Minister, the difficulty always is that the information I am looking for is generally not there. I got a copy of question 78. Perhaps you can have a look at it, Mr Metcalfe. There was some suggestion that the problem might be the way I asked the question. It is always helpful to have advice as to how to better ask a question. I asked you to provide in relation to the detainees that were not unlawful a list showing the duration of the detention and other information which would not lead to identification of the persons concerned. I do not really need to go on. I did not ask for an express summary; I asked for the duration of the detention. It is pretty clear to me what I asked for. The Ombudsman provided it in a reasonable way.

Mr Metcalfe—I see that our response indicates in the second paragraph that half of the people were detained for very short periods and then it disaggregates the others. I think you have made the point, and we have accepted it, that perhaps we could have been more explicit. There was no intention to mislead. The information on these cases was always going to become public. I will ensure that in looking at any further questions, if you are after detailed advice, we will attempt to provide that.

Senator LUDWIG—Thank you. Chair, I have been going a little while. Others may wish to also ask general questions. Otherwise, I will continue.

Mr Correll—Chair, we have an answer to that earlier question from the senator.

ACTING CHAIR—You can provide that now.

Mr Mann—In relation to the person who was released as not unlawful but is still in detention, the first period of detention was from April 2004 to May 2005 and the second period was as a result of a character cancellation under section 501, from June 2005 until the present.

Senator NETTLE—I will ask some questions while we are still in that area. 'Released, not unlawful' is the code that was used for these people. I appreciate that you said one of those people is currently still in detention. My question is whether the code 'released, not unlawful' covers all cases, if the purpose of the referral for the investigation is to determine the circumstances in which somebody has been unlawfully detained. The ones that I have thought of would be people who are currently in detention and whose detention—as a result of a court case or any of the reasons that the Ombudsman has provided for these 220 cases—is also considered to be unlawful in some way. What is the process for those cases being found or referred? It seems to me they are not going to fall into that category because they are not 'released, not unlawful'. So how are you going to find out about those—

Mr Mann—You are asking for some reassurance as to how we identify cases in the first place—what mechanisms we have to review cases to reassure ourselves that they are lawfully in detention.

Senator NETTLE—It seems to me that there may be people in detention who are currently not unlawful, so they would fit the second part of that category. But they have not been released. How do they get their cases reviewed if they have not been in for two years, in which case the Ombudsman would review their case? If you are unlawfully in detention, do you have to wait two years for there to be an investigation? The other area I have thought about is where people might be voluntary returns but they, under the same categories as the 220 people, may also be considered to be unlawful. Is there any plan to determine what people would fit that category and how their cases would be investigated or referred to the Ombudsman?

Mr Correll—I will respond to that question. Basically, in terms of all individuals in detention, discounting illegal fishers in short-term detention at the moment, there are less than 600 people in detention today. All people in detention are subject to a constant cycle of review of their circumstances in detention. In our state and territory offices we have detention review managers who have a specific role of reviewing, constantly, their circumstances. We also have

a formal structure at the national level which is reviewing each and every one of those cases as well, particularly looking at people who have been in detention for longer periods of time.

Senator NETTLE—I am reasonably aware of the review processes that are there. I am, like others—as I am sure you are—concerned about those review mechanism not having picked up Cordelia Rau and Vivian Solon.

Senator Vanstone—With respect, I think what Mr Correll is talking about is mechanisms that have been introduced since then.

Senator NETTLE—Okay. I am not asking you to repeat all of the mechanisms. I have sat through many occasions when I have heard those. I am specifically asking you whether there is a type of review that is designed to look at whether anyone has been unlawfully detained. I accept there are many types of reviews. Are there any that specifically relate to whether someone has been unlawfully detained or not?

Mr Correll—Where there are particular cases where there may be a legal decision, for example—I can highlight some cases, and a classic example would be the Srey case—we are constantly looking at any circumstances of individuals who are in detention or, for that matter, individuals who are identified through compliance processes where their circumstances may mean that they are affected by, say, the Srey case and, as a result, that would influence whether they should be in detention. Those sorts of reviews happen. For example, with the Srey cases, we have a specific legal team that is monitoring those cases. And where our state offices identify any circumstances that would be what we call Srey affected, those cases are referred into the legal team through the management structures in the states. Operational instruction and training has gone out to our state offices in that area.

Mr Mann—To add to that answer: the compliance officers now have training in how to screen people who are potentially to be detained to make sure that they are not affected by any of the known court cases, such as the Srey case. We also looking at the Nystrom case. Within 48 hours of someone coming into a detention centre, a detention review manager will again confirm the lawfulness of the detention—within 24 hours, if there is any difficulty in establishing the identity of that person. Those are new processes that have been put in place since May this year.

Senator NETTLE—I know 20 more cases were referred to the Ombudsman. Were they as a result of those processes?

Mr Mann—I think from memory that seven people have been released from detention as a result of us identifying that they were affected by the Nystrom case, for example.

Senator NETTLE—I have some specific questions about the Nystrom case. In the way Mr Correll has described it, there is a legal unit relating to each of the cases, which is going through and seeing who has been affected by that case. With the Nystrom case, were the seven people who have been released from detention the total of the number of detainees whose cases were found to be influenced by the Nystrom case—or was it that, say, 20 were found and seven were subsequently released?

Mr Mann—We believe that we have identified most of those cases. However, we are still making sure that we have not missed any person who may have been affected, so I could not

give you a categorical answer at this moment. But certainly that is what we are working to do as quickly as possible.

Senator NETTLE—Another thing that is troubling is how you define what might be unlawful detention. For example, in those cases where, as a result of the Nystrom decision, they have subsequently been released, and in the case of the department, the Ombudsman or whoever is doing the defining, what period of their detention would be considered to be unlawful? Would it be from the date of the Nystrom decision? Would it be from the date on which their case was looked at? Would it involve the length of the detention? How do you determine that?

Mr Correll—As soon as we have a legal opinion or view to say that a case is clearly, let us say, Nystrom or Srey affected, our position is to act immediately. If an individual who is Nystrom or Srey affected is in detention, we would take immediate action to remove that individual from detention. If we were continuing to detain the individual under those circumstances of having a legal view, we would not be acting lawfully ourselves under those circumstances. So it is from the point of the legal position assessment.

Mr Mann—Unfortunately, it is not an easy process to assess whether an individual has been affected by that particular case. We have tried to identify any potentially affected persons, conduct an assessment as quickly as possible and, as soon as we have formed a belief that they may be or are affected by that decision, we take steps to release them from detention.

Senator NETTLE—You determine that they are unlawfully detained from the point at which you decide that that court case affects them. The reason I am asking the question is that the Nystrom case was on 1 July. I do not know when these seven people were released. Was it this month, last month? I don't know. You are saying to me that it is your view that they were only unlawfully detained from the point at which you made the determination that they were unlawfully detained.

Mr Mann—My understanding is that it would be from the moment that we believe it is likely that they are Nystrom affected—not that we have determined that they necessarily are, but likely—at which point our reasonable suspicion that they are unlawful would no longer exist, so they must be released.

Senator NETTLE—Are they notified of the point at which you decided it was likely that they might be affected by the case?

Mr Metcalfe—Could I add to what we have said, because if you are interested in this area, I suggest it would be worthwhile if you had a look at a recent High Court decision called Ruddock v Taylor. Taylor was a fairly celebrated case of an individual who had undertaken some very significant crimes and been the subject of cancellation of his visa under section 501. My understanding is that the High Court indicated that what constitutes reasonable grounds for suspecting a person to be an unlawful noncitizen is to be judged against what is known or reasonably capable of being known at the relevant time. So at the time Mr Taylor was detained, the officer concerned had a view that he had had his visa cancelled and therefore it was reasonable—in fact, he was required by law under section 189 of the act—to detain him.

I think the court found that if there are reasonable grounds for detaining someone under section 189 at the time of detention, the lawful nature of detention does not change where a court later finds that the decision leading to a person's detention was affected by an error or mistake in law. I have not had any legal analysis done on this personally; others may have looked at this. That seems to me very much like the sort of case we have had with Nystrom and with Srey, which were the most significant cases, where essentially visas were found by the court to be in existence which were not understood to be in existence by the officers making the detention decision. So with this whole discussion about when a person is unlawfully detained and when it is recognised as being unlawful, I suspect all of this needs to be read subject to this very recent High Court decision. I would be reluctant to give definitive opinions without us having the opportunity to take legal advice on the questions you are asking.

Senator NETTLE—Thank you for that. With the Nystrom case, I understand the consideration was that there were two visas: there was a permanent resident visa, which had been cancelled, and then there was the absorbed person visa. With regard to those seven people who have been released, is it correct that the minister can still decide to cancel their absorbed person visas? So, the Nystrom court case was about the fact that they should not have had their permanent residency visa, but they still got an absorbed person visa. Perhaps I should ask the minister: is that the way it works—the minister can still decide to cancel their absorbed visa? Is that something that you are looking at?

Mr Correll—The answer is yes, the minister can take that decision depending on the circumstances.

Senator NETTLE—I understand there is a hotline that has been set up for people who might have been affected by the Nystrom case. Is that right?

Mr Metcalfe—No, I think you are referring to a hotline we established in relation to the Uddin decision.

Senator NETTLE—Sorry, which decision?

Mr Metcalfe—Another decision, Uddin.

Senator NETTLE—Was that about the student visas?

Mr Metcalfe—That is correct.

Senator NETTLE—So that hotline is only for student visas; it is not for the Nystrom case?

Mr Metcalfe—Yes, that is correct.

Senator NETTLE—We are talking about who has been affected by the Nystrom decision—some people in detention—and I imagine there would also be some people, and maybe you can tell me, who might have accepted a voluntary return or were deported but would also have been affected by the Nystrom case. Is the department doing anything to identify those cases, and can an individual who is in such a situation now come back to Australia? If they were deported before the Nystrom case occurred but would not have been had the case occurred before they were deported, what is their status now with regard to being able to come back to Australia?

Mr Correll—We would have to take advice on that. I do not think we have information at the table on that, so we would have to take that question on notice.

Senator NETTLE—Can you tell me whether or not you are looking at those cases?

Mr Mann—I can say that we are certainly looking at cases still on shore where people are not in migration detention but may still be serving out criminal convictions. So we will be monitoring those cases as the people come up for release from criminal custody. But I cannot add to the answer in relation to those that may have already left Australia, which is the area where we would need to seek advice.

Senator NETTLE—What about the category of people who are currently living in the community who were affected by the Nystrom decision? Is that another category you are looking at?

Mr Mann—No, there would be nothing as a result of the Nystrom case itself that would have us look at those people that have already been released into the community. If they were in either a detention facility or some alternative place of detention, they would have been released as a result of this decision.

Senator NETTLE—On the issue of claims for compensation for unlawful detention that people might take to the court, is there a standard rate of compensation per day, per month or whatever of detention?

Mr Mann—I think that takes you back to the comments the secretary made before about the Taylor case and the fact that a subsequent court decision may result in someone being released, but it would not make their detention unlawful.

Mr Metcalfe—I will ask Mr Eyers to assist us with this.

Mr Eyers—There is certainly no daily rate. The courts have made that very clear over a variety of cases of unlawful detention, not just those relating to immigration matters. There is no daily rate. The other point I would like to make while I am talking, if I could, is that in respect of the Nystrom case an assessment has to be made of each person who might be potentially affected by Nystrom as to whether they have an absorbed person visa—that is, whether they ceased to be an immigrant as at April 1984—and that is an assessment that is not objectively easily made, and a range of information sometimes has to be sought from the person themselves in order to determine whether they ceased to be an immigrant as of that time. So that explains in some respects the length of time that in some of these cases is taken before an assessment is made that they should be released from detention.

Mr Metcalfe—That perhaps underlines the sort of complexity that we sometimes have to deal with. I am quite familiar with the establishment of the absorbed person visa, because I was running the legal branch of the department back in 1994 when the absorbed person visa was created. That was a legislative response in the migration reform legislation to the fact that up until 1984 the Migration Act had been based upon the immigration and aliens powers of the Constitution.

High Court decisions in the 1920s had indicated that British subjects were subject to the immigration power and not the aliens power, which was essentially seen as relevant to non-British subjects. It was possible for a person to move beyond the immigration power by

becoming known as 'a constituent member of the Australian community' and thus absorb into the Australian community and no longer being an immigrant.

In 1984 the then government based the Migration Act purely on the aliens power, so all non-Australians, including British subjects, became aliens. When the migration reform legislation came into place 10 years later, the concept of an absorbed person visa was created. That little history lesson is simply to highlight that these are very complex issues of fact and law and thus each case needs to be looked at very, very carefully in relation to its circumstances.

Senator NETTLE—On the nine people who have been released, can the committee have some details about when they were released, how long they were in detention, how long they lived in Australia beforehand—that sort of information?

Mr Correll—We are just checking whether we have that information at our fingertips. If we do, we will answer now. If not, we will have to take it on notice.

Senator NETTLE—Yes, that is fine.

Mr Mann—No, I will have to take that on notice.

Senator NETTLE—Okay. I ask for when they were released, how long they were in detention for and how long they had lived in Australia. Going back to the issue of codes and which people are being looked at, apart from those cases which have been affected by the Nystrom or Srey court cases—I went off on the path of the Nystrom and Srey cases because that was the answer that I had other questions relating to—are there any categories of people whom you may specifically be looking at to see whether they are unlawful?

Mr Metcalfe—Unlawfully detained?

Senator NETTLE—That is right, yes.

Mr Mann—One of the areas of difficulty is identification and whether there are some doubts about the identity. So we have set up a new national identify verification and advice unit to assist field officers and detention officers make thorough searches as soon as possible if there is any suspicion that the person may be either a lawful noncitizen or, dare I say it, a citizen. The other area where we are also focusing our attention is if it is not immediately apparent from our systems that the person may have some judicial review on foot. That is an area that we need to work closely with the tribunals on and monitor the court listings to ensure that we have picked up any outstanding judicial review.

Senator NETTLE—Sorry, I did not understand that. Can you try me again on that?

Mr Mann—We would not detain someone if they had in many circumstances ongoing review, and I think in the Ombudsman's cases that he is looking at he has indicated that there are some problems in us being able to quickly identify where cases are perhaps with a review tribunal or court.

Senator NETTLE—We got eight categories from the Ombudsman. It sounded like you are suggesting to me another category.

Mr Mann—No, his category of data issues would be where that particular situation would arise in the cases that have been referred to him.

Senator NETTLE—So where you are not sure whether or not they have got a review you think that would fall under the data.

Mr Mann—Yes. What we are doing now is checking that detainees do not have such matters on foot.

Mr Metcalfe—Mr Palmer specifically commented on this issue, this disconnect between the tribunals and the department. Despite people's best endeavours, it is clearly an area that needed improvement. So one of the Palmer implementation projects does go to ensuring that we have far better connectivity between the tribunals, which have the information that a review has been lodged and is under away, and the department being aware of that and its departmental systems recording that fact so that if an officer comes across such a person during compliance activity a database check indicates that in fact there is a review on foot.

Senator NETTLE—Just to look at those eight categories we got from the ombudsman for reasons why, and the minister also mentioned one of them today, which is about children turning 10 and subsequently becoming lawful. Maybe it is just me, but I would have thought that you would have known when a child was going to turn 10. You would know their birthday and you know that from that date they would be lawful. Can you explain to me if that is not the case? If a child is in whatever form of detention they are currently in, I would have thought you would know when they were 10 and would be lawful and should no longer be detained. Am I missing something?

Ms Daniels—With regard to the cases we are aware of, there are a number of cases within the group of children turning 10 and hence acquiring citizenship. I could not guarantee in every case but certainly in a great majority of cases, if not all, that child on reaching their 10th birthday is released from detention and hence the release is coded 'Released, not unlawful'. So it is at the point that they reach their 10th birthday and acquire citizenship that their status changes and hence the release takes effect.

Mr Metcalfe—So a more accurate descriptor would be 'Released, no longer unlawful'.

Senator NETTLE—So you are saying you do not know, of these cases of the seven kids, whether they were released on the day they turned 10 or whether they were released some period later. Is that what you are saying?

Ms Daniels—I am saying that, for those cases that we have where children are acquiring citizenship on their 10th birthday, in the great majority of those, and there are not many of them, they are released on the date that they turn 10 because it is, as you say, quite evident that they are reaching their 10th birthday and hence acquiring citizenship.

Senator NETTLE—The seven children in these cases may well have all been released on their 10th birthday or they may have been released at some point afterwards. But all of them, because of the code they would have been given, would have been referred. Is that what you are saying?

Ms Daniels—I probably need to correct one point. Of those seven children identified by the Ombudsman, not all of them would fall into the category of having acquired citizenship on their 10th birthday.

Senator NETTLE—There could be another reason why those children were subsequently found to have got that code and been released.

Ms Daniels—That is right.

Senator Vanstone—But you have highlighted one aspect. Getting a visa by operation of the courts or something is another category where someone could later become lawful and the category just does not indicate that they were released at that time.

That is why we will be working on changing those categories so that it gives both us and scrutinisers of the department greater clarification because, if they have later become lawful—which is something the Secretary might have just tripped on as one breakdown of it—I do not think anyone would be so concerned when they have been given a visa or become a citizen. The ones that you are concerned about are ones who, presumably, already had a visa or were already a resident or citizen and may have been properly detained but have not been efficiently dealt with after that.

Senator NETTLE—As you were talking, I thought about the Hwang family, Ian and Janey, from Stanmore Public School. They may fall into that category you were just describing then.

Senator Vanstone—I am not going to comment on a particular case now. I will take that on notice.

Senator NETTLE—I am not trying to get you to comment on it. You are saying that category of seven includes people who might be aged 10. I am just thinking of cases that we have talked about before at estimates—Virginia and Naomi Leong or Ian Hwang. Whilst not those cases, they may be the sorts of cases that might fall into that category because there may be some aspect, such as a court case, of being unlawfully detained other than their birthday.

Mr Metcalfe—You have highlighted that there are a variety of reasons, and that is exactly the point that we have been making. There are a variety of reasons why a person may be released under that code. But a simplistic view of that code does not explain the multitude or several different circumstances that may in fact have occurred in a particular case.

Senator NETTLE—One of the other categories is mental health issues. We have talked in other committees about the changes being made seeking to address that area. I am aware of changes that you have talked about before which are being made for mental health care within the detention centres for people who are detained. Do any of the changes that are being made, in dealing with mental health issues, go to the other end of the process, when somebody is detained and, for whatever reason, they cannot identify themselves? Are you looking at implementing changes at that end of the process to identify who has mental health issues?

Senator Vanstone—Yes. There are some very significant changes in that area. Mental health is a problem. Often psychologists or psychiatrists will tell you that after one hour with someone they cannot necessarily tell you what that person's state is. It is therefore very difficult for immigration officers and for police, for example, who bring people to us. We have taken steps, and Mr Correll might be the appropriate person to talk about that. Are you the appropriate person?

Senator NETTLE—I accept, of course, that it is difficult for somebody who is not a mental health professional to determine whether or not someone has an illness. It is difficult for a mental health professional in some circumstances. Do the processes that you are introducing for the beginning of that process include a mental health professional assessing someone?

Mr Mann—I can add from the stage of the process where we may come in contact or locate such a person. Certainly that will be a focus of our training for compliance officers in our new college for security and compliance officers. There is also the process, on admittance to a detention facility, of the screening that occurs at that point in time as well as a backup and more thorough assessment—and my colleague can perhaps expand on that.

Senator NETTLE—I accept that it is important to do that work to ensure that the detention officers understand mental health issues. But my question is about any involvement of mental health professionals. It is a big ask for somebody who is a detention officer to learn enough about mental health to be able to identify that. Can you explain to me any changes made or to be implemented that involve a mental health professional being involved right at the beginning of the process?

Ms O'Connell—In terms of changes to mental health within detention centres, we have recently introduced some significant changes with the introduction of two psychiatric nurses at the Baxter immigration detention centre. Also, there is some improved screening upon people entering a detention centre. I will ask my colleague to outline that improved screening process.

Mr Casey—As Ms O'Connell said, starting at Baxter, we have introduced an integrated mental health services team. It is headed by a mental health team leader and has psychiatric nurses, the psychological staff from PSS and clinical staff from IHMS who are now working in an integrated community mental health team where somebody is identified as having a mental health problem. The identification of mental health problems arises out of the screening tools that are now being used in that team, and they mainly consist of a mental health state examination for all people going into the detention centre, followed by—

Senator NETTLE—Did you say a mental health state examination?

Mr Casey—Yes. It is part of the general health assessment.

Senator NETTLE—You mean 'state' rather than 'State'.

Mr Casey—Yes. That is the name of the protocol. Another protocol, the Health of the Nation Outcomes Scale, is used very extensively in community and acute mental health services in Australia. It involves a number of items on which somebody is scored by observation from a trained psychiatric professional.

Senator NETTLE—These are done for somebody when they arrive at Baxter by one of the mental health workers?

Mr Casey—Mental health nurses, yes.

Senator NETTLE—That is good to know. Not everyone starts the beginning of their detention at Baxter, so what is being implemented for mental health assessment not just for

people who are going to Baxter but at the beginning when people are detained? Are there any nationwide strategies?

Mr Casey—Yes. The same process will be introduced into the other detention centres by the end of the year. At the moment we are working with the health provider in a recruitment and coordination strategy to get people employed and also doing the necessary physical alterations of health facilities at the centres to have somewhere for these staff to work. So that is in place at the moment. There are a number of improvements being undertaken, including minor building works, and we are working with GSL and its subcontractors on a recruitment strategy. We have a health services delivery group which comprises DIMIA and those three other agencies that meet on a two- to three-week basis to work through the implementation of the same sort of model that is operating at Baxter across the other centres.

Senator NETTLE—How would somebody who was detained but not at a centre be able to access that mental health screening? For example, Vivian Solon was never detained at a centre. Would somebody who did not end up in a detention centre access that mental health screening?

Mr Casey—I cannot talk for all of the airports, but I was in discussions with the manager at Brisbane Airport recently and raised the issue of when they are detaining somebody at the airport. There were discussions with the local health provider, a private hospital in Queensland, with a view to seeing how well he could get a psychiatric opinion as opposed to the normal general practice. As you know, before somebody would leave, they need to be assessed by a clinician as to their fitness to travel. So the issue about how people will get access to a psychiatric opinion, for example, if they wished to are issues that are part of what we are looking at as part of this long-term health strategy that we are putting in place. I think it is a good question in terms of, say, airports or somewhere like that, to make sure that people do have access and are able to contact somebody if they want some form of professional opinion as to the person's mental health state.

Ms O'Connell—Senator, I think you also asked about people leaving immigration detention centres who may have some mental health issues and how that is managed as they depart.

Senator NETTLE—I don't recall asking that, but I am happy to hear about it.

Mr Mann—One of the projects that we will be piloting over this coming year is a community care model, which we are developing with NGOs and service providers, for people that are not in detention facilities but may have special care needs. This is to pick up some of the areas that you have identified: if people are not in a detention facility, how they might they be identified and supported—residence determinations. We are looking at the scope of how much further beyond that population we might be able to provide that kind of assistance. That will be a 12-month pilot over the next calendar year.

Senator NETTLE—Mr Casey, you were talking about the mental health team at Baxter. I have asked questions previously about the requirements of the contract with DIMIA and GSL which stipulated the setting up of a health advisory panel.

Mr Casey—Yes.

Senator NETTLE—I know the last time I asked about that it had not been set up. How is that going?

Mr Casey—I think it would be fair to say that the first attempts earlier in the year did not meet with a lot of positive support from a number of medical groups in the country, but we are going around again. I have recently met with the college of psychiatrists and have had discussions with them, particularly in relation to Mr Palmer's view about us having a health advisory panel or health advisory group. We are also now in the process of talking to the college of general practitioners and a number of other bodies that, I think, in terms of the changes that are taking place, we would like to re-engage with and have discussions with, about the role that they might play in helping us to establish a group that can continually give advice to the organisation about appropriate health issues. It would also be a group that can work with us in developing, for example, the sorts of health standards that we might want to put in place and the sorts of accreditation processes that might be appropriate for the health services that we are providing.

To date, in the two months that I have been here, I have been to the college of psychiatrists, I have met with the Mental Health Council of Australia, and I am now starting to meet with some of the other players. Next week I meet with the National Mental Health Working Group, which is the Commonwealth-state group that deals with mental health policy in the country. So, yes, it is back on the agenda and it is something that is being pursued actively.

Ms O'Connell—Senator, I could add to that. On 5 October, we met with a group of people, including Dr David Chaplow who was the medical and mental health adviser to Palmer on the Palmer report. At that meeting, we prepared a draft terms of reference for this health advisory panel. The important factor emphasised at that meeting was the need to ensure that all of the bodies support the creation of the health advisory panel, and that we receive the appropriate representation. That is why my colleague is now outlining the process by which he has been gaining that support and representation. When that is done, we will proceed to put that panel in place.

ACTING CHAIR—Senator Nettle, whilst I have given you a fair bit of leeway because most of this involving change management is covered under the general questions, much of this is actually under output 1.3. I would propose that we move to output 1 and move through those outputs in that way. Do you have any difficulty with that?

Senator NETTLE—I will ask one more question on the overall Ombudsman theme. But I am happy to leave the other mental health questions until later. In the directions or terms of reference that the Ombudsman has been given, has the Ombudsman been tasked with giving any recommendations in relation to whether or not any compensation should be paid if cases are found to have been unlawful, or is that not part of what the Ombudsman has been asked to do?

Mr Metcalfe—Senator, I will correct this if I am wrong, but my understanding is that the matters have been referred to the Ombudsman for investigation under the Ombudsman Act, and so I would imagine that the full range of powers and responsibilities he has under that act are issues that he will take into account. I am not an expert on that act, but you may wish to ask him about that.

Senator NETTLE—Unfortunately, I did not get the opportunity to do that last night, and he does not appear before Immigration estimates, even though he is now the Immigration Ombudsman. So perhaps I can ask you about your expectations in relation to recommendations that you will receive from the Ombudsman—if he has been tasked to do that and, as I have heard, to determine whether or not those people were unlawful. Is it the department's expectation that he will go further than determining whether or not people are unlawful, to the point of making any recommendations around compensation or other issues?

Mr Metcalfe—I would not want to hypothesise about what the Ombudsman might recommend. We have now had the first case—Ms Alvarez's case—which was undertaken by Mr Comrie, under the auspices of the Ombudsman and pursuant to the Ombudsman Act. We have obviously seen the outcome there. I think it would be inappropriate for me to hypothesise about what the Ombudsman might or might not do in relation to his powers.

Senator NETTLE—But you are not aware of any limitations that have been put on the Ombudsman in relation to the terms of reference of his inquiries.

Mr Metcalfe—He has been asked to look into the matters pursuant to the Ombudsman Act.

Senator NETTLE—I agree that we cannot speculate on what those recommendations may be.

Senator CHRIS EVANS—Can I ask some questions on the same subject as Senator Nettle's questions?

ACTING CHAIR—Sure.

Senator CHRIS EVANS—It goes to the resources of the Ombudsman. I understand he informed the committee the other day that he hoped to finalise things—he could not even say all the reports—by the end of 2005-06. It seems to me that it is going to be quite a lengthy process before we get to the bottom of all this. Have there been any discussions with him about resource issues to allow him to complete his inquiries with more expedition?

Mr Metcalfe—I think the Ombudsman has separately sought and received resourcing in relation to the additional responsibilities that he has been asked to take on. Really, the issue of resourcing is one for him to talk about. But, as far as the department is concerned, we certainly have undertaken to provide the greatest possible cooperation with the Ombudsman. We have established a small senior liaison group to work directly with the Ombudsman and with Mr Comrie. I think that has ensured that there is a highly efficient interchange between the two organisations. But, as far as his own resourcing is concerned, you would have to ask him.

Senator CHRIS EVANS—I suppose the first question is: is DIMIA providing any assistance to him in terms of resourcing?

Mr Metcalfe—I will correct this if I am wrong, but we are not formally providing any resourcing to him in terms of the fact that I have not seconded staff or made money available to him. But what I can say is that we have established some dedicated resources to ensure that, in working through these matters with him, he is getting very swift and proper responses to any questions he might have.

Senator CHRIS EVANS—I accept that; I am just trying to concentrate on the public interest in getting these matters resolved.

Mr Metcalfe—We all share that, Senator.

Senator CHRIS EVANS—I would have thought that you, foremost among all, would have liked to move on and get this resolved. I was just a bit concerned by what I read about his evidence to the committee chaired by Senator Crossin that, at the earliest, we are talking about the end of the financial year 2005-06—and I think there was some suggestion that inquiries were going to go beyond that. As I say, I think it is in everybody's interest to get to the end of the process. Are you suggesting he sought additional resources from Finance?

Mr Metcalfe—That is my understanding, but it is not within my direct responsibility. But I do understand that the Ombudsman believes that many of the cases do not require individual inquiry but can be looked at together because the issues are similar, such as some of those matters we were discussing with Senator Nettle earlier. But I really think you would need to talk to him about how he intends to go about undertaking his work and the time periods and resourcing associated with that.

Senator CHRIS EVANS—Thank you.

Senator NETTLE—Can I ask something else on the Ombudsman? The other inquiry that the Ombudsman has been tasked with is the review of people who have been in for over two years. Have any recommendations been received from the Ombudsman to date in relation to people who have been in detention for over two years?

Mr Correll—I am advised that we have received two reports in recent times from the Ombudsman in relation to long-term detainee cases.

Senator NETTLE—Out of how many cases that the Ombudsman is looking at?

Mr Fleming—Over time, the Ombudsman will be looking at the 149 cases of persons who had been in detention for two years or more when the legislation came in on 29 June. We have to refer reports to the Ombudsman on those progressively within six months of that date, which we have been doing. We refer any new cases after that date to the Ombudsman within 21 days of them hitting that two-year mark. So those processes are happening. As Mr Correll said, the minister has received two reports from the Ombudsman just recently and they, in accordance with the legislation, will be tabled shortly. They are required to be tabled in parliament.

Senator NETTLE—I was going to ask when they might be tabled. How many cases have been referred to the Ombudsman to date?

Mr Mann—As at 26 October, 144 cases have been referred.

Senator CROSSIN—Do you have a breakdown of the nationality of those cases?

Mr Mann—Of the ones referred to date, no, but we can quite easily take that on notice.

Senator CROSSIN—You don't have it with you?

Mr Mann—No, not the nationality breakdown of those cases.

Senator LUDWIG—I asked for some of that information earlier in relation to the ones that have been referred. When will that be available? I think you were going to go and have a look at the 221 today.

Mr Mann—We will try to at least get you an answer to that question within the hour.

Senator LUDWIG—I just wanted to follow up on some questions about that. Under original question 078, I asked for significantly more information than that which you have provided. Perhaps you can reflect upon that and look at getting us a more fulsome answer today in addition to Senator Crossin's request—not only the period of detention, the nationality of the detained person and the length of detention but the reason for release. In other words, a more fulsome reply. You can then put the reply in terms of whether they were removed, whether they were then released or whether they were granted a particular visa and, if so, what class that was.

Senator NETTLE—I will just add to the question you are taking on notice for Senator Ludwig. Whilst we might not be able to get all of them—I do not know what the time frame is—is it possible for us to get—or maybe you already know—the nationalities of the people who have been detained for five to six years and six to seven years? Can we put a priority on that one and see if we can get at least that bit?

Mr Correll—Are we talking here about the 221 group still, Senator?

Senator NETTLE—Yes.

Mr Correll—I am understanding that this question is covering the total 221 group—both aspects. I will attempt to get that information back later today. I think that should be achievable for both Senator Ludwig and yourself. If there are any problems with that I will report back later in the proceedings.

Senator CROSSIN—I have a few questions to follow up on that. Mr Metcalfe or Mr Correll, in relation to the Ombudsman's report, I just want to follow up on some questions that we asked during the inquiry we are having. Was the Ombudsman given the power, or did he always have the power, to investigate what may or may not have happened in the minister's office?

Mr Metcalfe—I will have to take advice on that.

Senator CROSSIN—He seemed to indicate to us in the hearings that he had that power. Could you advise us whether any contact was made with the minister's office from the Ombudsman in relation to that inquiry?

Mr Metcalfe—In relation to which particular inquiry?

Senator CROSSIN—The Comrie report, really.

Mr Metcalfe—Ms Alvarez?

Senator CROSSIN—Yes.

Mr Metcalfe—I would have to ask the Ombudsman as to what he did, and the Ombudsman would probably have to check with Mr Comrie, so it would be something that we would need to check on. My understanding is that the intention in referring the matters to the Ombudsman is that it allows him to investigate, pursuant to his act, as he sees fit under his

own notional powers, so the powers he has available to him under his act are available to be used. What happened in a particular circumstance about that inquiry is something that you should address to him. If you would like, I could ask the Ombudsman as to whether he would be prepared to provide an answer to you.

Senator CROSSIN—We are seeking to have Mr Comrie appear before us next Tuesday night, because there are still many unanswered questions in relation to his inquiry, particularly in relation to the email that Ms Solon's ex-husband sent to the minister's office that sat unread or unattended to for 21 days. It seemed to me that there was another chapter of Mr Comrie's report missing, that his inquiry seemed to stop when it got to the minister's office. I am wondering if you can shed any light on that for us.

Mr Metcalfe—I cannot shed any light on that issue. What I do know is that there was a very unfortunate chain of circumstances that led to Ms Alvarez's removal. It has been described as catastrophic, and I have said here on the record that I only agree with that. In relation to the issues later in his report, about the knowledge that appeared to arise within the department in 2003 and 2004 that in fact an Australian citizen had been removed improperly, indeed unconstitutionally, he clearly has a fair bit to say. Recommendation 12 of the report deals with that and, as you are probably aware, my delegate has instituted action under the Public Service Act in relation to that. But, on the matter you have raised, I am just not familiar with that.

Senator CROSSIN—I have a question as a follow-up to the statement the minister gave previously about the workload of the department. It seems to be a consistent line that we hear in relation to problems the department has experienced. Is part of the commitment of the funding that has been announced, the $230 million, to try and alleviate the burden of that workload?

Mr Metcalfe—Let me say two things. Firstly, I think the minister, in providing those statistics before, was simply seeking to put on the public record the fact that we are a big department that undertakes a great deal of work. That is not to in any way deny that in some key areas our work has been far from optimal, far from acceptable. We fully accept that. What the minister, I think, was indicating was that we employ many thousands of Australians, they are committed to doing a very good job, they are proud of what they do and, in providing record numbers of migration outcomes, record numbers of refugee outcomes, record numbers of tourists and students coming to Australia and benefiting our economy and in the two-way transfer of knowledge and people, we have a very good story to tell. That does not mean that in some areas we do not need to significantly lift our game. In relation to the second point, essentially the department has been provided with an additional $231 million. The vast majority of that is new money.

Senator CROSSIN—Mr Metcalfe, can I just stop you there. I do have further questions about the breakdown of that $231 million that I will go to later, but I specifically want to ask you whether you believe that the burden on your department can be alleviated by more additional resources and funding in the form of more staff. Is that one of the ways in which the problems of the past can be eliminated, to actually alleviate the burden of the workload on your staff?

Mr Metcalfe—Yes.

Senator CROSSIN—So what level of resources and funding do you believe is required? I am pretty much across how the $230 million will be spent. It does not seem to me that that will give you more staff.

Mr Metcalfe—It does.

Senator CROSSIN—It might give you better training and better IT, but I cannot see a large injection of staff who will assist in picking up some of the burden that your existing staff, for example case officers, carried.

Mr Metcalfe—It does a number of things. I believe it will provide approximately 200 additional staff at various levels within the organisation. It was quite clear to me that the strain on senior executives in the department had become untenable, not only because of workload issues—and we are dealing with growing workloads—but also because of the fact that we are rightly in an area of intense public scrutiny and interest. I suspect that no organisation in Australia is more scrutinised than the Department of Immigration and Multicultural and Indigenous Affairs—and given what has happened, rightly so. However, no-one should kid themselves that that level of scrutiny does not bring with it a cost as well.

We devote a very substantial amount of our resourcing to responding to FOI requests, parliamentary inquiries, media inquiries, contact with the Ombudsman and so on. That is the system and that is fine, but that is not to say that there is not a cost associated with it. We are happy to talk about this in detail later, but some of that funding does go to funding the additional senior executive staffing in the department and other people in the organisation. In addition, I have closely examined the existing departmental budget and believe that there was room to distribute funds in ways that had not been done previously. One of my early decisions was to distribute some millions of dollars to our state and territory office network which will directly allow them to employ more staff on the counter and provide better services to people.

Senator CROSSIN—Do you have an idea of how many that would be?

Mr Metcalfe—In terms of numbers of people?

Senator CROSSIN—Yes.

Mr Metcalfe—I will have to check on that, but many millions of dollars have been provided to ensure greater certainty to our staff. Some of the training and other initiatives that we can talk about in more detail later build in a component of ensuring that there are replacement staff so we are not just training people and taking them out of the workplace. We are ensuring that there is a greater number of people so we can continue to do our job while at the same time we lift our skill levels.

Sone of the other initiatives go to strengthening client services. We have almost infinite demand for telephone contact and we have responded to that by establishing call centres. Our response to date overseas in relation to people wishing to inquire about visas has been far from optimal and we are going to fix that as part of our client service. While this additional funding primarily responds to the Palmer and Comrie recommendations and is heavily devoted to training and systems, it also goes beyond Palmer and deals with issues of client

service. If you would like detailed disaggregations about numbers of staff and where they might be, I can give that to you on notice or later on.

Senator CROSSIN—So what are you saying? Are you saying that the department is overburdened and understaffed? Do you hope that the $230 million will go someway towards relieving that?

Mr Metcalfe—It is always a bit unfair to put departmental secretaries in the position of giving an iron-clad guarantee. You know the system, Senator. I have a system to work within. The Department of Finance and Administration has not in my experience been a blank cheque. We have to very properly justify our bids for the expenditure of taxpayers' funds. However, I believe that this additional resourcing is necessary to enable us to better resource key areas, to better train staff and to improve our systems. Could there be more? Yes, of course there could always be more. Is it a fair balance? Yes, I believe it is. I have been in the job for three months and that is my view. I will continue to keep these issues under review and to pursue them with the Department of Finance and Administration if I think it is necessary.

Senator Vanstone—Apparently, in my absence a question was raised in respect of an email from Ms Alvarez's former husband and the proposition was put that it was sitting in my office for 21 days. That is not quite right. I have a private email, which comes directly to me, and I have the ministerial one, which is read in the department. So if anyone is under the misapprehension that an email was sitting in my office for 21 days, I can tell them that that is not right. That web site email is looked at by the department and obviously it was addressed by them and then brought to my attention in accordance with answers given in the previous estimates.

Senator CROSSIN—I might come back to that, now that you have raised it, because I think the 21 days is actually the timeline specified in the Comrie report. I will get a copy of that report and we will go back and verify it.

Senator Vanstone—It is the time period between when it went to my web site, but that is a different issue from whether that web site is looked at by my office. It is not. It is looked at by the department because it primarily has people writing to me as immigration minister, as in a letter that would be sent out.

Senator CROSSIN—I will come back to that. It is certainly an issue that has been raised in one of the reports that I have read, and we have raised it with the Ombudsman in an inquiry. In relation to the $230 million, $50 million of that is for retraining. Is that the $50 million that has been allocated to go towards a college of immigration, border security and compliance? Is that $50 million one and the same?

Mr Metcalfe—Sorry, Senator; I was temporarily distracted. Are you asking about the $50 million for training?

Senator CROSSIN—The establishment of the college—is that $50 million one and the same?

Mr Metcalfe—$50.3 million has been provided over the forward estimates period for the immigration college. I had all of this in my opening statement, Senator, which I abbreviated. So it is on the record because I have tabled that statement. The answer to your question is yes.

Senator CROSSIN—So when we talk about $50 million for retraining, that includes the college—it is one and the same? It is not $50 million for the training and $50 million for the college?

Mr Metcalfe—There is $50 million for the college and there is an additional $16.6 million for other training initiatives.

Senator CROSSIN—Tell me about where this college will be established. Who will run it? How will it be accredited?

Mr Metcalfe—We are currently in the process of exploring those issues. We do not yet know where it will be established, whether it will be established in more than one place or who will run it. What we do know is that it is not $50 million to build a bricks and mortar institution. As with a number of other organisations—the Australian Customs Service is a good example—I think it is most likely, although I have not made a decision on this and the minister has not been asked to provide her views on this, that we will enter into a partnership with a registered training provider, quite likely a tertiary institution. We would work with them to develop the curriculum and we would use their facilities. Whether they are in the one place or multiple facilities are issues to be worked through. One of the new appointments that I have made to the senior executive of the department is a national training manager to elevate the training function from being a section in Public Service terms to a branch. One of the first tasks of that national training manager will be to develop options for us on this issue.

Senator CROSSIN—What will people do? Will they end up with a certificate or a diploma in how to handle immigration cases humanely?

Mr Metcalfe—The college is primarily, and certainly initially, intended to focus on immigration, border security and compliance issues—the areas that have been the subject of the most significant criticism by Mr Palmer. We expect that there will be five streams across the college—immigration compliance, investigations, detention management, border management, and immigration intelligence issues. The intention is that new staff, whether they are existing staff or newly recruited staff, the people moving into those areas, would undertake a comprehensive induction program.

That could mean that they have up to 15 weeks, depending upon their background, knowledge and skills. It will be a combination of classroom learning, possibly some internet or computer based learning as well as work experience. Our expectation is that it would lead to a certificate level 4 in competency. In due course I would like to explore whether we can take the opportunities for learning and recognition of that further and see whether some sort of diploma might be possible. The college would also provide annual refresher training to staff working in those areas. So the primary function is to ensure that people who are exercising those very significant powers of arrest or detention under section 199 of the act and related issues understand those powers, are well versed in them, understand the issues, are properly trained in relation to taking information from people, are skilled in relation to the identity verification matters—all of those issues that have been identified as areas for further improvement—and that on an annual basis they are given refresher training. We see this as a very significant response to what has clearly been a significant problem.

Senator CROSSIN—So there is currently no training division within the department.

Mr Metcalfe—There is a training section in the department and by—

Senator CROSSIN—Why not expand and use the resources of that section rather than—

Mr Metcalfe—That is exactly what I am doing.

Senator CROSSIN—I thought you said one of the possibilities was to enter into a partnership with a TAFE provider.

Mr Metcalfe—Yes, but that is not inconsistent with the fact that I am using an existing section. I am building that into a branch, which is a more significant part of the organisation, but I do not think it is desirable for us to have simply all of our training responsibility in-house. There are expert training providers and usually the most efficient way is to contract with those training providers to deliver the actual training. That is not to mean that there would not be some in-house provision of training as we currently do but, with such a significant development, clearly we will need to have access to a number of experts—people in training, people with expert knowledge. To simply try and do that entirely within the department would be counterproductive.

Senator CROSSIN—So the breakdown of the $230 million—can you provide that or was it in your opening statement?

Mr Metcalfe—I will get that in front of me. What sort of level of detail do you want to go to?

Senator CROSSIN—A minute level. I am happy for you to table it for us.

Mr Metcalfe—I will see if I have a document here that I might be able to table.

Senator CROSSIN—For the purposes of *Hansard*, could you give us some broad breakdowns? You can table the fine details if you would like.

Mr Metcalfe—I will undertake to table it and I will check whether we have it or we can get it over here, otherwise I will take it on notice. In reasonably fine detail, the $231.1 million package is funding for this year and the four years of the forward estimates period, so it is a five-year package: $50.3 million for the college of immigration border security and compliance; $16.6 million for other training on immigration systems and activities; $17.9 million for improved immigration detention health service; $15.7 million for improved immigration detention facilities, including the fact that we strongly believe we need some facilities in Queensland; $19.2 million for the immigration compliance and detention case management and coordination, including the pilot of the community care model that we referred to earlier; $25.5 million for improved client services and feedback response management—these are issues that go a bit broader than Palmer as I indicated earlier; $12.9 million for improved quality assurance and decision making; $10.3 million for improved records management—a crucial issue as we have discussed here this morning; and—

Senator CROSSIN—Would that include a new computer system? Is this a database?

Mr Metcalfe—It does not include a new computer system. We have other funding for improved computer systems, and Mr Correll would be able to talk about that under the appropriate output item if you would like. That is particularly to look at this issue of records management where, as I described earlier, in our complex cases we can quite often have

multiple paper and electronic records. Getting to the bottom of a person's status can be highly complicated. As one of a number of partnerships that I have entered into with other key public sector organisations, I am delighted that the National Archives of Australia has agreed to partner with us to look at our records management. Essentially, we have an ambition to have the best records management in the public sector in Australia—not, I suspect, the worst. Then there is $62.7 million in other change and reform measures. On notice, I could disaggregate that further.

Senator CROSSIN—I might stop there. I have some other areas I wanted to ask about but I am not sure if Senator Bartlett or Senator Ludwig wanted to ask some questions.

ACTING CHAIR—I will remind that committee that, it being well after midday, we have been deliberating on these matters for over three hours and we have not quite approached outcome 1 at this stage. In that context I would remind senators that supplementary budget estimates for Department of Immigration and Multicultural and Indigenous Affairs will be closing at 23.00 sharp this evening. Senator Nettle, you have one short question on this matter?

Senator NETTLE—Yes. I had a question about the Ombudsman before we leave that. With regard to the two recommendations you talked about that had been to the minister, have those two detainees been released?

Senator Vanstone—I am sorry; I am not sure which detainees you are talking about. You may have asked something while I was out of the room.

Senator NETTLE—I was talking about the long-term detainees that the Ombudsman has been looking at. The answer was given that there were two recommendations that had been received.

Senator Vanstone—Mr Fleming has the answer to your question.

Mr Fleming—They were, in fact, both released prior to the receipt of the reports from the Ombudsman.

Senator NETTLE—I have questions—actually looking at this I am wondering if they are internal product—about staff turnover and the new slogan. Is this in this area? Do you want me to do that now?

ACTING CHAIR—Yes, indeed.

Senator NETTLE—I will start with the new branding, the 'People—our business' slogan. Can we get a figure on the amount of money that has been spent on the rebranding? There are the name tags, I understand. Are there water bottles as well and new stationery? Can we get figures for that?

Mr Metcalfe—Mr Tongue will assist us in responding to this. Of course, stationery these days is fortunately a very easy thing to change. We have had some minor modifications to our stationery but, of course, it is contained as a template on a computer and it is simply accessed as necessary. So, unlike in the past, it is not an expensive process.

Just before Mr Tongue comments on the detail, in coming to this job and in embarking upon what is a very significant process of change within the department, it became apparent

to me very rapidly that we needed to find a way to very simply sum up what we seek to be as a department. There are a lot of things I have done and a lot of work I have done with the departmental staff to talk about the sort of organisation that we need to be—one which is fair and reasonable in the way it deals with its clients, uses commonsense and, of course, obeys the law. We needed to sum up the fact that we deal with clients and that our clients are people, not just applicants, statistics or internet transactions and we needed to ensure that there is a strong human factor. In the same way, we needed people to recognise that we are Australians trying to do a hard job. We are not robots or automatons as well.

I also needed to come up with a descriptor that was applicable to not only the immigration and multicultural and citizenship aspects of the department but also the indigenous policy coordination aspects. So we came up with the tagline, 'People—our business'. Having come up with the tagline that people are our business, it was, I think, important to just remind people about it as often as we can. People may not necessarily want to see it all the time but it is just important for me, in this process of cultural change which is being talked about so much, to find ways to remind staff and remind people more generally that we understand that our job is about working with people and that we have to do so in a fair, reasonable, commonsense and human sort of way.

So, after some discussions in the department and with the minister, we agreed on the tag line 'People—our business'. We have implemented that by a very minor change at the bottom of our letterhead, as you will see in the annual report, I think. We have implemented it by having a screen saver on our computer systems so that, when you do not use the computer for 30 seconds or whatever, it defaults to a 'People—our business' logo. The tag line is supported by an action triangle in which the key pillars of our reform process—being fair and reasonable, being open and accountable and so on—are reflected. We have then developed, at very reasonable cost, some internal products which remind people. One is a pass-holder, a lanyard, which says, 'People—our business'. There are some water bottles and coffee mugs. Mr Tongue can perhaps give you a bit more detail about that. If you would like a set to be tabled, I could probably arrange that.

Mr Tongue—As at 31 October we have spent $26,797.36 on promotional products for staff.

Senator NETTLE—And that is on stationery, screen savers—

Mr Tongue—That is the promotional products for staff, banners that get used at events—we have produced some banners for our state offices to use when they are setting up promotional events—and the products Mr Metcalfe mentioned.

Mr Metcalfe—It would not include the letterhead, because, as I said, that is virtually no cost. There would be a little bit of staff time associated with developing the letterhead. And with the screen saver, again there was a little bit of internal staff time associated with developing it. But the physical products that Andrew Tongue described—the lanyard, the plastic drink bottle and the coffee mug—amount to $26,000 across a department of 6,000 people.

Senator LUDWIG—No stress balls?

Mr Metcalfe—We did develop—and again I am happy to table it—I would not call it a ball; it is a bit more of a jigsaw puzzle.

Senator CROSSIN—That is probably very appropriate.

Mr Metcalfe—It is probably four little stress balls, which have those concepts: 'People—our business', 'Fair and reasonable', 'Open and accountable', 'Well supported and trained staff'. It is a reinforcement and a reminder. A lot of what I am doing is talking with executive staff, senior staff, all our staff and trying to get this message well and truly understood—that these are the expectations. A number of those things have been produced as well.

Senator LUDWIG—Posters?

Mr Metcalfe—Mr Tongue described—

Senator LUDWIG—A banner but not a poster.

Mr Metcalfe—We have had them previously. We had some for citizenship. We had some for the department. The way that we tend to promote ourselves is that we have the Australian government crest, the departmental name and we then have traditionally had a series of faces, a bit like on the front of the annual report. What we have now done is produced those with 'People—our business' as a significant part of that banner as well.

Senator LUDWIG—Erasers, pencils?

Mr Tongue—No. We have kept the product suite pretty small and tight because of the cost issues.

Senator LUDWIG—Caps?

Mr Tongue—No.

Mr Metcalfe—No, but we are always open to suggestions.

Mr Tongue—Any way to get the message out to 6,000 people across 60 locations overseas and 15 locations nationally.

Senator NETTLE—Did you say before, Mr Metcalfe, that the slogan was developed by a group of people in the minister's office? I am just wondering whether you paid a consultancy to come up with the slogan.

Mr Metcalfe—This is not unique. I know that the department of education some years ago, in developing its cultural change, came up with the tag 'Open for business', which was meant to engage better with universities and other sectors. We ran a competition amongst our staff. I was the final judge and arbiter—the sole judge and arbiter—but the minister, of course, was personally consulted with.

Senator LUDWIG—She had the veto.

Mr Metcalfe—The minister was an important aspect of consultation and she was delighted, I think, at the final phrase we came up with. I had been talking a lot about these themes, so I am not entirely surprised that we came out where we came out. I suspect it is probably about where I started from in the first place, which was that we needed to find ways of describing that we are a department dealing with people and we have to do so professionally, and I needed to find something that was relevant to all aspects of the portfolio.

So we ran a staff competition. A lot of people contributed. Quite a few people came up with people, business and those types of themes, and there were two people who were either right on or very close to that tag line. They received from me a very small certificate of appreciation and some internal recognition through our staff newsletter.

Senator CROSSIN—I want to go back to the email issue. I think we need to ask a few questions about this. The Comrie report on page 23 gives a chronology of this instance.

Senator Vanstone—Yes, I have that in front of me.

Senator CROSSIN—He mentions that Mr Young emailed the office of the Minister for Immigration and Multicultural and Indigenous Affairs. You are saying that that email web site is managed by DIMIA's ministerial and communications section. Is that correct?

Senator Vanstone—I think Mr Storer can tell you who in DIMIA looks at it. It may be possible to access it from my office, but we have the department do it because people who contact it want to contact the minister, in the same way as when they write a letter to the minister. We were, as we have made clear, provided with a draft. I think we looked at that and thought it is true to say that someone thinks they are emailing the minister's office. Whether that means the physical office or the office held is another matter.

Senator CROSSIN—I understand. You say 'we looked at it'; who would 'we' have been?

Senator Vanstone—A draft was provided, and I do not mean on this particular point. I do not think we necessarily focused on that. Someone might have—I do not know. All I am saying is there is an ambiguity that you are looking at. I think you are reading that as physically arrived in my office and was looked at.

Senator CROSSIN—That is what I want to get clear at these estimates.

Senator Vanstone—I understand.

Senator CROSSIN—Is that the case or is it DIMIA's ministerial and communications section that looks at that? Who picked up that particular email when it came through?

Mr Storer—All mail primarily comes into the ministerial and communications section. In this case the email arrived—

Senator CROSSIN—Of the department?

Mr Storer—In the department. As the minister mentioned before, she has a personal email site, but for her responsibilities as minister emails come into the department—the same way a letter may came in. The minister and the department get more correspondence than any other department. I cannot remember the exact figures but over the last year we have had around 55,000 pieces of correspondence. When this email arrived from Mr Young on the web site, it was amongst a mixture of thousands of pieces of correspondence that we would have had at that time.

Senator CROSSIN—On that day?

Mr Storer—On 4 April—that is correct.

Senator CROSSIN—Can you provide evidence of that to this committee?

Mr Storer—I think I can. I will have to go back and see what was available at that time. April was a very busy time, as you can appreciate. A lot of people were writing with their views regarding the Ms Rau situation. There were many other controversial issues going on, so there was a lot of correspondence and a lot of activity. What happens in terms of the way correspondence is handled—and this would have happened on the 4th—is that all of the thousands of pieces of correspondence, emails, hard mail and other forms, get categorised and registered to be sent on to whoever is going to deal with them and eventually send the suggested response to the minister for her consideration. At that time, because there were such a lot of mail, this was categorised as not of high priority by junior officers who picked it up. By the time they got around to registering it, which was 20 days later, I think—

Senator CROSSIN—Sixteen, according to this report.

Mr Storer—I know it was 20 April. When the junior officers were registering it, they brought it to me and said, 'This may be of interest.' It was 20 April—I cannot tell you the precise time. Then I took it up to the acting secretary and the deputy secretary at the time and said, 'I think this is very important.' That was late in the day of the 20th. They then followed that up by pursuing a bit more investigation. My understanding is that the first time they brought it to the attention of the minister's office was the next day, the 21st, to Dr Nation. Following that we had to contact the minister and the secretary, who were overseas at the time in Washington.

Senator CROSSIN—So are you saying that, predominantly, in your ministerial and communications section, you have junior officers who would, on the average, deal with routine inquiries and emails. Is that correct?

Mr Storer—Yes.

Senator CROSSIN—But this is not the first time Mr Young had contacted DIMIA. This was the first time, out of desperation, he emailed the minister's office directly, but it was not the first time DIMIA had heard from Mr Young, was it? He had made repeated attempts, as I understand it, to contact and pursue DIMIA and even the Queensland missing persons bureau. Is that correct?

Mr Storer—I understand, from reading the reports, that that is correct. But this was the first time that our ministerial and executive area that deals with correspondence and mail had been contacted. I understand that before it was by phone to call centres and so on.

Senator CROSSIN—Have you conducted an investigation as to why there was such a time lapse, given the importance and priority of this case? There must have been a number of people who would continually be contacting DIMIA in relation to this person. Why did your ministerial section not know who those relevant people were?

Mr Storer—As I said, at that time there were 7,000 pieces of correspondence that they were actually dealing with. Normally, a month at a time, there would be about 3,000, so it was an exceptionally busy time. Everything is a priority, Senator, and has to be dealt with. In the way it was categorised, it just did not jump out at them as being of particular priority. So they set it aside to be registered in a lesser priority sense. But as soon as they got around to registering the letter—'Let's get on with this now because it's gone down the queue of

priority in dealing with this correspondence'—they brought it immediately to my attention and I immediately brought it to the senior executive's and to the minister's attention.

Senator CROSSIN—Since that time has anything occurred inside the department to look at the way in which those emails are treated or at the efficiency or priority certain emails get?

Mr Storer—Yes, we have. Hindsight is a wonderful thing—

Senator CROSSIN—That is the way this department has been operating lately.

Mr Storer—Yes, but we do try to be much more efficient in the way we deal with correspondence and letters—as best we can. Everything takes time and that is all we can do. We are trying to be faster, more efficient and deal with correspondence in much more effective ways.

Senator CROSSIN—When you have a case of national recognition such as this, there must be at least a dozen or so names attached to this case that you would expect to hear from or that you have heard from. Are those names not given to that section to alert them to that?

Mr Storer—Can I just say that this is the letter that brought it to national prominence. At that stage we did not have it, and that is—

Senator CROSSIN—Despite the fact that Mr Young had contacted DIMIA many times?

Mr Storer—But not by correspondence. At that stage we did not know. As I said, when junior officers dealing with 55,000 pieces of correspondence every year get confronted with another piece, they do not know that. But as soon as it came to the attention of someone a bit more senior—me, in that case—we immediately acted upon it and then brought it to the minister's attention as something that has now become of national prominence because of that. At that stage, they did not know.

Senator CROSSIN—How did it get on a list of things that were not high priority, though? How can it be that it was not considered an absolute priority the minute someone read that email?

Mr Storer—We get lots of emails and other correspondence that deal with the particular circumstances of people's cases. As Mr Metcalfe has been saying, our cases, those that the department deals with, are extremely complex, and lots of people want to bring them to the attention of ministers and governments. You know: 'We have something we particularly want to draw to your attention to follow up.' Now, a vast proportion of the 55,000 bits of correspondence—I do not know exactly; I would have to break it down—deal with individual claims and people's circumstances. They feel that something has gone wrong and they want to get some personal correspondence. As parliamentarians most of you would know: half your work is taking up issues related to people coming into your office saying they have not been treated fairly by the department or 'I want to know what has been happening' and so on. A lot of that then comes through the correspondence. This at the time seemed to be another one of those and did not seem to be as high a priority as some other cases that were before the minister and the department.

Senator CROSSIN—Even though, if my memory serves me well, the email began with, 'This matter is serious.'

Senator Vanstone—Everybody regards their immigration matter as serious.

Senator CROSSIN—This was pretty serious, though, wasn't it?

Senator Vanstone—It was. As Mr Storer has pointed out, subsequent investigation of the email displayed just how serious it was. All I am saying to you, Senator, is that the statement by someone, 'This is a serious matter', is not an unusual statement for us to read.

Senator CROSSIN—So what is the time line since Dr Nation, who was then the deputy secretary? She was the only person, I understand—

Senator Vanstone—No, Dr Nation is chief of staff of my office.

Senator CROSSIN—Well, what is the time line between the deputy secretary receiving this email and the chief of staff receiving this email—two days later, wasn't it?

Mr Storer—No, one day later, I believe.

Senator CROSSIN—Why not that day? Why not 10 minutes later?

Mr Storer—Because I drew it to the attention of the deputy secretary at around five o'clock that night, I believe, and she subsequently involved a whole lot of other staff to test out the veracity of the letter. As I understand it, Ms Daniels and other people who have appeared before you today worked through the night to flesh that out and see if there was any truth behind it, and then it was drawn to Dr Nation's attention early the next day.

Senator LUDWIG—It never really went to the minister, did it?

Senator CROSSIN—How long before it then went to the minister?

Mr Storer—As I was saying, the minister was travelling overseas and was in Washington at the time, I believe. The information about this went to her, I think, later that day, Australian time, which would have been Saturday, Washington time—the day after the 22nd, I believe. Ms Daniels may correct that; I am not sure.

Senator CROSSIN—What day did you then contact Mr Young to tell him you had received his email?

Mr Storer—I did not do that, Senator.

Senator CROSSIN—Who in the department did that and what was the date?

Ms Daniels—I might be able to help you on some of that detail. According to my notes, the matter was brought to Dr Nation's attention in the afternoon of the 21st. We had discussions that evening with the then secretary, Mr Farmer, who was in Washington. We provided papers, I think—there was a brief sent to Washington on 22 April; that was a written brief. And my notes indicate that Dr Nation left a message for Mr Young on 22 April.

Senator CROSSIN—In the form of a returned email or a telephone call?

Ms Daniels—I think it was a telephone call.

Senator CROSSIN—Do you know if that was picked up or returned?

Ms Daniels—I do not know whether it was returned or whether a subsequent call happened, but there was a subsequent conversation, and I do not have the exact timing of that.

Senator CROSSIN—Has anything changed in this section of DIMIA? Is there anything different about the way emails are now treated, the way staff are briefed or they are processed?

Mr Storer—As I said before, we are trying to make sure that material is registered much faster. But it is very hard in that every case that comes in says the same things—not the same as Mr Young's but they say, 'Ours is a very important case, we've got new information that aids our case.' We try to make sure that we clear the backlogs of correspondence as fast as we can. We work as closely as we can with all the relevant areas of the department to help them write their ministerials. Most parliamentarians, for example, see their cases as high priority, and if we do not get material back to parliamentarians then they think their cases are not being given as high a priority as other cases. We are trying to constantly battle with this. I cannot give you a clear answer. We are just working as best and as hard as we can to make sure that we clear the enormous amount of correspondence that the minister and the department get, in the quickest and most efficient time we can.

Mr Moorhouse—The issues raised by Mr Comrie have formed the basis of a review of how we are dealing with telephone calls and emails generally within the organisation and also our approach to client services. One of the particular focal points of our training of people in contact centres and our client service training generally is an approach to identifying exceptional circumstances and ensuring that those exceptional circumstances are escalated appropriately and are dealt with appropriately. Our client service training that we are focusing on, and in particular the training that we are providing to the staff in our contact centres who are dealing with telephone calls and email inquiries, is very much focused on the issue that you are identifying—that is, the appropriate identification and escalation of exceptional circumstances.

Senator CROSSIN—Did Mr Comrie ask you questions about this timeline and sequence in compiling his report? He does not make any recommendations about the fact that this section ought to change or become more efficient or be better resourced. He makes recommendations about other sections of DIMIA but not about the ministerial liaison section.

Mr Storer—Nothing came direct to me about that from Mr Comrie. I cannot answer that. You might have to ask him.

Senator LUDWIG—Why does the email of the minister say 'if you want to email the minister' when, with all due respect, Minister, it does not seem to go to you; it goes to the department? On the web site it says, 'If you want to talk to the department, click here and talk to the department; if you want to email the minister, email the minister.' The traffic seems to suggest in fact that it does not go to you, Minister, it goes to the department, who then treat it as another piece of correspondence. Therefore, because they did treat it as another piece of correspondence, it took 21 days for it to be brought to Mr Storer's attention. I am not suggesting you should receive every piece of correspondence but that seems to be what occurred. Why do you have a ministerial contact? Is the public supposed to be able to differentiate between them? It seems that what happened here was that Mr Young had been trying to contact the department and he failed miserably. He then tried the minister and that seemed to have failed for 21 days as well.

Senator Vanstone—I understand the proposition you put. In fact, Mr Comrie singles out Mr Young as being a hero in this whole event for having persisted for so long. Twenty one days is an obvious matter for discussion. Nonetheless, it was by going to the ministerial web site that he did in fact get the matter resolved, unlike the other places he had tried earlier. I cannot say how the department treats emails in which people want to contact the department. I do not have any experience of someone contacting my office directly indicating that by contacting my web site their matter had not been dealt with appropriately. In other words, I look at emails as being like letters; they just happen to be received electronically. That is the only difference. They are handled in the same way as letters, except that letters are sent to me. Some are addressed to Parliament House and I think some people probably write to me as the minister at the department, probably not many. They get opened and then they go down to the department for advice. It is exactly the same concept—

Senator LUDWIG—As a letter.

Senator Vanstone—Yes, as writing a letter to me.

Senator LUDWIG—There is a picture of you on the web site and it has 'email the minister', but it does not actually go to the minister; it goes to the department.

Senator Vanstone—It goes to the department in the same way that a letter sent me goes to the department. If you want to contact the department about something to do with the department, that is fine, you can contact them differently.

Senator LUDWIG—It is regarded as ministerial correspondence.

Senator Vanstone—Yes, it is regarded as ministerial correspondence.

Senator LUDWIG—That which goes to the minister is treated as ministerial correspondence. It is then distributed to the department for answer and reply back to the minister's office.

Senator Vanstone—The department can answer about how they do it. It is treated as ministerial correspondence, but it happens to have been delivered electronically.

Mr Metcalfe—Immigration ministers tend to be very popular in terms of receiving correspondence. With respect, Minister, that is not unique to you. It has been something that ministers have had over many years.

Senator Vanstone—And I was starting to like you.

Mr Metcalfe—They receive many letters, and in my experience ministers and their officers are clearly unable to deal with that volume of correspondence. Priorities are set. Usually members of parliament who write to ministers get the top priority. Ministers over decades have been supported by the department and indeed that is one of our functions and that is not unique to this portfolio. Minister Vanstone has indicated that, because of the advent of electronic communication, an email sent to the minister is treated in the same way as a letter sent to the minister. A letter sent to the minister might physically arrive in her office but, unless it is of huge note, from a Prime Minister, for example, the department supports the minister in preparing a response or other action to that letter. Emails are treated in the same way.

To respond to Senator Crossin: could it have been done more quickly? Maybe. What did happen is that within 20 days, in an area that was receiving record volumes of correspondence, it was recognised as deserving priority treatment and, upon that, things then happened very rapidly. Of course, the matter came to the attention of the public and, ultimately, resulted through media contact in the identification of Ms Alvarez. That all happened because the minister made it happen.

Senator LUDWIG—Is the way you treat emails to the minister the way all departments treat ministerial correspondence? It is sorted when it comes in. Is an admin staffer attached to the minister's office for that?

Mr Metcalfe—I think Mr Storer is saying that the emails are accessed by staff in the department.

Senator LUDWIG—That is different from what I thought. Ministerial correspondence comes into a minister's office, as I previously understood it.

Mr Metcalfe—That is correct. It is a physical process.

Senator LUDWIG—Usually there is a seconded staff member.

Mr Metcalfe—From what I understand, there is no-one in the minister's office who physically would have been checking on 20 April the 8,000 or so emails that were received at the minister's web site. They are looked at by the department and, on behalf of the minister, responded to. Some of them are identified as being of high priority and the minister herself may personally consider them. Otherwise they are dealt with in the same way as any other ministerial correspondence.

Senator LUDWIG—They are not though, because what you have just outlined is the fact—

Mr Metcalfe—Sorry, Senator. The only difference is the fact that a physical letter addressed to the physical ministerial office may be seen by an adviser or a departmental liaison officer who would categorise it and send it to the department for handling. With an email that step is removed, because it would simply be an unnecessary and a time-consuming step to have someone in a ministerial office accessing 8,000 emails per day. It would not be one person; it would be a whole lot of people, and they would be just referring it to the department in the same way as ministerial correspondence. It would be a highly inefficient practice, I suspect.

Senator Vanstone—If we could devise a system whereby emails the likes of which we are talking about came directly to my office, I would be very happy. But unfortunately we do not live in an ideal world; we live in a world where a lot of people send emails on speculation or rumour. Senator Nettle raised by way of press conference some rumours she had heard from Qantas, and it all takes time to check up on. Loads of material comes in that is based on rumour and innuendo and is incorrect. Sifting through that takes a tremendous amount of time. If it were possible to devise a way for emails of this sort to go to a web site, I would be having a look at it myself. But it is not, because as soon as you make that web site or email site available, people of lesser faith start to use it.

Senator LUDWIG—Unfortunately, in this instance, because it was not treated similarly to ministerial correspondence there was not an adviser who looked at it who would have sorted it, I suspect, and who would have recognised the significance of it. That is what ministerial correspondence is always—

Senator Vanstone—The department has already indicated that—

Senator LUDWIG—By having removed that step you then add an extra 21 days to the processing. That unfortunately seems to be the result.

Senator Vanstone—The department has already indicated that it may have been ideal if the person who first looked at it spotted the obvious seriousness and urgency with which it should have been dealt. But I have also indicated that by emailing the web site this matter was dealt with. It is a matter that started in 2001. That is a long time that Mr Young had been trying, in various places, to get this matter looked at. We can exaggerate. I am not sure about the 21 days. Let us get our facts right here.

Senator LUDWIG—I have been corrected on that.

Senator Vanstone—Yes, but we get something wrong and we are corrected and told we are an incompetent bunch of nits.

Senator LUDWIG—I think I have been accused of that too, Minister.

Senator Vanstone—Not by me.

Senator LUDWIG—Not recently.

Senator Vanstone—I do not think so, Senator. It was received on 4 April and was brought to the attention of senior executive people on the 20th, which was 16 days later. I think someone has just looked at the 21 and been a bit lazy with the figures and dates they have picked up which is, of course, a recipe for disaster if someone's immigration outcome is depending on the facts being correct. I say that not to be snide but to indicate just how easy it is to get something wrong.

Senator LUDWIG—The difficulty I always have though is: have you looked at whether or not there is a better system, because Outlook has rules? It has ways of sorting emails. I perhaps do not get as many as you do, Minister, but I have rules which sort my emails out into various categories so I can go through them. There are processes which can be put in place rather than referring them all. In other words, you can take out what I call that special step that the minister's office has in terms of an oversight role in correspondence that is addressed to you, especially when you ask for it.

Senator Vanstone—I will talk to the department about whether there is some better mechanism or whether within the large number that get there this was reasonable. When you look at what we now know, you obviously say to yourself, 'Heavens above,' but when you look at all of the other times you have tried and got nowhere, you have to say that but for the 16 days it worked. It was treated as correspondence to the minister. It was brought to the minister's attention and it was dealt with.

Senator LUDWIG—Was the email replied to?

Senator Vanstone—I do not think it was replied to by way of email. I have certainly spoken to Mr Young myself only once.

Mr Storer—I do not believe by email but I think that was replied to in the form of phone calls later on.

Senator LUDWIG—That was from Dr Nation.

Mr Storer—I believe so, yes.

Senator LUDWIG—So when did the department contact Mr Young?

Mr Storer—I do not believe we have ever contacted Mr Young, but I will ask Ms Daniels—

Senator CROSSIN—You just told me that Dr Nation—

Mr Storer—Dr Nation is not in the department; he is in the minister's office.

Mr Metcalfe—On this point in some respects the minister's office and the department occupy the same space and when Dr Nation established contact with Mr Young there was really nothing the department could do. The contact with Mr Young was effected by Dr Nation. There was no need for the department to reply to him because there was already a chain of communication from the portfolio to Mr Young. Mr Young has received a letter from the minister, but that was the day that the Comrie report was tabled. I think the minister would have written to him anyway but there was a specific recommendation that Mr Young receive a letter from the minister and that was hand-delivered to him in Brisbane on the day the report was tabled.

Senator Vanstone—We are talking about hand-delivered letters. I took the opportunity to write to the officer, Barbara Sue Tin, who was named by the ABC as being an officer who had accessed the records and ascertained what had happened, in my view in a most disparaging way. She is also nominated in the Comrie report as being someone about whom improper inferences or unfair inferences should not have been made. She did try to get more senior people to look at this matter, and I thought it was appropriate that she also get a letter that day thanking her for her efforts. I must remember to check up on whether the ABC ever apologised to her. My guess is no. I rarely have a bet, but this is one day I might have a bet on that with someone.

Senator CROSSIN—If $230 million is going towards more staff and better resourcing, are there plans to put more staff in this area so that people can deal with these emails a little faster?

Mr Metcalfe—There are no specific plans to increase the staff in that area. There are plans to increase our call centre access. From what Mr Storer has said, although in an ideal world that email would have been identified as a priority the second it came in, it was accessed by staff at the ASO6 level, which is a middle ranking level in the department. It is the same level that we post overseas staff as a senior migration officer. It is a responsible position and there are issues of judgment required. In an area which received 8,000 emails on that particular day, unless we have literally hundreds of people working, I suspect that we always were going to have to devise a system which is going to allocate priorities. In hindsight I think we all would have preferred that that had been picked up the moment it came in. It was picked up sixteen

days later. When it was picked up there was very swift action in relation to it. None of that overcomes the fact that Ms Alvarez should not have been removed in the first place.

Senator CROSSIN—So in an increasingly technological age you telling me that you have got no plans to increase the resources to an area that gets 5,000 emails a day?

Mr Metcalfe—The resourcing is linked to workload activities. I will always keep matters under review, Senator. I have no interest whatsoever in the department making mistakes; quite the contrary. If there is a case for us to improve resourcing in that area and make decisions that we should move resourcing from somewhere else to compensate then I will be the first to do it.

Senator CROSSIN—How many staff in that area are currently dealing with those emails?

Mr Storer—I cannot give you the precise number; I will get back to you on it. It is in the order of six to eight people that are involved in the correspondence unit.

Senator CROSSIN—Dealing with 5,000 emails between them?

Mr Storer—Not only emails—

Senator CROSSIN—Also letters?

Mr Storer—Yes, letters—snail mail as well as electronic mail.

Senator CROSSIN—It is a pretty heavy workload.

Mr Metcalfe—You should not assume from that, Senator, that that is the totality of the department resourcing. That is a clearance point. They are the people who look at it and say 'urgent', 'less urgent', 'send it to Sydney because that's where they are dealing with it'. If it is a standard campaign letter, it gets a short acknowledgement thanking them very much, in accordance with instructions from the minister. A range of rules apply to them. So there are people who need to look at these issues. Mr Storer gave evidence earlier that the area had been the subject of significantly increased workloads because of the considerable public attention occasioned by Ms Rau. Should more people have been deployed into the area very quickly? Possibly, if they were available. We will certainly keep under review the adequacy of resourcing in that area. If there is a case for more, or short-term responses to deal with surges of work, we will certainly look at that. But we need to balance at all times the fact that we have a huge number of priorities across a huge range of areas and it is always a juggling act as to where the priorities need to be.

Mr Storer—Could I correct one piece of factual information for the record. The figures we have been talking about for correspondence are really per month. So it is 7,000 to 8,000.

Senator CROSSIN—So it is not per day?

Mr Storer—It was there at the time—but not per day. I mentioned something like 55,000 pieces of correspondence a year.

ACTING CHAIR—We will adjourn for lunch.

Proceedings suspended from 1.02 pm to 2.07 pm

ACTING CHAIR—The minister extends her apologies. She is on a videoconference at the moment and she will join us as soon as she has finished. I suggest we make a start. I am very

glad to announce that we have now reached that milestone of outcome 1. We will proceed with output 1.1.

Mr Metcalfe—Acting Chair, I would like to expand on a comment I made earlier in relation to children in detention. I have been advised that in fact there are 15 persons under the age of 18 currently in immigration detention. Fourteen of those are Indonesian fishermen who have been apprehended as part of the major exercises under way relating to illegal Indonesian fishers. Three hundred and seventy-five fishermen are in detention at the moment; 14 are in their late teens or aged around 16 or 17. In addition, there is a 17-year-old who arrived with his 18-year-old brother as an unauthorised air arrival about a week ago. We are currently in discussions with child welfare authorities about their arrangements.

Senator NETTLE—Can I ask for clarification on that. Are you including in that any children who might be in the community on, say, residence determinations?

Mr Metcalfe—No, that is in places of immigration detention, as in detention centres. Of course, a large number of children who had previously been in immigration detention centres are in now in the community in what we call residential detention.

Senator NETTLE—Can I put on notice how many there are?

Mr Metcalfe—Under 1.3, we can provide you with more detail on that.

Senator NETTLE—Sure.

Senator BARTLETT—I want to ask about the Regional Sponsored Migration Scheme. The annual report suggested that particularly the RSMS has an extremely high employment rate—I think it was 99 per cent or something like that for people that were using that scheme.

Mr Metcalfe—Do you have a page reference, Senator?

Senator BARTLETT—Page 28, which is unemployment rates less than one per cent. Also, the overall figures in that scheme have been going up quite significantly in the last few years. Firstly, I want to check on that statistic for the unemployment rate for the Regional Sponsored Migration Scheme. It states on page 28 of the annual report that the unemployment rates were less than one per cent. Is that using the ABS statistics and definition or are you using some other mechanism to determine that?

Mr Rizvi—The data for the Regional Sponsored Migration Scheme we obtain in two ways: one is we undertake surveys of that scheme and, two, to supplement that data we rely on surveys undertaken by state governments who are participating in that scheme.

Senator BARTLETT—So when you say unemployment rates, do you know if that definition is the same one that the ABS uses?

Mr Rizvi—That is my understanding, but it is certainly a percentage of those persons who indicated they were participating in the labour market. In broad methodological terms it is the same as the ABS. Whether it is precisely the same in every technical detail I could not say.

Senator BARTLETT—There has been a fairly substantial increase in the state specific and regional migration over the last three years or so. I think we are getting up towards a total of 20,000. Is it expected to continue to increase at that sort of rate?

Mr Rizvi—The major driver for those increases is the extent to which individual states and regions participate in that particular scheme. The messages we are getting, particularly from states such as Victoria, Western Australia and South Australia, are that they will continue to participate very strongly. If that turns out to be the case, I think we can expect the take-up of those visas to continue to trend upwards.

Senator BARTLETT—This is a subset, if you like, of the overall skilled intake, which we are aiming to get to 100,000.

Mr Rizvi—Just under 100,000 this year—that is correct.

Senator BARTLETT—So is there any goal or target for the percentage of that total of 100,000 to be under the regional migration state specific schemes?

Mr Rizvi—The government has announced a sort of three-tiered priority within the skilled stream. The first priority is for employer sponsored migration—that is, where an employer directly sponsors an employee from overseas. That is the highest priority category within the skilled stream. The second priority is where a state or territory government or a regional authority sponsors a skilled migrant and the third priority is where the skilled migrant has an occupation in the migration occupations in demand list. We are expecting, in terms of the employer sponsored area, that to grow quite considerably this year, possibly in excess of 15,000 of the 100,000 visas, Second will be the state sponsored visas. We expect it to be a figure higher than the 18,000 achieved last year but we have not set any particular target for that group. Essentially, the idea is that if the take-up from the state and territory governments and regional authorities rises, then that will be taken up first before more general independent migrants.

Senator BARTLETT—The corollary of this is, as you also mentioned in your annual report, looking at ways to contain migration numbers to Sydney. I gather the Sydney skills shortage list, which I asked questions about a few times before, was found to be all above board by the court—is that right?

Mr Rizvi—I would have to take on notice precisely what the Federal Court found in that particular instance but, as you recall, we did take your advice and we changed the regulations in any case.

Senator BARTLETT—You are looking at other mechanisms as well to try to contain or steer migration away from Sydney?

Mr Rizvi—We remain in consultation with the New South Wales government on that matter. In more recent months the New South Wales government has not pressed in that particular area. Were they to do so, that would be something we would consult on and advise government accordingly.

Senator BARTLETT—The migration intake to deal with skill shortages: some of that is dealt with in the permanent economic entry area. Some of it is covered through temporary residence permits as well. How do you determine which ones to make temporary and which ones to make permanent? Can you give an indication of what sort of transfer there is between temporary and people shifting across to permanent—category shifting or something like that?

Mr Rizvi—Essentially, we have an arrangement which enables employers to recruit people from overseas either on a temporary basis or on a permanent basis or, indeed, initially on a temporary basis and then convert to permanent residence later on. We do not necessarily force employers down either route. It is a matter for them to choose which route they would prefer. Given that they are going to spend a fair amount of money recruiting these people from overseas, many of them prefer to bring the people in initially on a temporary basis and then convert onshore to a permanent basis. Last year we issued in the order of 13,000 permanent employer nominated visas. A significant percentage of those—and I do not have the precise percentage with me—would have been persons who entered initially on a long-term temporary basis and then converted to permanent migration.

Senator BARTLETT—The numbers in the family intake are steady—they actually declined by a tiny amount, as I read them, when one compares them with the fairly sizeable business and skilled increase. Is that expected to stay at about that level in the coming year or two?

Mr Rizvi—At this stage, the 42,000 planning level for 2005-06 is based on a combination of categories, some of which are demand driven and some of which are not. Essentially, partners and dependent children are managed on a demand driven basis, and there are caps on the number of parents. That is essentially the way it is managed. At this stage, we expect the number of family stream visas to be around the 42,000 level. I would have to say, as more and more young Australians travel around the world, and as more and more young people from overseas come to Australia, we are seeing indications of growing demand in the partner category. That is something over time that governments will have to consider when they develop the annual migration program.

Senator BARTLETT—Just as with Australians travelling around the place and finding themselves attracted to people who are not Australians and wanting to bring them back—that type of thing?

Mr Rizvi—That is correct, Senator, as well as overseas people coming to Australia and being attracted to Australians already here.

Senator Vanstone—And you would be surprised how often that happens after they have been refused some alternative visa. If they do not get a spouse visa, you might be surprised how frequently they then seek a protection visa.

Senator BARTLETT—Love moves in mysterious ways, I guess.

Senator Vanstone—Yes, Cupid has a way of delivering its arrow in immigration outcomes. By the time their protection visa claim is heard, you would be surprised how many Australian citizen children have been born.

Senator BARTLETT—With the total for the business program, does that 100,000 include, for the people coming here, their partners and children?

Mr Rizvi—That is correct. It includes the principal applicant as well as any spouse or dependent children that they may have.

Senator BARTLETT—On that partner issue that you raised, and to some extent flowing on from the supplementary comments, I noticed in the MRT annual report the number of

appeals on partner visa refusals increased—I do not know from what total. I think the set-aside rate also increased again this year and the MRT for partners is up to 65 per cent. I have raised this before, and you have given some indications why it might be high in that area, but it is still high and getting a bit higher. Particularly given the surrounding commentary we have just had, are there any other indications, perhaps in the context of the new broom, culture change and all those sorts of things within the department, of what other things might be being done to try and address that?

Mr Rizvi—There are perhaps two main things that we have been doing. The first is that we have been consulting fairly closely with the MRT to try to get to the bottom of what the issues may be with some of those set-aside cases. Certainly the work that the MRT has done in that area seems to suggest that a significant factor in the set-aside rate is how long the relationship has been in existence by the time the couple go to the MRT and whether the relationship has been in existence a lot longer than when the relationship was in existence when they initially came to the department of immigration as primary applicants. As a result, the level of evidence they are able to provide about the genuineness of the relationship is significantly greater. Therefore, the MRT is in a better position to make a judgment about that relationship than we would be at the earlier point at which we encountered that relationship.

The second issue is to what degree we can improve our decision making so that, where we do encounter a relationship in its early stages, we are in a better position to assess whether it is going to be long-term genuine or not. That is never going to be an easy judgment to make. But what we are doing is a variety of things to improve the quality of our training in terms of the processing of partner visas and what to look for. We are looking to increase the level of analysis that we are doing on the characteristics of the cases that may be set aside to see what else we can learn from those. Thirdly, what we have recently developed is an interactive electronic form which can be used by sponsors and applicants to identify the kinds of evidence we are looking for to help in the decision-making process. We are pressing ahead with trying to increase the take-up of that form so that the information that we are provided is more complete and enables us to make a better decision more quickly.

Senator BARTLETT—What situation would people be in if they had had a refusal as a primary decision and had put in an appeal? I noticed in the MRT report that the average time taken to finalise an appeal in the partner area is 335 days, which is down 60 days, so that is good—although I guess that is something for the tribunal to be praised about rather than you guys. What status are people in during that 300-odd days?

Mr Rizvi—If they are overseas, then they will have overseas status. If they are within Australia, they will be on bridging visas.

Senator BARTLETT—With the $1,400 fee, it is obviously generally better for everybody all round if we can reduce the number of incorrect primary decisions. I acknowledge it is always going to be a tough one and that it is easier one year down the track to assess things. But it does seem to be an area causing a fair degree of inconvenience for a sizeable number of people. I guess you are onto it.

Mr Rizvi—We are certainly sensitive to the issue. What we want to do is to improve our decision making in that area the best we can whilst recognising that government also expects

us to maintain a reasonable degree of integrity in that area. The question of non-genuine relationships and sham marriages is not unusual; we do encounter it and we have to make sure that we are pretty good at identifying those as best we can.

Senator BARTLETT—Can I ask about parent visas? The contributory parent category has now been in place for over two years. We filled the whole program last financial year. I note the comment in your annual report that application rates, both in the contributory parent category and the parent category, increased significantly in the last financial year. Are you able to give us figures on what the current numbers of people in the pipeline are?

Mr Mills—Currently, in the non-contributory parent pipeline there are 20,300 people. Of that number, 16,400 have prima facie met the criteria and have therefore been queued. In terms of the contributory parent pipeline, I am afraid I cannot give you that figure at the moment but I can get it for you.

Senator BARTLETT—So that is 16,400 queued in the category that is capped at 1,000—is that correct?

Mr Mills—That is correct.

Senator BARTLETT—Are you able to indicate how many of the total 20,000 might also be in the contributory category—or would there be no overlap between the two?

Mr Mills—There tends to be little overlap. There may be some.

Senator BARTLETT—The new regulations regarding the domestic violence criteria came into force not terribly long ago. Have they been in place long enough to get any sense of a trend of what impact they are having?

Mr Rizvi—To date we have only had a very small number of referrals to Centrelink to do an assessment of the veracity of the claim of domestic violence. I really think the numbers are too small at this stage to make any judgments about how effectively that will operate.

Senator BARTLETT—There was a court case—I think it was called Sok v. MIMIA, before the full court of the Federal Court—about domestic violence. I noted it in the MRT report. It was this year at some stage. It found that 'domestic violence' in paragraph 1.23(2)(b) of the regulations is not restricted to physical violence or the threat of physical violence. Is that finding something that has been taken into account in assessing DV situations or that has changed how DV situations are assessed?

Mr Rizvi—Yes. That particular Federal Court case followed an earlier Federal Court case which narrowed the definition of domestic violence from that which we were using prior to that case. We were actually using a broader definition of domestic violence to include emotional violence and those sorts of aspects. The Federal Court initially made a decision which narrowed that definition. When the Federal Court made that decision, we adhered to its new definition, and we changed our processes to comply with the Federal Court decision. In Sok, the court has now widened that definition again, and it has actually gone back to something that was quite similar to what we were using originally. So it was not a significant issue for us to return to something that was more akin to our original interpretation of domestic violence.

Senator BARTLETT—That decision is not being appealed, as far as you know?

Mr Rizvi—No. We did not appeal either of the two decisions.

Senator BARTLETT—In the student visa category, the total number of visas that have been granted has continued to rise again, I think, but the rate of increase seems to be tapering off. The number is not capped or anything, as I understand it; it is purely demand driven. Is it anticipated that we will maintain that reduced level of growth or are you not particularly worried about that—you just take as many as you get?

Mr Rizvi—Certainly it is managed on a demand driven basis, and the government's policy commitment in that area is to maximise Australia's competitive advantage in that important export industry. It is true that the growth rate in the number of student visas has slowed somewhat. That is pretty much a global trend that has been taking place around the world. The United States, the United Kingdom and other of our major competitors are also seeing slowing growth. That is due to a range of factors, including the fact that places such as China and other countries are investing much more in their domestic education infrastructure than they were previously. Another factor impacting on that growth rate is the extent to which Australian educational institutions are now developing or delivering courses offshore. That is also leading to some slowdown in the growth. Having said that, we try to work very closely with the education industry to help them identify, and to work with them to put in place, arrangements that will enable the Australian industry to grow. We continue to work with them to look for niche opportunities to grow that important industry.

Senator BARTLETT—I think the Uddin court ruling was touched on a little bit earlier on. What is the progress with notifying all the people that are affected by that?

Mr Rizvi—Whilst the person who is responsible in that area and has that information comes to the table, I might just let you know that we have found the figures for the contributory parent pipeline. I am advised that fairly recently there were just over 3,800 persons in the pipeline.

Senator BARTLETT—I always get this confused—pipeline is bigger than queue, isn't it?

Mr Rizvi—That is a pipeline figure, not a queue figure.

Senator BARTLETT—The queue figure is less than the pipeline figure?

Mr Rizvi—The queue figure would be less, yes.

Senator BARTLETT—And the queue is a subset of the pipeline?

Mr Rizvi—Yes.

Ms Smith—You asked about the Uddin-affected students. There were around 8½ thousand who were affected by that decision and, as a result of that decision, had their cancellation reversed. Around 1,600 of those are currently in Australia and around 7,000 are outside Australia. A range of communications were put in place to advise students who were affected of the circumstances of that case, including press advertisements in national, state and selected ethnic-language newspapers. A notice was also sent to all education providers to advise them of the situation and to assist them where students came to their notice. We also wrote to all affected students in Australia at their last known address. We also put information on the web site to enable students to determine whether they were in fact affected by that decision. They were also given a contact centre number if they wanted to make an

appointment to see a departmental officer to seek more information about their situation. Contact centres were given special information to assist them in talking to students who might be affected by that decision, and we also provided information to our overseas posts to put on their local web sites and to provide to education agents overseas. This process has been under way for approximately six weeks, and to date around 300 students have contacted our offices in Australia. I do not have the details with me of the numbers of students who have contacted our overseas posts.

Senator BARTLETT—Can you provide that on notice?

Ms Smith—Yes.

Ms Daniels—There had been about 50 inquiries of overseas posts of those who thought they might have been affected by this decision.

Senator BARTLETT—Are there any plans to do more or are you giving it a certain period of time and seeing what the response rate is before assessing it? Is that basically it—if that is the response you get then that will be it?

Mr Rizvi—It is probably too early to make a call on that. I think we need to wait and see what happens with our initial efforts to try to contact these people, which have been, I believe, quite extensive. We will wait and see. If, in our consultations with industry, there is a case for us to do more, we will look at that.

Senator BARTLETT—With the people who do respond, what are you basically doing? Are you looking at each individual one and seeing whether or not they are affected? If they are affected by it, what do you offer them by way of redress—reinstating visas?

Mr Rizvi—Their visa, particularly if they are onshore, has indeed already been reinstated on the system. So the first thing we would do is advise them that their visa has been reinstated and that they should now advise us of the name of their education provider. If they do not have an education provider where they are studying, they should set about to get one and start studying. If that can then proceed then that is fine. If they have found they are in a situation where they do not want to study anymore but would like to remain in Australia on some other basis, we would look at that against the circumstances of their case and how long it has been since their original visa that had been reinstated had actually expired. If it had not already expired then, of course, it would be open to them to apply for other visas that they might be eligible for onshore.

Senator BARTLETT—I guess we will look at that a bit further down the track.

Senator LUDWIG—I have some questions in the student visa area if we are going to leave it, or do you have some more there? Do you want to hear mine first?

Senator BARTLETT—It is all right. I will let you build on the foundation I have laid for you.

Senator LUDWIG—You might have already answered a number of questions on notice from me in relation to this area. Does DIMIA investigate whether an education provider has complied with the ESOS Act of its own accord? In other words, I am trying to understand that you do not actually operate as distinct entities because, very much so, you allow students to come in and use our educational institutions and support our economy significantly.

Mr Rizvi—Individual education providers are in a wide range of circumstances. Of course, universities effectively self-regulate. The extent to which the ESOS Act applies to universities is somewhat lesser than, for example, it might apply to a private education provider. The key role in terms of registering education providers rests in the first instance with the relevant state education authorities, who will make recommendations regarding an education provider who should be registered for the purposes of providing international education. That matter is put forward to the Commonwealth department of education, who will consider that matter and then may or may not proceed to place that education provider and its courses on what is known as the Commonwealth Register of Institutions and Courses for Overseas Students, CRICOS.

In terms of individual education providers and their compliance with the ESOS Act, we will in the course of our work in respect of overseas students come across instances where education providers may or may not appear to be doing the right thing in terms of the ESOS Act. Where we identify that there are concerns, we will usually notify DEST and the relevant state education body, and we will jointly develop an appropriate course of action. For us, that may include requesting the education provider to produce various documents and we will consider that within that context. Within the Migration Act, however, we do not have the powers to either deregister or suspend an education provider. Those powers rest within the ESOS Act, which is administered by DEST or the relevant state education body.

Senator LUDWIG—In relation to the cancellation of a visa, can a defence be that an educational institution did not comply with its performance requirements under ESOS? You could envisage the circumstance where there has been a breach and the student says, for instance, 'I should not be breached because I signed up to a particular education provider and it is not meeting its performance requirements that I signed up for. As a consequence, you should not breach me in terms of cancelling my visa.'

Mr Rizvi—Those two are certainly interrelated issues, but in many ways they are also two separate issues. The education provider has various responsibilities within the ESOS Act—for example, to provide appropriate libraries and those sorts of things. If a student who an education provider has said has not been attending classes says to us, 'I did not attend the classes because their library is no good,' I am not sure that that necessarily follows. The issue of whether the education provider is meeting their obligations under the ESOS Act has to be considered independently of what is happening. The question of whether the person is attending their classes is a separate matter on which we would seek evidence. If the evidence shows that indeed they were not attending classes and were in breach, then cancellation may well ensue.

Senator LUDWIG—But you could envisage the circumstance where it is a failure of the educational institution. More than simply an inadequate library, there could be errors across the board which frustrate the student in studying. It is not what they signed up for, it is not what they paid a significant amount of money for. They are not getting the delivery of a system that they paid, in some instances, significant amounts of money for. Where do you draw the line between those minor matters where a student might complain but they do not really impact upon attending classes and those significant issues where the educational

institution has failed to provide a learning environment and a student does not want to attend or finds it frustrating to attend?

Mr Rizvi—A student certainly has the capacity to change education provider if they are finding that the course or the nature of the provider that they initially thought they were going to was not in fact the case. They can in fact change providers and the Migration Act provides provision for them to approach us to change providers, and that can happen. Where a student has been identified by a provider as having been in breach of their student visa obligations and the student comes forward and puts a cogent argument saying, 'It was not because anything I did; it was because of the nature of the education provider and some faults on their part,' that is certainly something we would look at, firstly, in terms of the individual student and whether there is evidence to back up that claim but, secondly, in terms of working with DEST and the state education bodies to check whether what the student is saying actually has some grounds which might lead to deregistration or some other action against the education provider.

Senator LUDWIG—Is there a way for you to check whether breaches or cancellations of visas relate to particular universities, in other words, whether there is a high proportion in one area and not in another which might also cause that university to be flagged on your system as an issue? What I am really trying to elicit from you is (1) the working relationship you have with DEST and whether it is sufficient to ensure that these areas are covered off, and (2) if it is not and there is a distinction between you and DEST, whether you should in fact be working a bit closer.

Mr Rizvi—I might ask Ms Keski-Nummi to talk about our relationship with DEST and how closely we work with them, but I might just stress here it is not just DEST; it is actually a three-way thing in that we have to work closely with the relevant state education body.

Senator LUDWIG—I am happy to throw them in.

Mr Rizvi—So it is a three-way relationship that we have, and that I believe we have quite successfully developed over the last few years.

Ms Keski-Nummi—The relationship is varied in how we work with DEST and with the state and territory education authorities. We are members of what is called the ESOS implementation group, which monitors the workings of the ESOS Act, and that includes state and territory education authorities, registration authorities, DEST and us. That group meets on a fairly regular basis around Australia in relation to the ESOS obligations on providers. Separate to that, we also work very closely with DEST in relation to systems and information and data sharing because our systems are linked in that the DEST data in their PRISM system is downloaded into our systems when we are looking at any sort of reporting of student breaches of the conditions of their visa. On top of that, we have regular formal meetings with DEST and also informal ones where any issues can arise.

In relation to education providers, when there are any allegations that are brought to our notice—in whatever form—if it is about providers not meeting some of their obligations or students being concerned about the services they are getting, we will immediately report those to DEST. We work jointly and singly with DEST in working with providers and giving them information sessions and so forth on what their obligations are. So I think that there are many

layers to the sorts of relationships that we have with both the state and territory education authorities and the registration authorities, as well as with DEST.

Senator LUDWIG—Do you have figures on breaches by university by state? Are those types of statistics available?

Ms Keski-Nummi—It comes under output 1.3 in terms of cancellations. But cancellations are something that we need to look at fairly broadly, because there are both what we call the good cancellations and what we call the bad cancellations. Many students who complete their courses early or who simply finish their course and leave Australia also have to be reported on, and we would normally cancel their visas. There are a variety of types of cancellations, so when you look at just the broad data—

Senator LUDWIG—I guess I am only looking at the bad cancellations.

Ms Keski-Nummi—Yes, I know. At the moment, I do not have the data disaggregated into the good and the bad cancellations, which is a colloquial way of putting it, but certainly we could take that on notice and get that information for you.

Senator LUDWIG—That would be helpful. The other issue is that one of the answers that you provided to another Senate committee inquiry indicated that there was one student who had been in detention for two years and four months. It seems like an extraordinarily long time. Is there a reason why someone would be detained for that long? There may have been other complications—that is, they may have applied for other visa categories or protection visas, which could account for that. The next longest were detained for between six and 12 months—four of them—and the next nearest after that, for three to six months. So I can imagine the bulk of them fall in the less than a week category, where there are 88, and less than a month, where there are 51. They would amount to cases where there was an issue that was sorted out relatively quickly—either they were removed or had supervised departure, I suspect, or they came to some other arrangement with you. But there is one category where a total of six students were detained past the three to six months mark; I would not mind a break-up of the circumstances of those students, if it is available—not the earlier ones; we will lighten your workload.

Mr Correll—Do you have the question on notice reference there?

Senator LUDWIG—It is a question taken on notice at a Senate Legal and Constitutional References Committee inquiry on 11 October 2005 into the administration of the Immigration Act 1958. It was a matter that was raised there, and I have been following it for a while. I do take every opportunity when you present yourselves to ask about an issue. I am sure you are used to that by now.

Ms Daniels—I can give you a few details of the case that is listed as two years and four months. I can outline for you that the person arrived as a student and they had a notice from their provider, a cancellation and a series of other applications including one for a protection visa, review processes, some judicial review activities, a number for bridging visas and an intervention request. They were finally released on a bridging visa, which is the thrust of the question that was asked. It is a fairly complex immigration history.

Senator LUDWIG—I thought a protection visa might have been the jag. I was just trying to eliminate the other five to see whether or not they included protection visas or there was some other complication. I am happy for you to take those on notice. There is no great hurry for that. I might still put some more questions on notice. The only other one I wanted to talk to you today about was your raids—and that is my word. Are they called compliance activity?

Ms Daniels—We call them compliance operations.

Senator LUDWIG—I was close. Do you pick a particular time when you are going to do a compliance operation at a university or a place of work? I have some information in response to questions in evidence about some of those compliance operations being held early in the morning and students not being allowed to obtain their belongings and possessions when they are being taken into detention. I was wondering if there was a standard operating procedure that you utilised and, if there was, whether it was available to the committee.

Ms Daniels—There are obviously some guidelines on the way to conduct operations, but within those operational guidelines there is an indication to compliance officers that in the main compliance operations should not be held—I am not sure what the morning time is—after nine o'clock in the evening. But of course, in some areas, for example, the restaurant area or the sex industry, the nature of the industry determines that operations would normally be held outside normal business hours or later in the evening. As I said, most operations are not expected to be held overnight or at unusual hours.

Senator LUDWIG—I guess we could do it this way—you could provide the numbers, say in the last 12 months, of compliance operations you have conducted; the nature of the operations; whether they were at a restaurant, on a campus or something along those lines; and the indicative times that the compliance operations were started. I am sure you have a lot more on file about them than that. You could also provide the procedure manual, just so that we have an idea of what you do which will either confirm or dispel people's beliefs about what you do.

Ms Daniels—Okay. We will have information; I just do not have it with me. We will have information on the industries in which during the year we have located people who are either unlawful or in breach of their visa conditions. That information is readily obtainable, and I could probably give it to you today.

Senator LUDWIG—I am happy for you take that on notice and then provide it within the usual return time, so that for completeness it includes the time of the raid and the nature of industry that was under investigation or having a compliance operation at that time.

Ms Daniels—Okay.

Senator LUDWIG—Thank you.

Mr Correll—It may be, Senator, that there may be some resource intensive character—it was six, I think—to pulling out all of that information, but if we can draw together the information within a reasonable—

Senator LUDWIG—What I usually do—and I guess some of you are new—is to put this caveat: depending on the nature of the resource requirements that it might need, come back to the committee if it is going to be intensive, and we might renegotiate down.

Mr Mann—Senator, could I just expand a little bit on the nature of the compliance activity? There certainly are some activities that we would be particularly looking for because of the information we have about students either in breach or overstaying, but quite often they are found just as a consequence of other activities and other information. We do not necessarily know beforehand that the likelihood is that we will find a student.

Senator LUDWIG—No, because they might be working in a restaurant—

Mr Mann—I will have some difficulty in providing you with a complete record of all compliance activities at the level of data that you have asked for, but we will certainly see what we can provide.

Senator LUDWIG—Yes. I always ask the department to bear in mind that if it becomes too complex you should come back to the committee and we will renegotiate how that might pan out. Thank you, Chair.

Senator BARTLETT—I have one more question specifically on student visas. On page 66 of your annual report you list the top source countries for international students to Australia. The figure at the bottom right-hand corner for Indonesian students for this year: is that a typo?

Mr Rizvi—I think it is a typo, Senator. I think there is a digit missing. We will get you the correct number.

Senator BARTLETT—That would be good. I was just a bit worried that we had done something dramatic in regard to Indonesians that I had not noticed.

I also wish to go back to the parent visa. That extra figure that I was given was a bit lower than I anticipated. The statement in the annual report is that application rates in both the contributory parent and non-contributory parent categories were increased significantly, but you gave the figure that there were only 3,800 in the pipeline for contributory parents, and the whole program is only 3½ thousand, from memory. That is rather less than I was anticipating. Would that mean that we have got 3½ thousand for the current financial year, and there are 3,800 applications in the mix at the moment, some of which are still to be finalised? That would indicate that there is not a monumental, huge demand. I guess the other thing I would like to clarify, in terms of my perception of that, is that it is now probably far enough into that new category to ascertain how many people would make that transfer, from the non-contributory to the contributory, and that is about it—this is about as many as we are going to get. Is that a fair enough assessment?

Mr Rizvi—I think we are continuing to get people moving across from the non-contributory to the contributory. We could provide you with some statistics on that, Senator, to see what trends are emerging there, but there are still people coming across. They would make their decision on that depending on their individual circumstances—particularly their financial circumstances, I suppose. The reason we mentioned the issue of the significant increase in application rates is that, given that there are over 3,800 persons in the pipeline in a category where the processing times are less than 12 months, and the number of places available is 3,500, that suggests we have got excess demand now.

Senator BARTLETT—Not as much excess demand as we have got in the other, non-contributory, category.

Mr Rizvi—Yes. We now have excess demand in both categories.

Senator BARTLETT—Well, that would suggest that your waiting time for the contributory is about a year, and for the non-contributory is 20 years; that is a fairly significant difference.

Mr Rizvi—Yes.

Senator BARTLETT—I suppose it is a policy decision for government as to whether there is any modification to that.

Mr Rizvi—That is right.

Senator BARTLETT—Do you have any idea what the estimated or assumed financial impact would be of any sort of increase in the non-contributory category? I recall when all of this was being discussed some time ago that there were suggestions about allowing certain numbers in in various categories and that budgetary approval would be required. Are there any figures as to what the deemed cost would be?

Mr Rizvi—We commissioned some work on that some time ago by the Government Actuary. We could use the work that the actuary did at that time to update some calculations for you on what, say, a per thousand increase in the non-contributory category would cost in health and social welfare.

Senator BARTLETT—If you could do that, that would be appreciated, so that I know what figures to quote when I am lobbying for more places. Can I ask about the work and holiday visas and working holiday-makers. What is the distinction?

Mr Rizvi—The distinction is that working holiday-makers are based on reciprocal agreements with countries with an immigration risk profile which is relatively good: firstly, overstayer rates are low; secondly, the risks that the individuals concerned may have difficulties in Australia in terms of issues such as exploitation are considered to be relatively low; and, thirdly, that the employment opportunities for Australians if they went to those countries would be quite good. They would be able to get jobs which would pay sufficiently well for them to finance at least part of their holiday. The work and holiday visa tends to be with countries where those factors are not evident.

Senator BARTLETT—So the ones we are getting from Iran are in the second category?

Mr Rizvi—That is correct.

Senator BARTLETT—What other countries come under that?

Mr Rizvi—The other country under that at the moment is Thailand. We are negotiating with some other countries as well.

Senator BARTLETT—For the work and holiday visa?

Mr Rizvi—Yes, and we are, of course, negotiating with other countries on the working holiday one as well.

Senator BARTLETT—Can you give us an indication of what countries they might be?

Mr Rizvi—In terms of the former category, we are talking with Spain and Portugal. We are talking with Austria, and I think we have recently started discussions with the Czech

Republic. In terms of the work and holiday visa, we have been having discussions with Turkey, China and Chile.

Senator BARTLETT—To value add to my delegation trip to Turkey two weeks ago, I should affirm that it would be highly beneficial to our bilateral relationship to finalise that one with Turkey.

Mr Metcalfe—Thank you, Senator.

Senator BARTLETT—With respect to the visas with Iran, as I understand it, that was linked to the MOU that was signed some time ago. You gave some figures at the last estimates for this category, and from memory it was a few hundred. I have had some further issues raised with me about this category. I wanted to ask about the assessment that is done at our end of the people who come here on that visa from Iran, and whether those people require the approval of the Iranian government as well before they come here. I do not want to cause any diplomatic incidents regarding concern about the human rights record of Iran, which I am sure we do not need to go into here, as people would be well aware of that.

We do have a reasonable number of Iranian refugees who are dissidents here and who are concerned about people with links to the current Iranian government coming into the country and occupying some of their working holiday observing some of the dissident community here. There are also some other debates that we are having around parliament at the moment about other legislative matters and the sorts of assessments that we are making about the individuals who come here on those sorts of visas.

Mr Rizvi—It is certainly true that the individuals concerned who participate in this particular visa program are nominated by their respective governments. So Australians wishing to participate in this program going to Iran would go through a nomination process through the Australian government, and vice versa. When the people apply, we assess them in terms of skill level, English language ability and education levels. They are also assessed against the standard range of health and character requirements. Character of course includes a range of factors that would have to be taken into account. Some of those are assessed by relevant agencies rather than by us.

Senator BARTLETT—That applies to basically every visa application—certainly any non-ETA application—doesn't it? They have a range of different risk factors.

Mr Rizvi—That is correct. And the nature of checks that other agencies may conduct would be a matter for them.

Senator BARTLETT—On the issue of the wider debate about the security of the Australian community in relation to the range of threats and balancing the different rights and freedoms and risk factors, the number of people who are now assessed through electronic travel authorities, ETAs, is about three million a year. In light of the wider debate about security concerns, can you step us through what the protections are for people who can apply for a visa over the internet to maximise the chances of picking up people who may be a problem? I think a comment was made after the London bombings that all the people who perpetrated that particular atrocity could have applied for a visitor visa over the internet and probably would have been accepted because they had not come to anybody's attention. I

recognise that you can only go so far, but, in the context of the debates that we are having at the moment, what sort of protections are there? Is that being reassessed at the moment?

Mr Metcalfe—I will make some initial comments and Mr Rizvi might supply some supplementary detail. On that comment, yes, I read in the media as well the suggestion that the four young men—British born—who undertook suicide attacks in London would have been able to get a visa for Australia. Of course. There was nothing in their background to indicate that they were of security concern; otherwise, I imagine Scotland Yard would have done something about it. So for commentators to suggest that the Australian department of immigration should have some greater level of insight into the security concerns around UK born nationals would give us powers of observation that would be unique in the world. I think, just from observing you, we both agree that that particular comment did not really assist public debate. Indeed, were we to suggest that we should have a different visa requirement for UK born nationals who happened to be of the Muslim faith because of some security profile it would, I suspect, start another debate as to visa processes.

As you are aware, the electronic travel authority and other visa categories are available without a paper application. It has been a huge success. It has certainly meant that we have been able to maintain our visa arrangements, have advanced knowledge of people's travel to Australia and handle that in a way that has been incredibly efficient. It has assisted in promoting tourism. All applications for visas are run across the movement alert list, which is now a very substantial database both of documents of concern—known documents which have been forged, altered or stolen as notified to us by various authorities—and persons of concern. There is a large amount of data of individuals and aliases supplied to us by a range of authorities, including security and police authorities. So to the extent that we can possibly have knowledge of people who may seek to do Australia harm, then that material is provided to the movement alert list and it is a key part of our overall national border security and counter-terrorism arrangements.

With countries that are not accessible to the electronic travel authority—and you know that largely goes to an issue of immigration noncompliance, nonreturn rates et cetera—the paper applications that come with that are also assessed against the movement alert list and in some cases other checks may be required by the competent authorities. In addition to the visa processes, you would be aware that we have a range of measures with airline liaison officers posted to airports overseas together with staff at airports in Australia who are alert to possible indicators. But it is fair to say that a person who is determined and well resourced is able to beat any system and therefore our working relationship with ASIO, the Federal Police and international partners is crucial so that we have what I regard as defence in depth. We are not just reliant upon one system with all our hopes in one system; we work cooperatively, and it is an area to which we pay and continue to pay very close attention.

Senator BARTLETT—In relation to the perception around ETAs, the level of assessment that you would do on an electronic application as opposed to a paper one would be the same. The same sorts of checks are run in terms of movement alert lists and any of those security issues. The distinction is a matter of overstay risk and that sort of thing rather than anything to do with security per se, is it?

Mr Metcalfe—Of course, the electronic travel authority is not set up so that the issue of health concern is assessed as part of the visa. It is assessed as part of an incoming passenger card that is completed on the way. Yes, it is a fair generalisation that the ETA and paper applications for visas receive similar assessment in relation to the movement alert list, apart from some countries where there are more enhanced security checking arrangements in place—and I cannot go into that for obvious reasons. In a world where identity fraud is becoming rampant and passport fraud and photo substitution are phenomena that we have to deal with on a daily basis, we do not have all our eggs in the basket of the movement alert list. That is very important, and it is very important in terms of persons who are known to be of concern. But for someone who may not be known to be of concern or is able to obtain a good forgery, there are other ways that we have to deal with those cases. It is an area that, as I have said, we are very conscious of the importance of getting right and we work with a whole range of people to try and get the best outcome we can.

Senator CROSSIN—Should I let people know that Makybe Diva won the Melbourne Cup? Australian sporting history was made, and you were all in here.

Mr Metcalfe—I should have placed that bet, Senator.

Senator CROSSIN—It was a fantastic race.

Senator LUDWIG—Who came second?

Senator BARTLETT—Does that qualify as a sport, does it?

Senator CROSSIN—I do not think you worry about who came second in a race like that, do you?

Mr Metcalfe—I am just seeing if anyone behind me is smiling.

Senator CROSSIN—But it only paid about $2.20.

Senator BARTLETT—I have one final question in output 1.1. I asked before about some other countries that you are exploring working holiday visas or work and holiday-maker visas with. Are there any Pacific island nations among the ones that you are negotiating with at the moment?

Mr Rizvi—There are no Pacific island nations with whom we are negotiating one of these at the moment, but, with the Prime Minister's recent trip and his recent announcements regarding the setting-up of technical colleges across the Pacific, I would imagine that the issues about visas and whether work and holiday visas et cetera would be the sensible flow-on visas from such an initiative will be the subject of discussions in the future.

Senator BARTLETT—There is a quite sizeable number of temporary resident skilled visas being issued to fill labour market shortages. There is no real equivalent for labour market shortages in unskilled areas. Is that a fair enough statement? I suppose you could call working holiday visas a sort of de facto—

Mr Rizvi—There is no specific temporary entry visa that is designed to cater primarily for filling labour shortages in low-skilled areas at the moment. Australia traditionally has not gone down that path. There are many other countries that have, but Australia to date has not.

Senator BARTLETT—I suppose it is a policy decision as to whether that changes. I will leave that there.

Senator KIRK—I have some questions in relation to the new visa category that has been established in relation to overseas apprentices. I notice from the minister's press release that she is emphasising that these overseas apprentices will only be recruited when there are no Australians applying for a job. How is that going to be regulated? What procedures have been put into place for that?

Mr Rizvi—The way it will be managed—and this particular visa will only be available in regional Australia, albeit that for South Australia that is all of South Australia—

Senator KIRK—Thank you for reminding me of that!

Senator CROSSIN—I take it that that is all of the Northern Territory as well then.

Mr Rizvi—At the request of the government of the Northern Territory—that is correct. The regional certifying body in most instances is an arm of the relevant state government but in some instances is an arm of local government or is some combination of the two. In each instance where a sponsor wishes to bring in apprentices under this visa into a particular region of Australia, they will need to be able to demonstrate to the regional certifying body that they have been unable to source young Australians in that region to undertake those apprenticeships.

Senator KIRK—When these persons are brought in from overseas, I take it that they are skilled but their qualifications are not recognised at that point. Is that correct? And they will then have to go through a TAFE course or the like to get their qualifications recognised.

Mr Rizvi—They are required to have a minimum level of English, to be over 18 years of age and to have sufficient educational attainment to start an apprenticeship in Australia. That may mean that they already have a significant level of skill in that area, or they may have only the base level. Both of those circumstances can be accommodated by this visa.

Senator KIRK—So it permits either on-the-job training or TAFE qualifications. Is that correct?

Mr Rizvi—It would be a mixture of those two, in that most apprenticeships involve a mixture of TAFE and on-the-job training.

Senator KIRK—Who meets the cost of the TAFE fees that will be incurred? Does the apprentice meet his or her own fees or does the sponsor cover those fees?

Mr Rizvi—The visa is modelled on the overseas student program—that is, there should be no detriment to opportunities for Australians to obtain places, and the taxpayer should not be putting the bill for the education of the individuals concerned.

Senator KIRK—So are additional places going to be made available in each of the TAFE systems to accommodate these persons?

Mr Rizvi—That would have to be managed by the individual TAFEs based on the fees that they will receive from the students or their parents.

Senator KIRK—There is no guarantee that Australian places are not going to be taken by these overseas—

Mr Rizvi—There is a guarantee in the sense that the Australian taxpayer is not paying at all for the training of the individual concerned. In that sense it is no different to the overseas student program. Indeed, there has been argument that the overseas student program has enabled many of our universities to grow quite considerably.

Senator KIRK—Thank you. That is all I had on that.

Senator CROSSIN—I have a number of questions about skilled migration. Can you tell me how many skilled migrants there are in the country at this point in time?

Mr Rizvi—That depends on how you define a skilled migrant. I migrated in 1966 under a skill stream. I am not sure whether I would be included in your definition of how many skilled migrants there are.

Senator CROSSIN—I am talking about how many would have come in under an employer sponsorship, under an occupation that is listed on the MODL.

Mr Rizvi—Those are two separate questions, I think. The number of skilled migrants who came in in 2004-05 under a permanent residence employer sponsored arrangement was approximately 13,000. That included partners and children. The overall skill stream in 2004-05 was just under 78,000, including partners and spouses. The 13,000 employer sponsored that I just mentioned were a subset of the 78,000.

Senator CROSSIN—So the 13,000 would come in under those occupations that are listed on the MODL?

Mr Rizvi—The MODL operates under what is known as the general skilled migration categories, which are points tested categories. They are not employer sponsored categories. The MODL does not apply for employer sponsorships. For employer sponsorships, we essentially accommodate any person who is in a skilled occupation, which is essentially anyone in what is known as ASCO groups 1 through to 4.

Senator CROSSIN—An employer sponsoring someone coming into this country could be any kind of business at all; they just have to prove that they have advertised nationally and they cannot get someone here?

Mr Rizvi—They have to be an employer of good standing, they have to demonstrate that they have a good record of training and they have to demonstrate that they are recruiting a person to a skilled position, not an unskilled position. They have to demonstrate that the person they are recruiting has the skills to do the job and that they have entered into an appropriate employment contract to employ that person under appropriate wages and conditions.

Senator CROSSIN—Is it likely that someone could be sponsored to come into this country if one of the industry's job specifics was not on your MODL?

Mr Rizvi—As I said, the MODL relates to the general skilled migration program, which is really quite separate from employer sponsorships. Under employer sponsorships, all skilled occupations that are either general administrators, professionals, para-professionals, associate professionals or tradespersons are covered.

Senator CROSSIN—Let us take an industrial painter, for example. I could not find that on the MODL but that would not stop someone bringing them in under an employer sponsorship—is that correct?

Mr Rizvi—If an industrial painter—and I am not across the details of exactly how an industrial painter is classified—is a fully-fledged tradesperson under ASCO major group 4, they would have no problems in terms of that being an occupation which is regarded as skilled.

Senator CROSSIN—My question really goes to this: what does a skilled migrant who is sponsored by an employer to come here do if they are not treated properly by the employer, if they are found to be underpaid, were told that they would be working six days a week and they are required to work seven days a week? What is their recourse?

Mr Rizvi—If the person has entered under a temporary entry arrangement—that is, they are not yet a permanent resident of Australia—the relevant employer has to, firstly, sign a contract with that employee. The contract has to have certain features to it which have to be in compliance with a range of employer undertakings that the employer is legally bound to. I have a set of the undertakings here if you are interested.

Senator CROSSIN—If you could table those I would appreciate that.

Mr Rizvi—I can provide the undertakings that they must sign up to. We, the department of immigration, will then monitor those employers, firstly by requiring the employer to report to us after a period of time to demonstrate that they have been complying with those undertakings. In addition to that, we undertake targeted site visits to around 20 to 25 per cent of these sponsors where we will inspect the work premises and meet with the employer and the employee to ensure that the undertakings given by the employer are being met.

Senator CROSSIN—So are you saying that DIMIA ensures that employers are complying. Is that correct?

Mr Rizvi—In respect of employer sponsored temporary entry visas, that is correct. In respect of permanent residents, they of course have all of the protections—

Senator CROSSIN—So that would be DEWR's responsibility.

Mr Rizvi—For a permanent resident it becomes the responsibility of either DEWR or the relevant state industrial relations body.

Senator CROSSIN—So if in fact they are then permanent residents who have come in under the permanent resident sponsorship and they find that their employment conditions are not what they expected them to be, by going to DEWR and complaining are they at threat of having their visa withdrawn?

Mr Rizvi—No. They are permanent residents of Australia.

Senator CROSSIN—How many workplaces, say, in the Northern Territory under the temporary employer sponsorship visa would you have? Could you take that on notice?

Mr Rizvi—Yes. We could identify how many employers are sponsors under the subclass 457 visa in the Northern Territory.

Senator CROSSIN—With a permanent resident skilled migrant, if in fact they find their conditions are appalling when they get here, can they simply leave that workplace?

Mr Rizvi—That is right. They are permanent residents. They essentially have all the rights and responsibilities that you and I have.

Senator CROSSIN—What happens with a temporary skilled migrant, then?

Mr Rizvi—If the employer has not been treating them appropriately, the employer will be subject to various sanctions. We will give the individual concerned an opportunity to find another employer. We will be fairly flexible about the amount of time we will give them to find another employer. If they are able to find another employer who will sponsor them, they will be able to apply and obtain another temporary entry visa.

Senator CROSSIN—How long do they have to take find another employer?

Mr Rizvi—We will usually give the person a month or two to find another.

Senator CROSSIN—In a place like Katherine in the Northern Territory, do you assist them to get to a larger metropolitan area or do you relocate them to somewhere if they are in an isolated regional place?

Mr Rizvi—There are responsibilities that the original sponsor has in respect of the individual. They have an obligation to meet various costs in respect of that person. But, no, it is not our job to find this individual another employer. It is up to them to find another employer.

Senator CROSSIN—You would understand that in smaller regional towns that employment base can be very limited. So, basically, if they cannot find anywhere, they are then returned to their country of origin. Is that correct?

Mr Rizvi—If they are unable to find an employer who will sponsor them, they are returned to their country of origin. Their costs of returning have to be met by the sponsor under one of the sponsorship undertakings.

Senator CROSSIN—So the employer would need to meet that cost. Is that correct?

Mr Rizvi—Where the person has left because the employer has not met their obligations, that is correct.

Senator CROSSIN—So you are going to take on notice the number and names of companies in the Northern Territory who are sponsoring temporary residents under the employer sponsorship at this time?

Mr Rizvi—We can certainly provide the numbers. I am a bit nervous about naming people. I would need to take some advice on whether I could name people.

Senator CROSSIN—Could you also tell me how many in the last two years have actually been employees who have been returned to their countries because of employers defaulting in the Northern Territory?

Mr Rizvi—We will see what we can find in terms of data on that. We can certainly find numbers of sponsors who have been sanctioned.

Senator CROSSIN—That would be useful.

Mr Rizvi—We will also be able to find numbers of employees who may have been formally removed. However, I will look into the various permutations of those statistics.

Senator CROSSIN—Thank you.

[3.30 pm]

ACTING CHAIR—We will now move to output 1.2. I understand that Senators Bartlett and Nettle have inquiries on that output.

Senator BARTLETT—In terms of the off-shore humanitarian program, the figures detailed for the number of applications finalised was 114,000 in the last financial year. It is noted that the target was increased from 59,000 to more than double that in light of an increased application rate. What were the factors for such a significant increase in the anticipated application rate?

Mr Hughes—As the humanitarian program expanded, there was a fairly dramatic expansion in the application rates in the special humanitarian program component. That accounted for the increase.

Senator BARTLETT—When it says 'applications finalised' that does not necessarily mean approved?

Mr Hughes—No. Given that by definition there are about 13,000 places, 'applications finalised' just means where we have made a decision on applications being made because it is then obviously less than the number of finalised applications.

Senator BARTLETT—When you say you have made a decision, that does not necessarily mean that they meet the criteria.

Mr Hughes—No. In fact, most of them by definition have been negative decisions because there are simply not enough places available.

Senator BARTLETT—Right. How does that work in the context of 13,000 places or 7,000 special humanitarian visas? You have the applications finalised; do you say that the quota is full for the year, 'come back again next year' or do they go into a queue or a pile?

Mr Hughes—There is no queuing. A person who did not succeed under the program would have to reapply.

Senator BARTLETT—And that can happen any number of times?

Mr Hughes—It can.

Senator BARTLETT—So how do you determine, from one year to the next, whether someone is successful? Is the number of times they have applied in the past taken into account?

Mr Hughes—No. It really has to do with the relative needs, depending on the numbers of places available—the number of places we have allocated around the world—and the strengths of the claims that are put forward in the applications.

Senator BARTLETT—When you say 'strengths of the claims' either people meet the criteria or they don't. For example, either they meet the refugee criteria—

Mr Hughes—The refugee criteria are somewhat different in that virtually all of those come from referrals through the United Nations High Commissioner for Refugees. That is not where we find the disjunction, if you like, between the numbers of applications and the number of places available. That is a fairly controlled environment. It is really in the special humanitarian program where more judgments have to be made.

Senator BARTLETT—So the applications finalised figure is basically for special humanitarian visas because with the refugee issue it is more a matter of you selecting from those that UNHCR has already indicated.

Mr Hughes—There is a fairly close match between UNHCR referrals and the places because it is something that we work through with them every year in each of the locations from which we take people from around the world.

Senator BARTLETT—So those numbers are pretty much for special humanitarian visas apart from the 6,000 or so UNHCR—

Mr Hughes—Yes. I will ask Ms Bicket to elaborate on that. She might be able to add something that would help you.

Ms Bicket—In terms of this particular category, whether an applicant is referred by UNHCR or by a proposer in Australia who is proposing them under the special humanitarian program, that person is applying for the same category of visa which is an off-shore humanitarian program visa. We assess them against all the various subcategories within that. The vast majority of applicants are seeking to be considered under the special humanitarian category. A range of factors will influence decision making in terms of assessing an application, including the degree of harm, persecution or substantial discrimination amounting to gross violations of human rights that the person is claiming to be subject to; the degree of their links to Australia; whether there is another country that can perhaps provide them with protection; and whether they are in fact in need of resettlement. One factor which many people sometimes do not appreciate is that resettlement is being provided as a choice and is only one of the three durable solutions available to refugees and people in humanitarian need. Simply being a refugee does not necessarily entitle you to resettlement. An assessment of whether you require it and whether it is the best option is made as part of that process.

Senator BARTLETT—Alongside that, with the special humanitarian visa, there is a need for a sponsor.

Ms Bicket—That is right. A proposer in this particular context.

Senator BARTLETT—I presume we do not have anything to do with the running of the no-interest loan scheme that has been set up through the IOM—that is totally up to IOM—but have you got any information about the uptake of that and how that has been played out?

Ms Bicket—It is very early days. It has only been a short while that IOM has had the additional funding to expand the scope of their program. They have established a community advisory group, which I believe has met on two occasions. That is working with communities to try to improve the access of the community to those available funds. We hope that over time it will actually allow a doubling—about an extra 2,400—of entrants to be able to access additional funding through that particular loan scheme. I do not have any figures, I am afraid,

for the short time it has been in operation and how many additional people have been serviced but I could make some inquiries and report back.

Senator BARTLETT—That 2,400 would be from within the 7,000 total—

Ms Bicket—That is right.

Senator BARTLETT—not an extra 2,400 on top of it.

Ms Bicket—No. It does not provide any additional places. It is really about providing more affordable financing options to people—to proposers and entrants—within the SHP to alleviate some of the financial burdens.

Senator BARTLETT—With the onshore protection visas, do those that are granted specifically come out from, or are treated as part of, the special humanitarian visa component?

Mr Hughes—Yes.

Ms Bicket—That is correct.

Senator BARTLETT—I know you are continually providing updated figures on all the onshore people and further protection visa applications. I noted in the annual report figures on page 95 in the table—I am just making sure I am reading it correctly, basically—that 4,601 onshore protection visas were granted in the last financial year. Is that correct?

Mr Hughes—That is correct.

Senator BARTLETT—So that 4,601 would be part of the 7,000 special—

Mr Hughes—No, it is not. The further protection visas are not counted against the humanitarian program because they were counted at the time that they were first issued. They were deducted from the humanitarian program three-odd years ago when the first issues were made, so further protection visas granted for the same people do not count. The number counted against the humanitarian program is in the paragraph above the table—895. It says:

Of the total of 4 601 protection visas granted in the year, 895 were counted as part of the Humanitarian Program.

So those are protection visas granted to people who had not previously had one.

Senator BARTLETT—Would the 308 temporary protection visas in that table be new temporary protection visas or would they be further protection visas? Or could they be both?

Mr Hughes—They could be either.

Senator BARTLETT—Are you able to give any indication of the number of people who were successful with a further protection visa who have been put onto another temporary protection visa?

Mr Hughes—Yes. Of the total granted further visas, 87 have temporary visas, of which 74 are on character grounds, based on the regulation that results in a further temporary visa if a person has been convicted of an offence that has a penalty that is a maximum of at least a year, and 13 have got further temporary visas as a result of the seven-day rule. That is in the total cohort of further protection visa applications processed to date; that is not 2004-05.

Senator BARTLETT—Are return-pending visas and removal-pending visas under this section?

Mr Hughes—Return-pending visas are under output 1.2, yes, but not removal-pending bridging visas, which relate to people temporarily taken out of detention. But return-pending visas, which are for people who are temporary protection visa holders who are found by both DIMIA and the RRT not to require further protection are eligible for the 18-month return-pending visa.

Senator BARTLETT—Can you tell me how many people are on that currently?

Mr Hughes—I will ask Mr Illingworth if he can find that figure. Perhaps while he is finding it you might want to ask another question.

ACTING CHAIR—Perhaps they could take that on notice, Senator, and we can move on to Senator Nettle.

Senator BARTLETT—Okay.

Senator NETTLE—I am actually pretty keen to go to 1.3, so I can probably put most of my questions for 1.2 on notice. I will ask one. You might have been here when I asked the Refugee Review Tribunal how they were going on the processing of TPV applications. I read out the bit from the Prime Minister's media release in June saying that all primary assessments of applications for permanent protection visas from existing TPV holders would be done by Monday—that is, yesterday. I am wondering how you were going with that.

Mr Hughes—I am happy to update you on those figures. Can I say that the starting point in relation to the Prime Minister's commitment was temporary protection visa holders who had made application for a further protection visa by 17 June and who had reached the 30- or 54-month point. There were some 3,400 of those. The reason that they had to have reached the 30- or 54-month point is that you are not eligible for a permanent visa until you have been on the temporary visa for at least those time periods. There were 3,400 people in that cohort. As of the close of business yesterday, the department had finalised all the work it could on those people. We had made decisions on 3,095 of them. We had finished all the work that we could on some 270 people, but they are dependent upon security clearances. There are another 35 who for various external reasons we were not able to make decisions on as of yesterday because they have serious criminal charges pending or criminal convictions which require more detailed consideration and a process before we make a final decision. Some of these 35 are reliant on some external information from another source, including the applicant. So we had completed all the work that we possibly could by close of business yesterday. Of that particular cohort, as soon as security assessments come through, the numbers of decisions will rise further.

Senator BARTLETT—On the issue of ministerial interventions through section 451, which I think comes under this area—

Mr Hughes—Section 417.

Senator BARTLETT—Section 417, sorry, and 351. One of the issues that has come up amongst the many issues that have come up regarding possible shortcomings in the past that have got plenty of coverage goes to quality of decision making and those sorts of things. As part of the new broom culture change, has there been any specific examination of the ministerial intervention unit and the quality and consistency of advice that that unit provides?

Mr Illingworth—We have been doing a lot of work on the arrangements in the department to provide support to the ministers in the use of the personal intervention powers. We have achieved some of the objectives that we want to achieve, but there is more work that we want to do. Obviously we are very alert to feedback from the ministers and their offices about the quality of our support. We are developing some training plans for the program as a whole which will include the ministerial intervention units. That is a matter that we have on our active list of issues to address in terms of reviewing the quality of our support and ensuring that we are providing adequate and appropriate support to ministers.

Senator BARTLETT—Minister, I think you have now picked up a few extra areas where you have to or you have the opportunity to exercise discretion, as, obviously, you are the only person under the act that can exercise this range of powers apart from Minister Cobb, and you have to rely on the advice you get from the unit. Are you satisfied with the quality of advice that you now get from the ministerial intervention unit or are you specifically examining that area of activity, given that it is one you personally have to rely on?

Senator Vanstone—There have been, I would think, fewer than a handful of cases where—I would not say I have not been happy—I have queried why a particular recommendation has been made. Given the volume, I would have to say I think they do a very good job. I have queried presentational aspects, however, that do not go to the substance of matters but do go to the speed with which you can cut to the core of the issue. That might sound like it is neither here nor there, but people who have put these applications in do want them dealt with speedily and, if the presentational issues are messy, it takes a lot longer to properly consider them. There has been some considerable improvement in those, but I would not rule out there being further improvement.

The process is that the department works with a set of guidelines for the ones that fit ministerial discretion. The department makes an assessment of those which fit ministerial discretion guidelines and they come up with the individual file. The ones that are assessed as not fitting the guidelines, generally speaking, come up by way of a schedule. There may only be one case in a schedule, but there might be up to 10 or 12. Each of those will have one or 1½ pages on them. It is not that the department decides 'no', they just put them into that category of, 'We don't think these fit the guidelines, but you have a look. If you want more information on those, you can get that and then that case will come up as an individual file.' That is the process under which we work. I think that is a reasonable process. It is looked at by a number of people in my office after that before it comes to me. So I am satisfied that each case gets very thorough consideration. That is not to say that there is always agreement between the people who look at them, because by definition these cases are on the edge and there are some that are very difficult. There are competing issues on which to decide.

An example might be one I just recently decided. It is going to cost Australia a motser allowing this person to stay because they have a kidney problem. But when you add up all the other things, I cannot really say that it is fair enough to send that person back. You will have some people who might say in relation to that particular matter, 'That's money out of the health system that could have gone to an Australian citizen.' You will have other people who might say, 'How can you send someone back to where they won't get the same sort of treatment?' And even more might say, 'Forget that it's money that could go on an Australian

citizen. You can't establish a precedent whereby people can use Australia as a health tourism location.' There are lots of competing and very valid and genuine arguments to consider on a lot of these cases. They get a very thorough going over.

I do think we could look at presentational issues so that, in the end, when you sit down around a table with two or three people, you can cut down to two or three things that are the issues, not all the other guff: 'Came in on this date. Went out on this date. This date. That date. This date. That date.' That is all generally piff-paff, unless you want to establish a pattern of abiding by visas in the past or a pattern of not abiding by them in the past, in which case you can make that simple statement, I think, and then have information available, if the minister wants to see it. In substance, they do a good job.

Senator BARTLETT—The other aspect of my question goes to the matter of quality control and whether there is some degree of double-checking of what comes to the minister by way of advice or recommendation and whether it is based on the total available information. I appreciate that I am more likely to see the small number where there are significant concerns. You always wonder whether there is a large number of others you do not see or whether they are the only ones you see. I have been aware of ones in which there have been disputes about nationality, and when people have provided more information that extra information has not been provided in the summary that goes to the minister. In effect, the minister gets, if not wrong advice, at least inadequate advice in terms of the total amount of information.

Senator Vanstone—If you are looking at the cases that do not fit within the guidelines and are judged not to—and, therefore, I get a page and a half, roughly, sometimes more—I cannot guarantee you that every relevant bit of information that someone else thinks is relevant is put in there. How could I offer you that guarantee? It would be banal to do so. All I can say is that there have been rare occasions in the two years I have had this job when I have, for example, looked at something the RRT have said and said to myself, 'I don't see why that does not merit further consideration.' That is not to say that, if the RRT express a view that something ought to be looked at, the person should be given a visa. But it is to say that their remarks should not be ignored.

Senator NETTLE—You mentioned that you receive recommendations from the department in relation to the 417s that you deal with. Do you receive a single recommendation in relation to those cases or a number of recommendations that you would then choose between?

Senator Vanstone—The files that come up that I have referred to—to Senator Bartlett—as being what we call schedules have a cover sheet that says, 'The department has made the assessment; these people do not fit within the guidelines.' And then there are a number of cases behind, as I have indicated. So that, I suppose, is a standard recommendation in relation to those. In relation to the ones where the department thinks they could fit within the guidelines, they have done a separate brief on that case. They come up with options.

Senator NETTLE—When you used the word 'recommendation', were you referring to those options—and you would choose which of the options?

Senator Vanstone—Yes. Or choose other options.

Senator NETTLE—I was checking I understood what you were explaining.

Senator Vanstone—The point has just been made that perhaps it is wrong to use the word 'recommendation'. The department does a pre-screening and makes an assessment that some do not fit within the guidelines. But it is up to us to have a look and say, 'Well, they might not, but I am going to use my power anyway,' or 'I've had a look and I think they do fit within the guidelines,' so then I will consider using my power. You might make either of those decisions. Equally, when files come up that have been considered by the department as probably fitting the guidelines, there are—you might not call them alternative recommendations, but there are alternative options that you could follow.

Senator NETTLE—When you talk about whether someone fits the guidelines for ministerial intervention or not—and I respect what you were saying before about choosing between the criteria for the different cases—do you have any set of criteria that you use for that or is that the part that is at your discretion?

Senator Vanstone—The guidelines are meant to be the fairest description we can come up with at this point in time as to those that might merit further consideration. As for the ones that do merit further consideration, the variety of cases is such that I think you would find it very hard. For example, there might be medical conditions. Also, families come in different waves, so you might have a child that is not an applicant on one visa application for a variety of reasons but is, in a period of time, going to become a citizen if they are not removed in the meantime. You might say, 'Well, in the normal course of events they are going to become a citizen; why worry?' but the parents worry, so you might say, 'Okay, it's not really unique or exceptional, but in the normal course of events this kid is going to become a citizen so we will intervene now.' There are just so many that I think it would be just impossible. You would slow the system down so much, trying to go back to your own guidelines, that you would set yourself time delays. That is why they say 'unique and exceptional'—

Senator NETTLE—Fair enough. I just wanted to ask.

Senator Vanstone—They have been through the legal buckets, they have got a no; by the normal standard that Australians accept as the migration system, they should go home. They are on their last legs. So it is 'unique and exceptional'. It is pretty general, isn't it? But it has to be, once you have got past the legal entitlements.

Senator NETTLE—Yes. The reason I asked about the criteria is that I thought health issues might be something you might consider, and you said you do consider them. I am aware of a Chinese detainee who was, I think, most recently at Villawood, who needed a form of kidney dialysis. It was self-dialysis—the bags, rather than being on the machine the whole time, so he changed the bags several times a day. He was subsequently deported back to China. I understand there was discussion at the time, before he left, that he might not be able to access the same level of health care and kidney dialysis as we was able to access here. I am aware that upon his return he passed away. He was not able to receive that access and he passed away. How does that case fit in with what you have been describing? I have no idea whether or not he had a 417 application in, but how—

Senator Vanstone—If you can give me the name of the case, I will have a good investigation of it. As you know, I have an issue with you in relation to getting your facts

right. If you give us the case, I will have a look at it, and I will give you some private advice on it.

Senator NETTLE—I am happy to do that in that case, but I am interested in the principle of how you make that assessment.

Senator Vanstone—I think what I have tried to say to you is: it is not possible to codify that down into one sentence. It just is not. In some case, for example, it may appear that someone has come here quite deliberately to access the health system. You might have a different view. We do not have a principle in the migration system or a sentence we go by that says: if you can get better health treatment in Australia you can stay. I tell you what: the whole world would be here.

Senator NETTLE—Minister, perhaps I can explain a little bit more about what I am asking. In the Vivian Solon inquiry, we were provided with a checklist, which was a deportation checklist. It was provided to us as a rationale for: we check these things before we deport someone. The copy we have does not mention any health issues. I raise this case because I want to know whether a health checklist is done before someone is deported.

Senator Vanstone—There is a fit to travel requirement.

Senator NETTLE—I accept there is a fit to travel requirement—that is the one where Vivian Solon could not sign the piece of paper—but the subsequent checklist we have been provided with does not have fit to travel on it. It might be because there is another document with fit to travel on it. I want to know what health check there is. Are you saying there is only fit to travel, which is not on the last checklist we have been given?

Mr Correll—Yes, we can look at the specific case. There is a removals checklist that is applied and was referred to in the Alvarez case and in the report. We have updated in our operational instructions the use of that checklist. There is also a fitness to travel requirement for any removals, so I think we would need to look at the circumstances of the case to be able to respond effectively to any questions.

Senator NETTLE—Maybe I will just check that what I have got is the current version. I have got MSI 267—advice of removal arrangements, which has a removal checklist on it—section 198 of the Migration Act. It goes on. It has got A, B and C sections. It has got six questions in the matters and evidence, none of which relate to health. Is that because I do not have the right document?

Mr Correll—I just need to check the precision of this but, since the Alvarez matter, we have issued an interim MSI which provides updated instructions and an updated checklist for removals purposes. We are in the process of finalising the final instruction going out for removals purposes. Which instructions are you dealing with? The original one from the time of the Alvarez report?

Senator NETTLE—No. Since Solon, we have been provided with this one.

Senator Vanstone—I think where you are going is that there is an allegation on this side of the table that there is a fitness to travel requirement. You want the source document for that. The Solon case indicates there is. There is some dispute about the appropriateness of the

medical assessment that gave the fitness to travel okay, but there was no dispute that it was there—the requirement to get that.

Senator NETTLE—I want to check if there is any health check that is part of that removal checklist because the version I have does not have it on it. So if the answer is fit to travel—

Senator Vanstone—The answer is: there is. The Solon case demonstrates that.

Senator NETTLE—It demonstrates there is a form.

Senator Vanstone—Yes. It demonstrates there is a requirement, so there is a requirement. What I also indicated to you was, clearly, there are people who are of the view that the assessment at the time was not appropriately done but your question is: is there a fitness to travel requirement? My answer to that is: yes.

Senator NETTLE—How does that relate to the removal checklist? If you take that part on notice, that is fine.

Senator Vanstone—Sure.

[4.04 pm]

ACTING CHAIR—We will now move to output 1.3.

Senator CROSSIN—This might be 1.2, but you will have to bear with me because my first—

Senator Vanstone—While you are doing that, Senator, can I take this opportunity while there is a gap?

ACTING CHAIR—Yes.

Senator Vanstone—I made some remarks earlier today about media coverage. This morning I was made aware of a letter from the Ombudsman, indicating that he was taking the unusual course of writing to convey his reaction to some of the press coverage over the past week of comments attributed to him in evidence given to parliamentary committees. He went on to say that he had been asked to appear before two Senate committees and that the media had taken an uncommon degree of interest in his evidence although, he says, the evidence mostly traversed matters that were already on the public record. He went on to say: 'My concern is that some of the reporting is not accurate and summarising what I said.' He selects an example—and I will quote from the letter:

> An example is a couple of recent newspaper reports attributing to me the view that almost every person who had been in immigration detention for two years or more had suffered mental illness as a consequence. In fact, I said 'mental health issues have arisen in at least most of the cases that we have been examining where a person has been in detention for two years or more'. I prefaced my observation with a number of qualifications that have not been reported, including that I had not looked at all the cases, that I was relying solely on reports on file and on views expressed by those in detention, and that there were multiple factors that contributed to a person's distress, including the unpredictability of the current litigation. I also used the terms 'mental distress' or 'mental health issues' rather than 'mental illness'.

In that context, I think what he is referring to is an article in the *Age*, which perhaps will not surprise people who follow these issues, which said in part:

> In damning testimony, the Ombudsman also said that almost everyone held for two years or more in immigration detention had suffered from a mental illness.

That was an article by Melissa Schubert that might have had some other issues in it. He may also have been referring to a *Daily Telegraph* article which wisely did not have a byline on it, and which had the headline 'Detainees driven mad'. That is an indication of the sort of coverage we are dealing with here. Obviously, there would be more content within that article. Another one had the headline 'Detainees mentally ill' and said that 'the professor had told the Senate committee that almost everyone held in immigration detention for two years or more had suffered from mental illness'. Of course, there was the report in the *Canberra Times* by Sharon Mathieson and Darrin Barnett headed 'More citizens wrongly held'. This might be the one I was referring to this morning. It starts by saying:

> The Commonwealth Ombudsman is investigating a string of new cases involving Australian citizens who may have been wrongfully locked up in detention centres.

That is all that needs to be said. It is not only a concern that I have about proper media reporting of these matters; clearly, the Ombudsman has a similar concern.

ACTING CHAIR—Thanks, Minister. Senator Crossin?

Senator CROSSIN—I apologise if this comes under 1.2. If it does, please take it on notice. Can you tell me how many ministerial discretions are still awaiting action under sections 417, 48B and 501?

ACTING CHAIR—If that comes under 1.2, I would appreciate it if you would take it on notice.

Mr Metcalfe—I will take it on notice. I think the officers have already left.

Senator CROSSIN—If you could take it on notice, I would appreciate it. In Senator Vanstone's opening comments to the estimates hearing in May, the minister made reference to the appointment of immigration detention review managers. Has that occurred?

Mr Correll—Yes, Senator.

Senator CROSSIN—How many of those are there and what do they do?

Mr Mann—I will just get some assistance with the numbers, Senator. They have been in place since May and they are reviewing each case upon arrival at the detention centre to give us some assurance that there is a lawful basis on which they have been detained. They also identify any cases where we are unable to confirm the identity of the person and, if that cannot be done immediately, refer it to our national identity verification and advice unit.

Senator CROSSIN—So the process is that you may pick up somebody, take them to a detention centre and then one of these immigration detention review managers will look at that case to see if you have done that lawfully?

Mr Mann—No. It is an assurance process, so the officers in the field would make their own inquiries. In many cases they would, if they had any doubts, be making inquiries back to the office while they were still in the field before making any decision to detain based on a reasonable suspicion. That is checked to make sure that there is no room for error on reception into the detention facility. If, for example, there is a reasonable suspicion but there is some

issue raised as to whether we have confirmed the identity, that is one of the sorts of issues that would be checked through that process.

Senator CROSSIN—Mr Fleming, are you going to tell me how many there are?

Mr Fleming—Would you like me to answer the question on numbers? There are five DRMs who have been appointed: one in New South Wales, one in Victoria, one in Queensland, one in South Australia and one in Western Australia. In the Northern Territory, the role is undertaken by senior staff in the office at the moment. There are very few cases in Tasmania, but the Victorian detention review manager oversights if there are cases in Tasmania. For the ACT, the Sydney detention review manager undertakes that role. So there are the five plus some support from senior people in Darwin who undertake that function. Also, particularly within Sydney because of the larger caseload there, the DRM is supported by other staff as required because of the volume.

Senator CROSSIN—Were these people in place when the case of the Chinese-born Australian back in May was placed in detention with his girlfriend and young child?

Mr Correll—I stand to be corrected on this, but I do not believe so. These additional positions were announced by the minister on 25 May 2005, so I do not believe they were in place at that time.

Mr Fleming—The timing does not sound right. I am not completely aware of the particular case.

Senator CROSSIN—So one would assume that with these people that sort of incident would hopefully not happen again.

Mr Correll—They form part of a key quality assurance framework to assist in ensuring that type of event does not recur.

Senator CROSSIN—How do these people fit in with the detention review advisory committee? Do they in some way report to that committee or have a liaison role with that committee?

Mr Fleming—We certainly get input from detention review managers on case lists that are circulated for the purposes of monitoring by the detention review committee. It is not all of them all of the time, but many of them also participate by telephone hook-up in the committee meetings themselves.

Senator CROSSIN—How often does the advisory committee meet?

Mr Fleming—Generally about every two weeks.

Senator CROSSIN—Did I see somewhere that there is a requirement to report formally every three months?

Mr Fleming—Is that for the detention review managers?

Senator CROSSIN—No, the detention review advisory committee. Does that have to provide some sort of mandatory report quarterly or something?

Mr Fleming—There is also an executive detention review committee that has been meeting quarterly. With the introduction of detention review managers and the other

processes, we are currently reviewing how that operates and we expect that to meet again shortly.

Senator CROSSIN—There are now three layers of review of detention that we have. We have the immigration detention review managers, we have the detention review advisory committee and we have the executive detention review advisory committee. Is that correct? Have I got it right?

Mr Fleming—You have.

Senator CROSSIN—We have three layers?

Mr Fleming—They may be looking at slightly different things given that, as Mr Mann has explained, the role of detention review managers is really going to issues of lawfulness of being taken into detention and identity issues. They also play a role on an ongoing basis of checking that detention continues to be appropriate.

The detention review committee picks up a broader role with a range of areas in the department in looking at what other processes are going on to make sure that substantive visa processing issues, for example, are progressing as quickly as possible and that, if they are subject to removal, appropriate steps are being taken to effect that if that is possible. They also start to pick up systemic issues, given that we will have the different areas from the department around. Again, the executive detention review committee is intended to operate more on the basis of looking at whether there are any systematic barriers to processing applications and issues for people in immigration detention that we can do something about.

Senator CROSSIN—Those three levels look at all of those issues for each of the 600 or so who are now currently detained; is that what you are saying?

Mr Fleming—They would be working through the cases and issues in all of those eventually, but in a rolling case list forming the basis for it.

Senator CROSSIN—In May, the minister also announced that there is now a 28-day limit on the time detainees will spend in the state detention, state detention being?

Mr Fleming—If people are held in correctional facilities, if they are to be held for any longer than the 28 days, it is only to be in exceptional circumstances that have been signed off by the state or territory director concerned.

Senator CROSSIN—Do your detention review managers or the review advisory committee also cover people held in state detention?

Mr Fleming—Yes. They are a caseload of particular focus.

Senator CROSSIN—How many of those held in state detention would there be at this point?

Mr Fleming—I will just find that in my briefing material.

Mr Correll—I think the answer is that there are currently seven people in correctional facilities or watch houses. This is at 21 October.

Senator CROSSIN—Would that include illegal fishermen?

Mr Correll—The figure of seven includes five illegal foreign fishers.

Senator CROSSIN—What would a stay of 28 days in exceptional circumstances be? What would warrant exceptional circumstances?

Mr Fleming—It may be that their behaviour issues are such that they cannot properly be managed in a detention facility. That is usually coupled with a serious criminal background. Sometimes there are also cases where we do not have an immigration detention facility where the people are but they wish for a whole range of reasons to remain where they are, because of ties with family, legal representation et cetera. Sometimes in all the circumstances it might be okay for them to stay longer. Also, sometimes—I think this applies to fishers in particular—they can be simultaneously in immigration detention and a form of correctional detention as well.

Senator CROSSIN—Senator Vanstone mentioned something along the lines that some complex cases would require referral to Canberra for guidance. Referral from where? From a state based office? In her opening statement she said, 'I have asked the secretary of the department to pursue the same issue with the heads of Commonwealth operational law-enforcement agencies'—this is access to databases. She then says, 'There is also a referral of complex cases to Canberra for guidance.'

Mr Fleming—I think that refers to the NIVA referrals, the national identity verification and advice unit that was mentioned earlier.

Senator CROSSIN—As opposed to detention.

Mr Fleming—With other issues. Usually, it would be a state office managing a case. If they did want assistance as to whether there was any other mechanism we could used to resolve this case, for example, finding a way of having them detained outside of an immigration detention facility, they can and do raise that with my branch in the national office in Canberra.

Senator CROSSIN—All right. Can I ask some questions about the contract with GSL—I am in the right place, am I? I will keep going until someone tells me not to!

Mr Correll—We will have a quick changeover, but ask away, Senator.

Senator CROSSIN—Just bear with me, Mr Correll. You would know that I have got the portfolio outputs and outcomes down pat for employment and education, so just bear with me today while I get my head around these and meet new officers. Maybe Mr Fleming might need to come back—sorry. Would the detention review advisory committee ever look at complaints from detainees about how they have been treated by GSL staff? When we were at Villawood, for example, we met a particular lady there who I will not identify even by nationality who was quite traumatised by the fact that she had been mishandled by GSL staff.

Mr Fleming—It would not necessarily come out to that committee. But if it manifested itself in a way that raised serious questions about whether they could be appropriately cared for where they were—in a particular detention facility, for example—it could be raised through that forum, but it is not an issue that generally would be.

Ms O'Connell—Senator, we do have mechanisms other than the detention review advisory committee for handling complaints.

Senator CROSSIN—Who would this lady go to to complain about her treatment? What does she do?

Ms O'Connell—In terms of that complaint, certainly, letting the immigration centre manager know of the complaint—and that can come through various different mechanisms throughout the centre. That would be the first point.

Senator CROSSIN—Can I just interrupt you there. And if she has no confidence to do that, because of the perceived closeness between the GSL staff and the centre manager?

Senator NETTLE—Or he is the subject of the complaint.

Senator CROSSIN—Or if he is the subject of the complaint?

Ms O'Connell—There is an opportunity also to complain directly to the Ombudsman—

Senator CROSSIN—The Ombudsman? How is she going to know about that?

ACTING CHAIR—Senator, it might be useful to allow the officer to answer your question.

Senator CROSSIN—She is doing that.

Ms O'Connell—There are posters in every centre—and information about the Ombudsman—advertising the telephone number for detainees to contact the Ombudsman direct. If they have complaints but they do not have the confidence, they will be dealt with by the immigration centre manager.

Senator CROSSIN—Is the information in different languages in the detention centres?

Ms O'Connell—Yes, it is. I cannot tell you how many languages, but it is. There are also information booklets and, during the induction, detainees are made aware of the Ombudsman and the Ombudsman's role.

Mr Metcalfe—Senator, did the lady concerned indicate to you that she wanted to make a complaint but had not felt able to?

Senator CROSSIN—Yes. She is very frightened and traumatised. I have to say I did not see any information anywhere about the Ombudsman—not on any posters or in any reception foyer or interview room we were in for the three or four hours we were there.

Mr Metcalfe—Could we perhaps privately obtain the details of that lady's name? I think, given that you have raised it in this way, I will certainly undertake to ensure that we do follow it up to ensure that she has had the opportunity to make a complaint and, if she felt that she was unable to make a complaint, that we also examine that. Otherwise, we have a bit of a stalemate with the suggestion that this person is concerned. If the system in your view or in her view is not meeting her needs, that is exactly what we need to know about so we can fix it.

ACTING CHAIR—Yes, if Senator Crossin can meet you out of session and provide those details, I think that would be the best way forward.

Mr Metcalfe—I would appreciate that.

Senator CROSSIN—I did not raise it because I wanted to bring particular cases here; it is just that one. It is also about access to legal information. Section 256 of the act provides for

access to legal assistance when requested, but I'll be blowed if I could find that information anywhere in the centre and, if I were a detainee, how I would get any access to information about section 256. How do detainees actually know that that exists, along with the information about the Ombudsman? Are all detainees given a packet when they arrive there—like: 'These are your rights; this is what you can do under section 256; and, if you happen to have your head bashed against a wall by one of the GSL staff, here is the Ombudsman's information'? How do these people access this information if they cannot speak English and do not know where to look for it inside those places?

Mr Williams—In relation to the Ombudsman, the posters and the advice in different languages, yes, the posters are displayed. The Ombudsman has a program of visits, as does the Human Rights and Equal Opportunities Commission. That is one of the first things they check on each visit to the centre. Those posters are up and they are in a very wide range of languages. Also, when detainees are inducted to the centre they are provided with information about that kind of thing, including in writing. In regard to the section on legal advice, under the section 256 of the act we are obliged to provide facilities for legal advice which includes rooms, access to telephones and correspondence. We do that. That is a legal obligation. Also in relation to asylum seekers, the department provides, in some cases, an asylum seeker assistance scheme where the legal advice is funded by the department.

Senator CROSSIN—I know that. I have a couple things there that I would like you to take on notice. You may well need to contact the Ombudsman and HREOC. Can you find out from those two departments how many times this year they have been to Villawood, Baxter and Maribyrnong?

Mr Williams—We can certainly do that.

Senator CROSSIN—And when was their last visit?

Ms O'Connell—To add to that. The Ombudsman or members of his staff are visiting Villawood at the end of this week, and the following week members of the Ombudsman's staff are visiting Baxter. Those visits are fairly regular visits. They always take issue if they are concerned at all about information of their office not being available.

Senator CROSSIN—I understand what you say about providing interview rooms. We saw the two or three rooms at Villawood that are available. But we had evidence during the inquiry that those rooms are often booked; they are often not available. They are probably certainly not the place in which I would want to spend six or seven hours a day talking to people if I were a lawyer in that situation. That is another matter, I guess. In order to access those rooms, people have to actually know they have a right to call in a lawyer. Perhaps you could provide the committee with the information you give to detainees when they first arrived at Villawood.

Mr Williams—Yes, we can provide that.

Senator CROSSIN—Whatever packet you give them, could you provide to this committee for us to look at?

Mr Williams—Sure.

Mr Correll—We can happily provide information on what is there at the present time. I would also point out that in the government's response to the Palmer report there are a number of initiatives in the area of the introduction of a case management framework that will cover all persons in detention centres, and a community care model that includes a counselling role for people in detention centres. So there are a number of developments occurring in this area. A case management and community care pilot initiative is due to commence in January in the new year as part of that response. That will be highly relevant to the issues you are raising.

Senator CROSSIN—What was the projected cost and the actual cost of the contract with GSL for the last financial year?

Mr Williams—I think we would have to take that on notice. I do not have that information to hand.

Senator CROSSIN—I meant for the last financial year.

Mr Metcalfe—You are looking at 2004-05, at the estimated cost and actual cost. Is that the question?

Senator CROSSIN—Yes.

Mr Metcalfe—We will take that on notice.

Senator CROSSIN—I would like the projected cost for 2005-06. I am wondering if this is expected to increase following the current contractor review between DIMIA and GSL.

Mr Metcalfe—We can take on notice the estimated cost for 2005-06. In relation to whether the cost might increase, the review has commenced and I think it would be really impossible for us to foreshadow what might come out of that. Clearly, some enhancements have been made to medical processing, including mental health issues and that comes at a cost. More broadly, we have not got to the stage yet of even having any preliminary conclusions as to what that review might bring with it. Then, of course, we are in contract, so that would lead to some negotiations, I would imagine, with GSL. Certainly by the time we next meet, I would hope that we will have much more information on that particular issue.

Senator CROSSIN—Are there any financial penalties imposed for contract breaches by GSL?

Ms O'Connell—Yes, there are.

Senator CROSSIN—Are they too broad to mention or can you give me a couple of examples?

Mr Williams—They are actually described as sanctions rather than penalties. That is a minor point but an important one. They are tied to the immigration detention standards, which form a schedule in the contract. So, where there is a demonstrated breach of one of those standards, it may be that a sanction is applied.

Senator CROSSIN—Can you give me an idea of whether there have been any sanctions applied in the last 12 months?

Mr Williams—There was an announcement, I think by the minister or the department, some months ago about an individual case involving some transfers of detainees where

standards were not met, and sanctions were applied in that case. Every quarter they are assessed and applied and there is a process of discussion and communication with the service provider over them.

Mr Metcalfe—In that particular instance, the transfer of five men from Melbourne to Port Augusta, I issued a press release in relation to that and indicated that the department was appalled by the treatment that had occurred and there had been very, very significant financial sanctions applied to GSL.

Senator CROSSIN—Can you tell me what they were?

Mr Metcalfe—In the order of hundreds of thousands of dollars.

Senator CROSSIN—When that sanction is paid, does it go into consolidated revenue or does it offset the contract costs to the department?

Mr Williams—It is an offset against a contract payment. So there is a portion of the payment, as I understand it, that is at risk, and it is that portion that sanctions might apply to. It is kind of deducted from contract payments.

Senator CROSSIN—Are there financial sanctions for a breach of the contract project for each financial year that you are aware of? Is the transportation one the one and only one this year?

Mr Williams—No, there will be other occasions. Each quarter they are assessed and there will be some level of sanction or discussion about them.

Senator CROSSIN—Can you provide me with the nature and type of sanctions that have been imposed over, say, the last 12 months?

Mr Williams—We will need to take that on notice.

Senator CROSSIN—I understand that. Are the financial penalties against the department through settlements or court orders taken from consolidated revenue or from the department's budget?

Mr Williams—I guess that would depend on the level of insurance cover that we might have for the particular activity. I might ask one of our financial or legal colleagues to comment.

Mr Metcalfe—I think we might take that on notice as to the particular technical effect it might have—whether it is something that ultimately affects insurance payments because it is met by Comcover and we have to pay a higher premium or whether the funds are administered by this portfolio. I will see if I can have an answer for you before we finish tonight. Otherwise I will come back on notice.

Senator CROSSIN—If the funds are administered by the portfolio, does it come out of that particular division or branch or is it from the global budget? Do you know?

Mr Metcalfe—Essentially there is a disaggregated budget within the department. Others will correct me if I am wrong, but my understanding is that detention issues are essentially a quarantined item, so the funding available varies depending upon the costs incurred and the department does not make any 'profit' from that. We get resourced for what we need and we do not get anything additional.

Senator CROSSIN—The previous funding model for DIMIA was based on itemised funding. Payments were made for location, detention and removal. Is that correct?

Mr Metcalfe—I will ask Ms Gray, our chief financial officer, to join us. This issue you are referring to goes to an issue that had some media attention recently as to how the department was resourced in relation to locations and compliance activity, which is quite a separate issue from what we were just talking about, which is the detention contract. Is that right?

Senator CROSSIN—Yes.

Ms Gray—I think you were asking about the way in which we have been funded over recent years.

Senator CROSSIN—Yes.

Ms Gray—DIMIA has a long history of having resource agreement type funding models, where the units and methods of payment varied according to activity. In July 2001, Finance undertook a pricing review of DIMIA's business and came up with a purchasing agreement which came up with an itemised price per unit of activity. That agreement set out what we produce and what government would pay for us to produce those products. From our perspective, the model was intended to allow us some degree of certainty, to allow us to do the job to the level of activity that there was. From Finance's perspective, it made sure that we were funded only for what we need, and if the funding was not required in accordance with our estimates, it could be used elsewhere in the Commonwealth. That purchasing agreement was in place until 2003, when we reviewed it, and we put a standard fixed appropriation in place while we undertook a wider review of the funding model.

The review of DIMIA's business processes and costs was undertaken by an external efficiency expert, Mr Tony Sherlock, and was overseen by a committee comprising the Department of the Prime Minister and Cabinet, Treasury, Finance and DIMIA. We came up with a new funding model which has moved away from the concept of per unit price and instead allows for the concept that Mr Metcalfe was referring to earlier, which is that volatile items that are difficult to estimate are effectively quarantined. So we have a degree of certainty around getting additional funds if we need them; but likewise, if the funds are not required we hand them back. The remainder of our funding is a standard appropriation.

Senator CROSSIN—Do you hand them back to consolidated revenue?

Ms Gray—Yes, that is right. Effectively it would adjust our appropriation so that we would just not have that amount of revenue.

Senator CROSSIN—I just was not sure whether you meant you handed them back to a central office in DIMIA or Finance and Administration.

Mr Metcalfe—No, the department of finance is not that kind to us.

Ms Gray—I just wanted to elaborate on this quarantined idea, where other volatile items are also quarantined, and those include the offshore asylum seeker management funds, removals, detention, management of unauthorised boat arrivals, litigation and humanitarian settlement services.

Senator CROSSIN—Was the cost of detention and removal a cost to a branch or a division responsible for locating and detaining?

Ms Gray—In allocating the funds out, yes, we look at what those divisions need to undertake that business, and we also look at the resources that states require.

Senator CROSSIN—Is that a cost under the GSL contract or a cost under the global budget—if it is related to movement of people from, for instance, Melbourne to Port Augusta? How does that work?

Ms Gray—If they are being moved by GSL, my understanding is that it falls under the contract.

Ms O'Connell—That is correct. That would be part of the GSL contract cost for that financial year.

Senator CROSSIN—Do you have the figures for how much it is now costing to maintain Nauru? What is the ongoing cost of maintaining Nauru now?

Mr McMahon—That is actually output 1.5; but in the last financial year it cost $37.5 million for Manus and Nauru. It is roughly $3 million a month at the moment for Nauru.

Senator CROSSIN—And there are only two detainees there at the moment. Is that correct?

Mr Metcalfe—As of this morning, yes.

Senator CROSSIN—And as of this afternoon?

Mr Metcalfe—There are two there now.

Senator CROSSIN—Two there this morning and this afternoon?

Mr Metcalfe—There are 25 on their way to Australia.

Mr McMahon—If you look at Manus, the monthly cost for maintaining Manus is $150,000. If we mothball the Nauru centre or alternatively have it operationally ready to be reactivated, depending on how you want to describe it, we would imagine it would be a similar amount—$150,000, $200,000. It is mainly security to keep the assets in place. But at the moment we just have to work out what we are going to do with the centre.

Senator CROSSIN—At the moment you have got two people there and it is costing—

Mr McMahon—It has been up to this point costing roughly $3 million a month. We need to have discussions with the Nauruan government about what is going to happen to the two people. It is quite possible they will not be in the centre. I think we would be positioning ourselves to, in effect, mothball the centre but we still have to have discussions. If we mothball then you would see the costs drop very dramatically from the $3 million but we are not in a position, at this time, to estimate exactly what it would drop to.

Mr Metcalfe—Just to be absolutely clear on this point, it would be completely incorrect to suggest that from now on it will cost $3 million a month to maintain two individuals. Nothing would be further from the truth. That is a historical figure that relates to a larger population. Given the government's decision that 25 of the remaining 27 persons would come to

Australia, the figure will obviously drop dramatically. What we cannot say, though, is exactly what that figure will be.

Senator CROSSIN—So you cannot tell us what the true figure might be.

Mr Metcalfe—That is right. We will now go into a process of working with the relevant authorities. I am sure that when we see you in May we will be able to tell you what the figure is.

Mr McMahon—What we can say is that Manus is $150,000 a month.

Senator CROSSIN—Just to maintain it? Even if it is empty, it would be that much?

Mr McMahon—Correct. There is a whole range of things. First of all you need security personnel there to make sure that the assets stay in place and that it is operationally ready. They have to run the machinery. The machinery has to be maintained. You cannot just let a generator sit, for example, and not run it periodically. There is a lot of maintenance to be done, particularly in a place like Manus, which is very tropical. There is a high level of deterioration of equipment.

Senator CROSSIN—I know. I personally can relate to that.

Mr McMahon—Yes, you would know the tropics.

Senator CROSSIN—Fridges do not last very long. While I have your chief financial officer here, I want to ask a couple of questions about bonuses paid to senior departmental staff as part of their contract.

Mr Metcalfe—This is well outside 1.3 but—

Senator CROSSIN—Is it?

ACTING CHAIR—So was the last one.

Senator CROSSIN—Am I going backwards now? Will I put these on notice?

Mr Metcalfe—I am sure that our CFO will be here as long as we need her today.

Senator CROSSIN—Do you want me to put these questions on notice then so we are not jumping all around the place?

ACTING CHAIR—That would be excellent. Thank you, Senator.

Senator LUDWIG—There was a report in May 2005. I am not sure whether this question has been asked but I think the minister was talking about reports that sometimes turn up in the media that might be wrong. Can you tell me about this one? It was about a Chinese-born Australian suing over immigration detention. Has that been canvassed here before? This was a report on ABC online on 18 May. A citizen was detained by immigration officials and held at Sydney's Villawood detention centre for three days.

Mr Metcalfe—I do not know what happened at last estimates. I was not here.

Mr McMahon—We did deal with such a person at the last Senate estimates, correct.

Senator LUDWIG—What are the results of it? Has that been finalised?

Mr McMahon—I have not seen—

Senator LUDWIG—There must have been a court case as well, I suspect.

Mr McMahon—It was a court case. You will know that the position was quite contested. I think we have got—

Mr Williams—Excuse me, it has not been heard so it is probably sub judice at the moment.

Senator LUDWIG—That was the point that I was trying to go to without raising the issue itself. That is currently before the courts, is it?

Mr Williams—I am advised that it is. I do not know anything more about it, though, I am afraid.

Senator LUDWIG—Can you take it on notice to the extent that, when it is finalised, you can perhaps take us to the case itself or give us an overview of what actually occurred in those circumstances?

Mr Metcalfe—Do you want a sort of hanging question on notice? When we can respond, we will—that sort of thing?

Senator LUDWIG—That is about it—or I can ask the committee to put it on their records and—

Mr Metcalfe—You could ask every time.

Senator LUDWIG—I just did not want to keep asking the question until such time as—

Mr Metcalfe—I just want to make sure that our system does not lose it.

Senator LUDWIG—I will not forget it, I suspect.

Mr Metcalfe—I am sure that will help us.

Senator LUDWIG—I do not mind if you do. I will not take you to task over that. The minister is not here, but we were going through an issue earlier and this is the appropriate place—output 1.3—to ask about it. We were going through the area of those people who have been detained and the Ombudsman had indicated the list of the number of years they had been detained. There were 221 cases and 20 had been added. They may show up in the computer as released not unlawful. I think I asked for their nationalities. Are any of those people Australians?

Mr Metcalfe—We are checking on that information as we speak. When we have the details of what we took on notice, we will come back to you.

Mr Correll—We are attempting to come back later today with that information.

Senator LUDWIG—It just struck me then because it was a Chinese-born Australian in that instance and I thought I would broaden the search out. Are there any other forms of detention where there is a released not unlawful that would not be referred to the Ombudsman?

Mr Metcalfe—We had a long discussion this morning with Senator Nettle about the eight categories in which the Ombudsman has classified those particular cases. We had a discussion, as we indicated in my response to the minister on the Comrie report, about whether there was a missing adjective or not. There is an ongoing process of checking to see

whether persons have been detained lawfully. We have discussed that with Senator Crossin in relation to detention review officers and various other matters. I think the position that we ended up at this morning was to indicate that, if there were cases where it appeared that there had been a detention of a person improperly, unlawfully, then we would have discussions with the Ombudsman in relation to whether there should be an investigation, bearing in mind that there can be some circumstances, such as we discussed in detail this morning, where a person may be released having become lawful—such as the children's citizenship aspect or whatever. So I do not think there is a simple answer to what you have just asked, because we have spent a lot of time talking about those issues this morning.

Senator LUDWIG—I know we have, but I thought it important to at least try to get some clarity both from us and from you to ensure that at least the media are not taking issue with how the matters might arise in this committee and getting it wrong. The other area of course is those who are currently in detention who have got claims and those sorts of matters. Can they then become released not unlawful at some point?

Mr Correll—Yes. There are clearly such circumstances. Indeed, a major component of the 221 are in exactly those circumstances: people who have been in detention facilities whose circumstances change. It can be, for example, a question of identification, identity.

Senator LUDWIG—That is what I was thinking.

Mr Correll—It can be the age of a child—a child turning 10 years of age and successfully applying for a visa. We also heard a lot this morning about the legal precedents that have an impact. They are probably the greatest single area. A particular decision is taken which has a legal precedent which then has a ripple-on effect for people in detention.

Senator LUDWIG—So there is the area where there could be a decision which creates a situation where a person is no longer lawfully detained and there is the situation where a person may turn a certain age which then puts them into a different category. These circumstances will all be episodic; they will not be periodic. It will depend on the individual's circumstances or the court case or a particular incident.

Mr Correll—Yes.

Senator LUDWIG—Is there a process in place to capture that—to ensure that you do not detain them longer than necessary? In other words, up to the point where there is a change in circumstance, we will accept—although an individual may not, and they have their own avenues of appeal—for the purposes of this discussion, that they are lawfully detained, but at that point, and after that date, they are not. I think I was reading somewhere about a court case which had reflected upon one person, and they had been released, and another person might have been under the same circumstances and there was some six weeks delay. That could then create a situation where you might, unfortunately, put yourself in a position where litigation might arise as a consequence, because their detention might have been longer than necessary. So what sort of program have you got in place to ensure that, as best as you are able, you capture these episodic events and ensure that their detention is no longer than is necessary?

Mr Correll—Senator, I think this is very similar to some discussion we had earlier today in response to questions from Senator Nettle—

Senator LUDWIG—Yes.

Mr Correll—but, essentially, there are two ways we tackle this issue. One is through the ongoing review processes for people in detention, where we are—

Senator LUDWIG—No, I understood that, because that is what I was listening to, but—and I did not mean to cut you off—it covers the point where that comes in at a certain time, so it only captures them post the event, when there is a two-year review. So it could mean, if the episode was at the beginning, that it could be two years later before you had that review.

Mr Correll—The highest risk area in this area is likely to be a circumstantial change relating to a legal precedent. This relates to the discussion we had this morning about Srey and Nystrom type cases. In those circumstances, the approach we have is for action to be taken by our legal team to review the specific case circumstances. But sometimes that can be quite a complex process, to review those circumstances, and as soon as a legal view is formed on that then we would take action immediately. But, yes, that does involve a lead-time. It is hard to see how that particular lead-time can be obviated until the facts of a particular case are resolved.

Senator LUDWIG—The other area, of course, is how, in terms of the detention, the ministerial series instructions operate, particularly in relation to how sections 189 and 196 operate. Have they been updated recently?

Mr Mann—They are identified as priority instructions that are being updated by the end of this calendar year.

Senator LUDWIG—So they have not been updated yet?

Mr Mann—They have not been reissued; I am not sure if interim guidance has been provided. I would have to seek advice on that.

Senator LUDWIG—If there is interim advice available, could you make that available to the committee as well?

Mr Mann—In this area around the particular legal precedent—

Senator LUDWIG—There is Goldie, and then there is Taylor, and I think it is reasonably settled that, in terms of the view that the department had, it was, I think I used the kind words, 'not right'. The Federal Court, and perhaps Ruddock and Taylor, probably explained a little bit better how the law should operate, and your ministerial series instructions, as they were, or currently still are, do not, I think, reflect either of those two cases well.

Mr Metcalfe—Certainly parliament recommended—and it made a great deal of sense—that all of our migration series instructions be reviewed and, of those, the top priority are the ones which relate to detention and removal. There have been a number of supplementary advices and instructions to staff, and I think we have discussed a couple of those today. One of them was issued recently by Mr Correll in relation to removals. Essentially, the key point of agreement that circumstances are such that removal should occur is now placed at the state director level, rather than at more junior levels, within the department.

But clearly there has been significant development in case law, significant experiences which have pointed to major problems and supplementary instructions, which need to be

incorporated in updated instructions. There is no point issuing updated instructions unless you are training people in relation to them. I think one of the comments that Palmer made was that an officer needs to be aware of dozens of instructions to be able to fully undertake their job and he asked if this was reasonable. Ensuring that staff are better supported and better trained goes to this issue of updating instructions and then making sure that they are actually put into practice.

Senator LUDWIG—I think they are called migration series instructions. I always get them confused with the ministerial discretion that is available under 417. The question I wanted to come back to was: what are they now operating under, have they been advised and who has been advised to ensure that—

Senator Vanstone—Senator, could you speak into the microphone? I think it is turned away.

Senator LUDWIG—Sorry. It seems to want to turn away itself sometimes—it has a life of its own. If you have updated the migration series instruction, to what extent and who has been circulated with that to ensure that it does operate, that it is available for officers to use and that they have been trained in using it. It is a significant part of implementing all of your compliance operations, and I would want to ensure—and I am sure you would too—that your stuff are fully trained as to how that section operates and how it should be interpreted.

Mr Mann—There are two things I would say in relation to that. A message has been communicated about exercising great caution and as we speak two things are happening: firstly, we are rewriting those instructions; and, secondly, we are improving on the current training that covers this very issue. This issue is covered in the existing training that our officers have undertaken, but we are looking to update it and make sure that it is what we want to see for the future. From now until the end of this calendar year we will be conducting training, and we have already issued an instruction that no compliance officer is to participate in compliance operations without having already undertaken the existing training. We are exercising great caution. Unless the current training has been undertaken, no officer is to participate in a compliance operation in the field while we both improve the instructions and start delivering enhanced training through to December. That will then be built in to the ongoing curriculum of the college, which will be up and running from next June.

Senator LUDWIG—So does that mean migration series instruction 351 is now suspended until it is updated? What happens? You can correct the number; I think it is one of those numbers.

Mr Mann—It is not a matter of it being suspended. A cautious approach is certainly being taken.

Senator LUDWIG—You do not think it is still right, do you?

Mr Mann—I think the issue is us making sure that we exercise caution in forming conclusions and do not make assumptions—all of the warning signs that have been brought to our attention in the Palmer and Comrie reports. Compliance operations are continuing. However, they are continuing in an environment of great caution and we are making sure that there is very tight management of what those operations are with reference to compliance help desks to make sure that we are happy with the way those operations are conducted. We are

planning our operations in advance so that we know exactly what is being done around the country. I do not know that we would say the instructions were wrong as opposed to needing strengthening, improvement and clarification reinforced by the sort of training the secretary has talked about.

Mr Correll—And in some cases being strictly adhered to through proper quality assurance. There are a number of measures we are taking at the moment addressing the area you are covering, Senator. Firstly, we are in the process of systematically working through and rewriting instructions dealing with the highest priority areas and the areas we think are at risk. Secondly—and Mr Metcalfe has already referred to the removals instructions area—we have put out specific interim advices where we consider a high risk situation to apply. Thirdly, as part of the initiatives announced by the minister earlier in October, following on from the Palmer report, we have a major quality assurance project running for our compliance activities as well, which means that not only do we want the instructions to be right out there but we want the operations to be strictly following those instructions. Those various measures are all being actioned at the present time.

Mr Mann—Probably the key area that we believe needs to be strengthened is in regard to a continuing review of people who have been detained to ensure that their detention remains lawful. That is certainly the purpose of the detention review managers and the oversight through the review committees that we have talked about. We are now trawling over those cases on a regular basis. It is probably the key area, if there were any weaknesses in our prior training and instructions, on which we really need to focus.

Senator LUDWIG—The report of the *Inquiry into the circumstances of the Vivian Alvarez matter* at page 68 under 'Deprivation of liberty' states:

> Sub-paragraph 2.1 of Migration Series Instruction 234 states that the detention of a person under the Migration Act is analogous to the action that constitutes an arrest by the police or another law enforcement agency.

On page 69 it continues:

> The paragraph also asserts that the powers cannot be used for the purpose of helping an officer establish the requisite reasonable suspicion.
>
> DIMIA officers, from field level to senior executive, seemed to have had little understanding of their responsibilities under the Act—other than a mistaken belief that they must detain a person and that when the person is detained the detention is absolute. The seriousness of taking a person's liberty—

And it goes on. Is that section amended to now reflect the court cases that are mentioned here which relate to Goldie's case and to the High Court case of Taylor? That is what I have been asking you. It is unclear to me whether you have amended your migration series instructions or whether you are continuing to operate under the current migration series instructions. If you have provided interim advice to your departmental officers, can you make that available so that the committee can see how you are operating and using 234 as provided for by the Comrie report? If you are providing training—I do not want all the training—and there is a section that deals with the detention power and how you explain it to your officers, could that be made available to the committee. That would also be helpful. That is a critical issue that was raised by Comrie.

Mr Metcalfe—We will see if we can provide any more detail on notice. I think the story that we have been providing this afternoon is that the existing MSIs remain relevant but need updating, particularly in view of developments in case law but also because of the lessons we have learnt from situations such as Ms Alvarez and Ms Rau. That work is currently under way and it is a high priority for the department. There have been a number of interim advices to officers in relation to the exercise of their powers. There has been a very strong message from me, the minister and senior officers that our power should be exercised soberly and carefully. There are a range of reassurance mechanisms in place now that were not in place seven or eight months ago such as the national identity verification unit and the detention review manager system, which provided further reassurance on those complex identity cases or in relation to ensuring that there is a second pair of eyes looking on a regular basis at cases in relation to detention.

There was the Goldie case, and Ruddock against Taylor, which is only a very recent High Court decision. I referred to it in my letter to the Ombudsman which is published at the back of the Alvarez report. That case was literally handed down at the time or within a few days of my writing that letter. And that of course goes to quite a specific point, which relates to persons who were detained and where subsequent litigation indicates that in fact they were the holder of a visa. And it goes to the issue, as I discussed earlier, of whether or not their detention up until that point was lawful, and we had a discussion about what happens then.

So there are a whole range of things that have been done, but we are certainly not saying that that is it. There is a lot more that is to be done. Rewriting the instructions, bringing them right up to date and keeping them under regular review were a very high priority, as well as enhanced training. That is the reason I asked the government to give me $50 million to set up an immigration college: it is to ensure that the training that has been provided in the past, which clearly has been insufficient, is enhanced significantly. So we have done many things but there is a lot more to go, and we are obviously happy to keep you briefed in relation to that.

Senator LUDWIG—There is a second part to the point that was made in the Comrie report. You were right to correctly identify training, but it went on to say—this is on page 68:

… but the Inquiry found little evidence that DIMIA officers either are trained—

so you were right in that respect—

to make a conscious decision to detain or are otherwise required to make such a decision by DIMIA policy.

That is the purpose of my question. That is why I went to migration series instruction 234 and why I have asked whether or not you have updated your migration series instruction—because it is not only about training but also about DIMIA policy. DIMIA officers will follow policy. It would be surprising if they did not.

Senator Vanstone—With respect, I think one of the things in the Palmer report is that there have been occasions when they have not. Isn't that the point—unless I have misunderstood the point of what you are saying?

Senator LUDWIG—Well—

Senator Vanstone—Let me make the point. One of the points that Palmer made goes to the Rau case, for example: it is very clear she should not have been left that long in—

Senator LUDWIG—Minister, this is a different matter. There are certainly cases, such as in both the Rau matter and this matter, where DIMIA officers did not follow policy.

Senator Vanstone—Yes.

Senator LUDWIG—That is a given; we know that. But there are also instances such as this one where they were trained to follow migration series instruction policy and, whether they ignored it or they actually followed it, it was wrong. It was wrong in my view, and it remains wrong in instruction 234.

Senator Vanstone—You mean where the policy is wrong?

Senator LUDWIG—Yes.

Senator Vanstone—Okay. I misunderstood the import of what you were saying.

Senator LUDWIG—It incorrectly expresses the law, in my view.

Mr Metcalfe—Senator, maybe you have read it slightly differently from me, but in the very bottom paragraph of page 68 of the Comrie report he talks about paragraph 7.2 of MSI 234, saying:

Paragraph 7.2 of Migration Series Instruction 234 clearly points out that the power to detain is strictly limited to situations where knowledge or a reasonable suspicion has been established.

It then goes on. I do not see anything in that discussion that indicates that that paragraph is in fact incorrect. What Mr Comrie does say, though, in the first major paragraph of page 69, is:

… officers … had little understanding of their responsibilities under the Act …

That goes to training, that goes to proper legal input into decision making, and that is exactly what we are in the process of addressing.

Senator LUDWIG—Well, we read it differently, as with all of these things. At the top of page 69, it also says:

The paragraph also asserts that the powers cannot be used for the purpose of helping an officer establish the requisite reasonable suspicion.

Mr Metcalfe—That is correct.

Senator LUDWIG—Maybe we could take it back to MIS 234; if you have a read of 234 itself and reflect upon how it is written.

Mr Metcalfe—But he is quoting in this sense, I think, approval of 234 but basically saying it was not understood or applied. There is a common misunderstanding about Palmer's findings in relation to Cornelia Rau, in that Palmer found that the initial decision to detain Ms Rau was in fact lawful. There were reasonable grounds to suspect that she was an unlawful noncitizen and, indeed, she was actively trying to promote that. That of course was a very different situation from that of Ms Alvarez. But Palmer's key point is that the ongoing detention of Ms Rau—for a long period of time, without proper checking or verification—rendered that detention unlawful at some point in that process.

I do not have any disagreement with you on any of this. It is clear we have to pull our socks up to a great extent. That is why the government is providing the department with $231 million over five years to do that. That is why we have developed a very detailed implementation plan in relation to the Palmer report and our job is now to get on and make that happen.

Senator LUDWIG—I will not persist in this area other than to await information that you might be able to provide me with as to your interim advice on how those sections now operate—that is, sections 189 and 196 under MSI 234.

Mr Mann—Our understanding is that we have provided advice. I have tried to get the details of that advice, because it predated my taking up this position. But it is certainly in the context of what has been said about the way we have exercised our powers that we have re-emphasised to our staff the consequences of detention for the person involved and, therefore, the need for great caution before exercising a reasonable suspicion power. We have also added those assurance processes. We have also reinforced the need for staff, when they have any concerns, to escalate to supervisors and specialist help before they exercise their powers. So that is the current state.

We have not yet reissued an instruction. We have three instructions being rewritten by December: *Establishing identity in the field and in detention*, *Establishing migration status in the field and in detention* and *Procedures for detaining persons of interest*. Those three new instructions, plus one that I have just signed off on removals, will all be part of our transitional training, not just for new staff but all compliance staff who are involved in such operations between now and December. That is probably the best answer I can give to you about what has been done in relation to making sure that we are exercising our powers properly, subject to that continuing review that detention remains lawful.

Senator LUDWIG—Perhaps you can take it on notice to the extent that you will provide a copy of the old and the current MSI 234 and if there is an update, when it is available.

Ms Daniels—I might add to that. In the context of the migration legislation changes in June, my recollection is—and I would need to check—that there was quite a detailed advice to compliance officers about the implications of that legislation and the implications for them of detention as a last resort. That incorporated all those processes that Mr Mann has just identified. At the same time, we also provided to our officers some quite detailed guidelines on dealing with Srey cases, for example, and how to filter those if they came to attention in compliance operations.

One of the MSIs that Mr Mann has identified, *Establishing identity in the field and in detention*, has been issued as a draft MSI now for quite some months, so that is already out there for compliance officers to use but not as a final document. The reasonable suspicion MSI is drafted and I want to check whether it has been out to our reference group in the states and territories for consideration before it is finally issued. Another component of training that we have not mentioned so far is a chunk of training that we call ‘transitional training’ to be held between now and Christmas which is in response to the Palmer report. One of the five streams of that transitional training is on reasonable suspicion. That might give you a better picture of the situation as it stands.

Senator LUDWIG—Was it the legislation that was the trigger, not so much the court cases, to require the changes in the documents?

Ms Daniels—The legislation was a significant threshold for us and we considered that it was important to make sure that compliance officers knew what the implications of detention as a last resort—which was then enshrined in legislation—meant for them.

Senator LUDWIG—I understand. Whatever you can provide the committee with would be helpful. Thank you.

Senator BARTLETT—Are there any updates you can give us on the follow-up by the department to the allegations by the Edmund Rice Centre?

Senator Vanstone—Are these the allegations that I understand are intermittently made but not necessarily refreshed, where unnamed persons are nominated as having been returned involuntarily and then later having met a foul fate?

Senator BARTLETT—They produced a report called *Deported to danger*. That is the group, yes.

Senator Vanstone—And that report is the one produced a few years ago.

Senator BARTLETT—They have produced updates on that in recent times. My understanding was that department officials have been meeting with them to get more details about it.

Senator Vanstone—One of the officers might have something to say about this, but the last time we answered these they did not have sufficient information to enable much to be done.

Mr Metcalfe—I have just been advised that we may have had a similar question from this committee in its inquiry in relation to the Migration Act. I think some information has been provided by the department to this committee in that iteration. We will check on that. If there is something readily available, then we will provide it to you or provide a reference to you.

ACTING CHAIR—If that is not the case, perhaps you can take it on notice.

Senator BARTLETT—I was not sure if it had come through. I saw I had a large wad of emails just before and I have not opened them all, so it may be there.

Mr Storer—It would have been provided yesterday.

Senator BARTLETT—I will have a read of that and perhaps revisit it.

Senator Vanstone—Just before you go on, I can give you one part of it, because I have been given the answer to have a look through. It is only page 1. It says:

Importantly, the report does not disclose the identity of persons cited as case studies, and the Edmund Rice Centre has not separately passed this information to the department.

I do not know how many people there are in this centre but—no disrespect to them—if and when I leave politics before I die, I think I am going to set up a centre; it is going to be me with a PC or laptop or something and I will pass advice to the world at large. I know these people are very interested, but it is very easy to make allegations and then not provide the detail that someone can then follow up. It is a critical failing of a group that presumably wants

to have an impact for the betterment of people. If they just want to have a go at the government, that is fair enough—make allegations about people, do not identify them and keep repeating them. But, if you actually want some change, then you have got to provide the details so that people who are willing to listen can follow up.

Senator BARTLETT—Perhaps in light of that having been said, even though I will read the full answer—I know that people from this group have put a fair bit of time and expense into going to places overseas to follow up some of these places and people—

Senator Vanstone—Why wouldn't they then follow on and give us the information, do you imagine?

Senator BARTLETT—My question was—and this may be in the answer, but I think in the context of things being put on the record, I will ask anyway—can I have an indication of whether there are continuing meetings with department officials and people from the Edmund Rice Centre to get further details about some of these examples.

Mr Metcalfe—If we can add anything to what we are providing in this other response, we will.

Mr Moorhouse—Senator, perhaps I could add a little there. A departmental investigator met with Mr Glendinning as recently as 8 September this year and again we are still waiting for specific advice from the Edmund Rice Centre in relation to the allegations.

Senator BARTLETT—So there have been a number of ongoing meetings; is that the case?

Mr Moorhouse—That is correct.

Senator BARTLETT—So would it be fair to say that discussions are ongoing between departmental officials and the centre to follow up on some of these things?

Mr Metcalfe—It sounds a bit like the ball is in their court, I think.

Mr Moorhouse—That is exactly the case, Senator. We have done everything that we can to try to identify the matters that they have referred to. The issues that we have been able to identify we have investigated. Neither we nor the AFP have been able to identify any indications of criminality or improper behaviour, but we remain ready to investigate any other matters that the Edmund Rice Centre is prepared to refer to us. So there is not an ongoing dialogue but there is an ongoing receptiveness, on our part, to receive information.

Senator BARTLETT—I will read the answer perhaps and come back to it again. According to your annual report, the number of overstayers located is I think a nine per cent drop on last year and a fair bit lower than your performance targets.

Mr Metcalfe—Do you have a page reference?

Senator BARTLETT—Page 116, the numbers of people located. I got the nine per cent figure from the next page:

… a 9 per cent reduction on the numbers located in 2003–04.

I guess that could be an indication that there are fewer overstayers, or it could be an indication that they are hiding better. But, given that it is lower than the goal you had there of nearly 23,000, could you give me your assessment of why that number has dropped since last year?

Mr McMahon—There are a couple of elements to that. One aspect is that the targets which were set have been tied to visitor visa issuing, essentially, so it assumed that there would be a correlation between the increase in the number of visas issued and the number of locations. That simply has not happened. The number of visas issued has gone up, and our location activity has not gone up at all. A second element was that, in the course of 2004-05, we actually invested quite a bit more of our compliance energies into dealing with intermediaries such as migration agents and education agents. You know, for example, that we set up the Migration Agents Task Force. In essence, we were trying to deal with people who you could say are in the supply line for creating an overstayer rather than necessarily spending all the money and energy on the overstayers themselves. I think another layer of it is the fact that we have increased the strength of our borders and enhanced our visa-issuing processes. So it is a combination of issues. Finally, there was some reduction in the growth of visa cancellations around students.

Senator BARTLETT—On the number of people refused immigration clearance: you have got 1,632 people refused immigration clearance at airports and 426 at seaports. When it says 'refused immigration clearance', that basically is what is colloquially referred to as a 'turn around'. Is that right?

Mr McMahon—That is correct. Or, in the case of the seaports, they would have been restricted on board, because you obviously cannot turn around a crew member in the same way.

Senator BARTLETT—That number of turn arounds—sorry, air arrivals refused immigration clearance—was an increase of 31 per cent on the year before. How does that tally with what I thought had been a reduction in the number of people arriving? This is different to people arriving without valid visas or—

Mr McMahon—That is correct. The advanced passenger processing is removing to a very substantial degree the number of undocumented arrivals. Basically, APP is now over 99 per cent in respect of air arrivals, and you can see that in respect of infringement notices for airlines. At one stage, they were up around 23 million. For this year, they are probably going to be a low four million, so we have dealt very effectively with the question of undocumented arrivals. What that has allowed us to do is to focus more closely on bona fides at airports, and we are using the expected movements to analyse them while they are in transit to a greater degree, and it essentially has, in a sense, reduced our efforts at the border in respect of dealing with undocumented arrivals, and freed us to look at bona fides issues.

Senator BARTLETT—So when people are refused immigration clearance—those 1,632 people—what sorts of factors then would mean they would be refused clearance, if it is not people arriving without documentation or with false documents?

Mr McMahon—Bear in mind that one third of those are Malaysians—I think about 536 from memory, but that may not be exactly the number. The next group, which is around 170, would be New Zealanders, and then about the same number of Koreans. The Malaysians are fairly significant on the harvest trail, so we will get a lot of those at Melbourne airport. Bear in mind that the harvest trail is, as you would expect, very seasonal. We may be picking up, for example, that when people are arriving they are saying that they are going to be visiting,

as a tourist; they will have no destinations but they might have a bus ticket to Mildura or whatever. It is that sort of thing, where you make the direct assessment against the arrival. Most of the people turned around are ETAs. The reason why the numbers for New Zealanders are high is because they actually do not apply for a visa before they come, and they are dealt with at the border. So there are a reasonable number of character issues that arise in respect of New Zealanders. So they are a slightly different group. But, for the Koreans and the Malaysians, over 80 per cent of them, as I recall, are ETA turn arounds, and it is largely bona fide issues.

Senator BARTLETT—And it is really up to the discretion or the antennae of the people at the airports as to whether or not to ask questions and how far to go and that sort of thing?

Mr McMahon—Correct. Some people might say that they are coming out for a convention or whatever, and you would then ask them, 'Okay, if the convention is in Brisbane, do you have a plane ticket to Brisbane and accommodation in Brisbane?', and they do not. They are the sorts of issues. It is really a logical testing of the claims that they are making.

Senator BARTLETT—I turn to section 501: cancellations—we have not had questions on that yet, have we? I note the number of section 501 decisions made personally by the minister has declined dramatically in the last couple of years, down from 189 to 17 and then 14. This may actually be a question for the minister, I guess, given that it is personal decision. Is that significant decline a decision of yours, Minister?

Senator Vanstone—It is not an indication of necessarily better people in the community. As I recall—officers might correct me if I am wrong—a decision was taken some time ago that the majority of these, the normal course of events ones, should be handled by the department and that I would only do the more serious cases. The consequence of that—it is not because I am lazy—is that it gives people review rights.

Senator BARTLETT—The area of the Migration Agent Task Force that was mentioned in the interconnection, I suppose, with the work of MARA—does that come under 1.3? Yes. I notice that there is a drop in the overall number of registered agents—not a massive one, but a drop nonetheless. I wonder, with the work that MARA is tasked to do and the interface between that and the department's aim of ensuring proper scrutiny of the work of migration agents, whether there is a potential issue there with MARA being able to do that aspect of its work adequately—if there is not a critical mass of migration agents, given that they self-fund MARA, as I understand it. Has that issue come up at all—whether or not MARA has sufficient resources to do the sort of work that you require of them?

Mr Rizvi—The question of funding for MARA is something we discuss with MARA regularly. You would be aware that relatively recently there have been a number of fee increases for registration, which has meant that the overall level of resources that MARA has available to it has increased somewhat. But that is something we continue to discuss with MARA, and we try to relate that to their workload.

Senator BARTLETT—But it is not something that is ringing alarm bells at the moment in terms of their ability to have adequate resources to do the job that you need them to do?

Mr Rizvi—At this stage we are monitoring the effects of the most recent fee increases to see what that will do in terms of revenue. The most recent fee increases related not so much to

initial registration as to repeat registration fees. Previously, as you would recall, when the number of registered migration agents was rising quickly, MARA was generating increasing levels of revenue from initial registration fees, but now that that has stabilised somewhat it is relying more on repeat registration fees, and it is those fees that have increased. I think we need to see what the flowthrough effect of that will be on their revenue relative to their workload. We will probably have further discussions with the MARA on that over the coming months.

Senator BARTLETT—I have not been listening forensically with all the other questions but have there been questions about residence determinations? In relation to the new ability to make residence determinations for people in detention, firstly I was wondering if there are figures that you can give on how many people that now applies to. Secondly, is there some sort of indication we can get of the variety of conditions that are attached to those circumstances?

Mr Mann—As at 28 October, there were a total of 74 persons in residence determination arrangements. This included 35 adults and 39 children. These sorts of conditions that may be imposed basically are to suit their individual circumstances. For example, generally, they must live at a specified address, report to DIMIA regularly and not engage in paid work, but other conditions may be specified by the minister.

Senator BARTLETT—When you say 'report to DIMIA regularly', that would be just ringing in or having to attend a DIMIA office, say once a week or twice?

Mr Fleming—In general we make sure that there is contact at least once a week. That should include, about once a fortnight, our staff actually going to where they are residing to check that their welfare is okay and that they are living properly.

Senator BARTLETT—Is there some sort of allowance or some sort of other funding involved with this—funding to help cover costs for the place they are staying or those sorts of things? Is that a case-by-case arrangement as well, or is there a set formula?

Mr Fleming—Generally we engage the Australian Red Cross as the lead agency to provide caseworkers to do a needs assessment. Then, through that, we will see what needs to be funded. Because they are technically still in detention, the minimum set effectively is that we cover the costs of their accommodation if that is required and we pay Red Cross money to cover their living expenses; it is about the same amount as the Asylum Seeker Assistance Scheme.

Senator BARTLETT—So the costs of accommodation—it could be rental and that type of thing?

Mr Fleming—It generally is rental, yes.

Senator BARTLETT—Are all of those costs tallied up and added to their detention fee?

Mr Fleming—No, they are not covered by the provisions in the act relating to detention debts.

Senator BARTLETT—Are these arrangements working okay so far—no major difficulties?

Mr Fleming—They seem to be working very well, particularly in relation to the families, which are the majority of the persons in residence determinations.

Senator BARTLETT—So the people in the main are able to move around unaccompanied as long as they report regularly?

Mr Fleming—That is correct. At the core of it is that they reside at a specified place. Associated with that, we generally require that—obviously, other than in emergencies—they seek the permission of the department if they want to be somewhere else overnight.

Senator BARTLETT—So if they want to stay overnight on any occasion, that should be checked first?

Mr Fleming—Yes.

Senator BARTLETT—That is all I had on that.

Senator NETTLE—Was it Mr McMahon who was giving us the figure for mothballed detention centre in Nauru? Can you give us the figures for the other mothballed detention centres onshore—like Woomera and Curtin. I do not know whether they are closed or mothballed.

Mr McMahon—I cannot, but others might.

Ms O'Connell—The costs for maintaining the Woomera and Port Hedland detention centres in a non-operational sense—Woomera is $2.6 million per year and Port Hedland is $3 million. They are figures for last financial year.

Senator CROSSIN—What about the detention centre in Darwin?

Ms O'Connell—That has not been operational yet.

Senator CROSSIN—You still have an ongoing cost, don't you?

Ms O'Connell—We do have an ongoing cost. I am sorry. I have not included that with those figures. It will become operational from the middle of next year.

Senator CROSSIN—What is the ongoing cost now to maintain the centre in Darwin?

Ms O'Connell—I do not have that one. I have only the other two as mothballed. This is prior to activation. I can get that figure for you.

Senator CROSSIN—Thank you.

Senator NETTLE—I am not sure if I have the name right here, but I understand that a new unit has been set up called the sensitive cases unit. Who do I ask about that?

Mr Correll—Yes.

Senator NETTLE—When was that set up?

Mr Correll—It is part of the new organisation structure we have put in place in our overall Compliance Policy and Case Coordination Division. I might hand over to the division head to talk about that.

Mr Mann—I think formally it commenced on 19 September. Mr Fleming is the branch head of that branch and looks after alternative detention matters as well as the case review process we talked about earlier. While we develop and bed down a more comprehensive case

management system, it also provides a focal point for any complex or sensitive cases that require bringing together from a whole of department perspective, particularly in the compliance and detention area. As part of the residence determinations or other new powers of the minister in relation to removal pending bridging visas or the 195A determinations by the minister, probably the other area there would be prepared through Mr Fleming's branch.

Senator NETTLE—There seem to be quite a lot of functions happening in that particular unit. Are the ones you outlined there all dealt with by that unit or are you just saying that that unit deals with those sorts of things?

Mr Fleming—There is a whole branch looking at that range of issues. I think the particular unit you might be referring to is a section within that—the complex case support section, which actually looks at the full range of issues but it looks at them in a small set of cases that come to attention from time to time as complex or sensitive.

Senator NETTLE—I am just making sure I am getting the language here right. Firstly we were talking about a sensitive cases unit and now we are talking about a complex cases unit. Are they the same thing or are there two units?

Mr Fleming—My branch is called the case management support branch and within that the area that I think you are focusing on is called the complex case support section.

Mr Mann—I will try to explain. Prior to 19 September a complex case task force had been set up. In the organisational arrangements, that was going to migrate into a sensitive case support section. We have just changed its name, so it is now called the complex case support section.

Senator NETTLE—Right. I was trying to work out what sorts of cases we were talking about. So how many staff have you got in the complex case unit?

Mr Fleming—As of today there are five, and obviously we are recruiting additional people.

Senator NETTLE—Does it have its own budget, or is that not how it operates?

Mr Fleming—The budget for it is being worked out. At the moment what we are working to is expecting a budget that will cover about 10 people, but we will keep that under review as we look at the scope and number of cases that end up being referred to it. In some respects some of it will be overtaken by the case management and community care pilot that Mr Correll was talking about earlier.

Mr Mann—So it is a new section in a new branch in a new division that was set up as a response to the Palmer and Comrie reports.

Senator NETTLE—So are you saying that there is no budget at the moment or that it is a moveable feast? I am just wondering whether I should ask you to take that on notice, to give us an idea of what your budget is, or are you saying that the budget will change?

Mr Mann—It is just caught up in the finalisation of the organisational budgets that are consequent to the restructure. So within the next few weeks I would imagine we would be able to come back and answer that question.

Senator NETTLE—Okay, I am happy to do that that way. How do you determine which cases are dealt with by that unit? How do you choose which are the complex cases that need to be dealt with in that way?

Mr Mann—To begin with, there was a body of cases that were identified and referred to it because they had hallmarks of some concern over either difficulties in identification of the people involved or a lack of progress in the resolution of their immigration status. These cases were first of all investigated through a complex case task force. They are the beginning workload for this section. In the future, however, we see its role as being, as Mr Fleming was alluding to, really a safety valve, if you like, to make sure there is a place cases can get escalated to, if our normal case management processes are not resolving status as quickly as we would like them to. So the idea is that it would have a small case load but would be trying to move the most intractable cases.

Senator NETTLE—The Ombudsman has a threshold: when someone has been in for two years, the case goes to him. Is there a threshold after which you say: 'Okay. We're not satisfied with the time. We'll send it to'—

Mr Mann—It is probably fair to say that those details are still being settled.

Senator NETTLE—Okay. If you could take that one on notice to let us know if you come up with a time frame.

Mr Correll—This is part of the national case management framework that we are developing at the present stage. Essentially, the way to see this sensitive or complex case area is that it is effectively the highest point of escalation within the department for cases where for various reasons they may be highly sensitive. Often they will involve multiple contacts across different parts of the organisation where there is substantial coordination involved. We are putting this into play as part of a broader case management framework.

Senator NETTLE—I am just trying to work out what it is doing. If you do come up with some guidelines about how you determine which cases go to it and you are able to provide them to the committee, that would be appreciated. I will now just go to the contract between DIMIA and GSL. I can tell you what the immigration detention standard number is if that is helpful, or not. It is 1.4.2.4. It says:

Personal information from a detainee's file is made available to the detainee on request, except where the disclosure of the information is considered to endanger the life or physical safety of a detainee, or is prejudicial to the security or good order of the facility, or where the information comprises medical records not usually provided to a detainee.

Can you explain to me which of a detainee's medical records fall into the category of 'medical records not usually provided to a detainee'?

Mr Williams—In general terms, it would probably be medical records that would best be provided through or by their doctor. For example, if there was an issue around mental health, self harm and that kind of thing, it might be important that the person get that information through a medical professional.

Senator NETTLE—I cannot envisage the circumstances in which you say these particular medical records on somebody's file are ones they should not see. I am asking you to explain that to me. I do not understand what would fall into that category.

Mr Williams—It is a while since the contract was drafted. I personally do not know of situations like that arising, other than those sorts of situations where, on medical advice, we are told it is best if the information is passed by a medical professional. That is why I am suggesting that might be the situation.

Senator NETTLE—Do you mean that it is best if that information is given to the detainee through their doctor rather than by you?

Mr Williams—Yes, that is right.

Senator NETTLE—I am aware of a detainee who requested their medical records and they were told no. What avenues are open to them to access their medical records?

Mr Williams—It depends if they are making a request just as a request for information or if they are doing it formally under the freedom of information legislation. If they are doing it under the FOI legislation, obviously there are appeals to people like the AAT and others. If they are doing it informally, there would be some internal redress—an ability to perhaps ask for it to be internally reviewed. Have you got a particular situation in mind?

Senator NETTLE—I know of a case where someone was refused and they have gone through FOI and they have now gone to the AAT. That strikes me as an extraordinary method to have to go through to get your medical records. If you can tell me of another way in which somebody could get their medical records, that might be helpful.

Mr Williams—In relation to medical records they have gone through that process?

Senator NETTLE—Yes.

Mr Williams—I would really need to know the details of the case to be able to comment. In the normal course of events, people ought to be able to get their medical records. Unless I know the circumstances in this case, I cannot really give you any more information.

Ms O'Connell—I think in that normal course of events the medical records would be made available to them through whoever their health practitioner was. That would be, if you like, the normal way of accessing information about your own medical history.

Senator NETTLE—Mr Williams seems to be describing two different scenarios. If they have requested it, one way is through freedom of information and then they could go to the AAT. And you are saying that, if they requested it another way, it could be dealt with internally.

Mr Williams—You were asking what the ability for redress was. There are obviously formal ways of redress through the freedom of information path. Internally, I guess it is informal, so it is open to them to seek that somebody else look at that or that it be done again. Informally, that is open to them to do and open to the department to respond to.

Mr Metcalfe—Senator, from what you have described, this particular matter is an FOI request, and I think you said it has gone to the AAT.

Senator NETTLE—I think it has.

Mr Metcalfe—If that is the case, it sounds to me like there has been a primary decision to refuse the access—

Senator NETTLE—That is correct.

Mr Metcalfe—an internal review decision to refuse the access and now it has gone outside the department to the AAT. If you were able to provide us confidentially with the name, we could just check as to whether there was some reason and perhaps have a discussion with you.

Senator NETTLE—So, once there is a refusal—I am trying to understand the process more than—

Mr Metcalfe—Of course, under the FOI Act, as we all know, there are specified grounds for refusing access.

Senator NETTLE—We appreciate that making FOI and AAT applications is not necessarily the best method. Are you saying that, after a primary decision, there would then automatically be an internal review, which must have decided no as well?

Mr Metcalfe—Under the FOI Act, the applicant would be advised that there is an internal review by a more senior officer. They can seek that. It is only after that internal review that there would be an external review. The Ombudsman has a role in this area as well. There could be a complaint to the Ombudsman. I think what Mr Williams is saying is that, ordinarily, our expectation would be that medical records would be provided. It does sound like an unusual case, particularly if there have been exemptions under the FOI Act, where there of course have to be particular reasons articulated. We would be happy to look at that particular case and let you know what the background is.

Senator Vanstone—Would you be happy to give us the details of that, Senator Nettle?

Senator NETTLE—I am asking these questions to understand the processes for other detainees. The reason I am asking them is because I know of individual cases. That is why I am using the example. I am not using it—

Mr Metcalfe—We will check on the generality that you have raised, but, if you were able, outside the public forum, to give us the details of the particular case, we could perhaps see why that has happened in that particular way and let you know about that.

Senator NETTLE—You just said that somebody would be told, under the FOI Act, that there was an internal investigation. Would they be told about how to access that internal investigation if they did not make an FOI application?

Mr Metcalfe—There are well-proven, time-proven procedures around this. If there is a refusal of access, for whatever reason, then automatically there is an entitlement to an internal review. People are required to be notified of that. Standard letters contain that information. From what you said, it sounds as though, if it has gone to the AAT, it has been through a couple of decisions in the department and now it is the subject of external review. I would hope there is a very good reason as to why it has got to this stage, but we are happy to talk with you about it. Perhaps at the commencement of the dinner break Mr Williams could see if you can provide some details to him and we could follow it up.

Senator NETTLE—I suppose that is why I started with the first question—because it is clear in the contract. The contract says there are certain medical records we will not provide, and that is where I started, because I wanted to understand how that is the case. I might go now to issues in relation to Scott Parkin. In estimates yesterday, we were told that he was detained by a mixture of AFP and DIMIA compliance officers. Is there someone who can tell me how many DIMIA compliance officers were involved in his detention?

Mr Metcalfe—We will get the experts to come to the table. While we are waiting for them, Mr Acting Chair, I would be grateful if there is any advice as to whether certain areas of the department have been finished with or not. Earlier this morning, Senator Crossin indicated that she was going to ask for more details about the break-up of the $230 million of additional funding. I provided some details and I undertook to take further details on notice.

Senator CROSSIN—I have done what I wanted to do about that money. I thought you answered that in enough detail.

ACTING CHAIR—It is our intention, Mr Metcalfe, to finish output 1.5 by the dinner break and commence output 2 when we return.

Mr Mann—I apologise, Senator; I do not have the details here but we are checking for you and will give you an answer in a moment. I understand it was a joint activity between DIMIA and the police and I am just getting the details of how many DIMIA staff were involved, if that was your question.

Senator NETTLE—That is where I was going to start. Mick Keelty said yesterday that there were four AFP officials involved so I thought would find out how many DIMIA officials were involved. Shall I continue with the questioning in that area or do you need to wait until you are able to deal with other questions in that area?

Mr Mann—Continue with—

Senator NETTLE—Can you tell me where he was taken for questioning?

Mr Bloomfield—According to our information he was taken to the Carlton police station.

Senator NETTLE—Is that different from the Melbourne Custody Centre?

Mr Bloomfield—Yes, that is my understanding.

Senator NETTLE—He was not taken to the Melbourne Custody Centre?

Mr Bloomfield—That is where he finished up, I think. That is where he was detained. He was initially taken to the Carlton police station. When he was located in Brunswick I think he was then taken to the Carlton police station and it was there that his visa was cancelled.

Senator NETTLE—Is that where he was questioned—at the police station?

Mr Bloomfield—Yes.

Senator NETTLE—Was he questioned by DIMIA officials or compliance officers?

Mr Bloomfield—Yes.

Senator NETTLE—Can you let us know who was doing the questioning? I do not want the names but I want to know the level of the compliance officers who were doing the questioning and also who was present.

Mr Bloomfield—I think that is tied up with your question that we are trying to get the answer for. Their questioning would have only been going to his identity in the sense that it was a mandatory cancellation, so it was not complex questioning.

Senator NETTLE—So they wouldn't have been asking questions about the cancellation of his visa? You are saying that they simply would have been asking questions about his identity—is that right?

Mr Bloomfield—They would have to ask the questions they would need to ask to know that it was him.

Senator NETTLE—Was questioning required in relation to the cancellation of his visa beyond establishing his identity?

Mr Bloomfield—To my knowledge, no, but I do not know the full detail.

Senator NETTLE—Do you know whether he was asked to sign a waiver against his rights to appeal to the Migration Review Tribunal?

Mr Bloomfield—No, I do not. I do not think he would have been asked at the stage of cancellation. I do not know what happened after that.

Senator NETTLE—I accept that you are saying that you do not know in the circumstance. Is that something that people would be asked to sign? Is that in any way standard or normal in another circumstance, if you do not know the detail of this circumstance?

Mr Williams—I will stand to be corrected if this is not correct but I believe that if he was asked to sign anything it was in relation to whether he consented to removal. Under the section that deals with removal there is a provision for people who wish to be removed voluntarily, so it is usually done through consent.

Senator NETTLE—Which section was he removed under?

Mr Williams—I think it is 198.

Senator NETTLE—What section was his visa cancelled under?

Mr Mann—Section 116.

Senator NETTLE—Is there a subsection?

Mr Bloomfield—It is 116(1)(g), in combination with regulation 2.43(1)(b).

Senator NETTLE—So they are the sections for the cancellation—

Mr Bloomfield—And the removal power is 198.

Mr Metcalfe—All removals occur under section 198.

Senator NETTLE—When we are talking about being asked to sign a bit of paper, are you saying that a compliance officer would have described to him the difference between removal and deportation?

Mr Williams—No, because deportation is not in this story. The compliance officer would have explained his options, I would imagine, and under normal circumstances the person might choose to apply for a visa or appeal or alternatively choose to leave voluntarily. I say

this knowing that I could possibly be corrected but I believe he was asked if he wished to depart voluntarily and normally he would have to evidence that by signing something.

Senator NETTLE—In signing to agree to depart voluntarily, are you waiving any appeal rights?

Mr Williams—I think that was our initial view, but on legal advice it became clear that he could pursue both—that he could appeal to the tribunal in relation to the visa that he had applied for and he could also leave prior to it being heard, so he chose to do that.

Senator NETTLE—That legal advice was sought after he—

Mr Williams—Yes, I think it took us a day or so because it is very unusual for somebody to want to do both. Usually, somebody either wants to stay in Australia, and to do that they have to apply for a visa and if they don't get it, appeal it, or they want to leave. They don't usually want to do both. So it was quite an unusual situation. I think initially it was not very clear but we got legal advice within a day or so and advised him that he could pursue both options.

Senator NETTLE—You don't know of any other form he would have been asked to sign by a compliance officer during that interview other than whether he—

Mr Williams—My colleagues might know more. I don't think one normally signs an 'I will waive my right to appeal' type form. It is not a normal form that would be used.

Senator NETTLE—Can anyone else add to that?

Mr Correll—Rather than speculating on that, I think we are getting some additional information and detail on the numbers and levels, and we will check that piece of information as well and report back after the dinner break. We should have that information for you then.

Senator NETTLE—Somebody in immigration detention in Melbourne would normally be transferred to Maribyrnong detention centre, I would imagine. Do you know why in this circumstance he was presumably transferred to the Melbourne custody centre rather than to Maribyrnong?

Mr Metcalfe—That was my decision, Senator.

Senator NETTLE—On what basis was that decision made?

Mr Metcalfe—For the simple reason that the Maribyrnong detention centre is a low-security facility with very minimal exterior security. In the circumstances of the visa cancellation, I thought that a facility with better security would be appropriate.

Senator NETTLE—Did you take advice in making that decision?

Mr Metcalfe—No, I took that decision myself.

Senator NETTLE—So you received no advice from any security organisations in making that decision on the basis of security?

Mr Metcalfe—I made it clear in the circumstances that I did not think that Maribyrnong was the appropriate place to detain him. I asked officers to pursue other places of detention with Victorian authorities, which they did.

Senator NETTLE—That is how he came to be held in the Melbourne custody centre?

Mr Metcalfe—That is correct.

Mr Mann—I have some additional information, Senator. My understanding is that there were four DIMIA compliance staff in addition to the four AFP staff that you mentioned, with general assistance from the Victoria Police at the Carlton police station.

Senator NETTLE—The Carlton police were not involved at the cafe; they were involved when he got to the police station?

Mr Mann—That is my understanding.

Senator NETTLE—I understand that it was an adverse security assessment that triggered the automatic cancellation of visa—is that correct?

Mr Bloomfield—Yes.

Senator NETTLE—I presume that was an adverse security assessment from ASIO. Who in the department is informed of that by ASIO in that or another circumstance?

Mr McMahon—Normally that advice would come through the border security division and it would be passed on. It is not an infallible route but certainly we would normally know ahead of time. I was actually not around right at the time when this decision was taken, but we would normally know a little ahead of time that they were contemplating an adverse assessment, which would normally then galvanise some action on our part in terms of location et cetera.

Mr Correll—I can indicate that that is exactly what happened in this circumstance.

Senator NETTLE—At what point in the process is the minister informed? Was she informed? I do not know how it works.

Mr Correll—I would have to check the rescission of that. We will have to take that on notice, just to check our records on the precise timing of informing the minister.

Senator NETTLE—Would it be standard in such a circumstance—where a cancellation of a visa was occurring because of an adverse security assessment—that the minister would be notified? I appreciate that you need to take on notice my question about this individual, but would it be standard procedure?

Mr Metcalfe—I think it is fair to describe it as very unusual for visas to be cancelled on that ground, and it would be our expectation that ordinarily the minister would be advised of a decision by ASIO that they were issuing an adverse security assessment.

Senator NETTLE—Maybe when you take that one on notice for me, you could let me know about both the timing and whether it was DIMIA or ASIO that notified the minister in this case, presuming the minister was notified.

Mr Correll—Yes, we will take that on notice.

Senator NETTLE—When Mr Parkin was removed, was he accompanied by immigration officials?

Mr Williams—No, he was accompanied by officers of Victorian corrections, I think.

Senator NETTLE—There were no—

Mr Williams—DIMIA officers, no.

Senator NETTLE—In relation to the bill for the detention debt he was provided with when he got to Los Angeles, I understand that covered both the detention and the air fare. The figure I have for the detention is in the order of $11,700 and the figure for the air fare back to Los Angeles is $4,235. Please correct me if I am wrong.

Mr Williams—There was no detention debt, I think, in the end, because we are not charged by the Victorian police for using their facilities, so there was no debt to pass on in relation to his detention.

Senator NETTLE—So have you got the total of the bill there, and an itemised account of it?

Mr Williams—Yes. The total debt to the Commonwealth was $10,910.42, consisting of $4,235 in relation to his passage costs—his air fare—and then $6,675.39 for the air fares and accommodation of the escorts.

Senator NETTLE—Did the escorts stay at Disneyland?

Mr Williams—I have no idea. We provided them each with two nights accommodation in Los Angeles. If they stayed longer or did other things in that time, that would be a matter for them. We did not pay for any stay in Disneyland. We paid for a standard hotel room for each of them for two nights, as a reasonable break for them prior to returning.

Senator NETTLE—That hotel was not in Disneyland?

Mr Williams—I would have to take that on notice.

Senator NETTLE—Could you take that on notice for me. I do not know if it was in Disneyland or if it was on Disneyland Drive in Los Angeles. If you could take that on notice for me, that would be appreciated.

Senator CROSSIN—How many nights did the officers stay in Los Angeles?

Mr Williams—I do not know, but we paid for two nights.

Senator CROSSIN—Can you find out for us how many nights in total they stayed in Los Angeles.

Senator NETTLE—And where they stayed.

Mr Williams—It was reported at the time that we funded four nights stay for them, but that was not the case.

Senator CROSSIN—You funded two nights.

Mr Williams—Two nights per officer.

Senator CROSSIN—But they could well have stayed there three weeks and had an airfare to Los Angeles courtesy of the department?

Mr Williams—That would be up to them.

Senator CROSSIN—Could you take that on notice then.

Mr Metcalfe—We have taken that on notice.

Senator NETTLE—Have I covered everything on Scott Parkin's bill now? We have his air fare, their air fares and their accommodation—is that what equals the $10,000, or is the $10,000 on top of that? No, the $10,000 was the total.

Mr Williams—That is correct. I am just quickly adding it up, but I believe it is correct.

Senator NETTLE—Those are all the questions I have on Scott Parkin. I have many more questions.

ACTING CHAIR—I am quite sure they will be able to take those on notice. In the remaining 25 minutes we have to finish another two outputs. I have assurances from the remainder of the senators that we can probably do that in that time. I understand you have a question in 1.4, and we will come back to you to take that question, but I think it would be great if you could put the remainder of those questions on notice.

Senator NETTLE—There are about 20 other categories I have questions for in 1.3.

ACTING CHAIR—And we only have 20 minutes now.

Senator NETTLE—So I suppose it is just worth me indicating to the department that they will be taking 20 sections of questioning on notice, if that is what you are asking me to do.

ACTING CHAIR—I am. And that is simply down to time. I am quite sure the department will entertain that taking them on notice.

Senator NETTLE—I am just letting the department know about the workload that will involve.

ACTING CHAIR—It is either that or run out of time.

Senator CROSSIN—I think we are all in that situation because we only have a day for this area.

ACTING CHAIR—Senator Kirk, I think you have a short question on this last matter.

Senator KIRK—Yes, I do have one quick question in relation to psychologists being employed at detention centres. There have been reports—we have certainly had some reports—from witnesses during our migration inquiry that unregistered psychologists had been used in detention centres on, I believe, 15 occasions, both at Baxter and Christmas Island. I understand that this was a decision taken by GSL and that found them in breach of both the contract with DIMIA and South Australian and Western Australian laws. My question is: what action, if any, has the department taken in relation to these breaches?

Ms O'Connell—We investigated that. I will ask my colleague to report on what was we found.

Mr Casey—We did investigate the allegations concerning the psychologists working in a state where technically, at the point that they were in that jurisdiction, they were not registered. I believe on one occasion one of the PSS staff, from 6 October to 3 February 2005, who normally works at Maribyrnong IDC and is registered in Victoria provided relief at Baxter. It was during November 2004. I understand that at that time in some communications they referred to themselves as a psychologist where technically they should have, during that period of time, referred to themself as a counsellor because they were not registered in South Australia.

Ms O'Connell—In relation to Baxter they are now reviewing that situation. There was a relief psychologist who was based in Maribyrnong and registered with the state of Victoria who provided services in South Australia. That relief person was not registered in South Australia and should not have referred to themself as a psychologist but rather a counsellor. That is a breach.

Senator KIRK—I got all that. So, from your investigations, there was only the one occasion when this occurred?

Mr Casey—That is my advice at this point in relation to this situation.

Ms O'Connell—Senator, if you are aware of any other information that suggests that it has been more widespread, or at other centres or in other time periods, we would happily take that on board and, again, investigate as we did in this last instance that was brought to our attention.

Senator KIRK—How was this one matter brought to your attention?

Mr Casey—I understand from my advice that Dr Carmen Lawrence had come across this. She raised this question. That was how it was investigated. It was brought up by the federal member.

Senator KIRK—Are there periodically checks done to ensure that persons who are working in the detention centres are in fact registered?

Mr Casey—We have raised this issue with PSS, which is the agency for whom the psychologists work. Recognising the problem, they have now sought to ensure that, where one of their staff might be working in another jurisdiction, they regularise their registration in that jurisdiction. I think the point to make is that it is not that they are not untrained or unprofessional; this was a technical breach that arose because of a temporary transfer of staff between one jurisdiction and another. They have now sought to make sure that, where their staff might be moving into another situation, they regularise their registration or do not operate as a psychologist within that jurisdiction, which of course would be a breach of the state regulations.

Senator KIRK—So, essentially, you are leaving it to the PSS to monitor?

Ms O'Connell—In addition to that, we are covering that in our regular monitoring of the arrangements and the contractual arrangements, and we ask for certificates to validate that they are registered in those states. Having had it drawn to our attention, we are now more actively monitoring that. It always was a requirement of the contract, and these people were initially registered within the state in which they were mainly operating. The error occurred when someone was providing relief and was not registered appropriately in that state.

Senator KIRK—Was the one case that you have substantiated regarded as a breach under the contract—and action taken?

Ms O'Connell—My understanding is that yes, it was.

Senator KIRK—I do not have details of the further 15 matters, but I understand that there was a report to that effect in the newspaper. If I can get further details, I might put something on notice.

Ms O'Connell—Thank you. We would happily take something on notice. The one which we talked about here took place in November 2004.

Senator KIRK—I have that. Thank you.

Senator BARTLETT—Given the time, I was just going to ask something on 1.5.

Mr Casey—I have just been given some further advice that, subsequent to that, in July 2005, GSL Australia did advise us of a total of 15 instances, as you suggested, in which visiting psychologists providing services at Christmas Island and Baxter detention centres had failed to comply with local registration requirements. In all of these cases, again there was no indication that the psychologists involved did not have the appropriate skills and training. This came through GSL as opposed to the PSS. The department has now made it clear to GSL that these breaches are unacceptable. I understand that sanctions were imposed on GSL in the June 2005 quarter performance linked fee assessment as a result of the breaches. I do not actually have the quantum of that. I apologise for my previous answer. I have just been given this advice.

Senator KIRK—I have just noted here that the acting immigration minister, Mr Cobb, acknowledged that there were these 15 instances and that GSL reported that. It says that significant sanctions were imposed on GSL. What is the size or the quantum of what I assume is a fine or compensation that they are required to pay in those circumstances?

Mr Casey—As in previous answers, I think I will have to take that on notice. I do not have the actual quantum that was linked to these particular circumstances.

Senator KIRK—If you could take that on notice, that would be useful.

Senator BARTLETT—Firstly, can I get an indication about the detention centre on Christmas Island. Is that construction still going ahead?

Ms O'Connell—Yes, it is. It is proceeding.

Senator BARTLETT—You have actually started building walls and so on.

Ms O'Connell—It is certainly proceeding. Yes, walls have been built. The frames are up and erected.

Senator BARTLETT—What is the finish date for that anticipated to be?

Ms O'Connell—The end of 2006.

Senator BARTLETT—I want to turn to the Nauru case load, for want of a better term. Firstly, there are 25 coming some time quite soon, as I understand it, leaving two remaining. Can I just check something about the 25 that are coming in the very near future. My understanding is that 13 of those have been recognised as refugees. Can I ascertain what type of visa they will be on. Secondly, in relation to the other 12, will they just be in the community on residence determination type detention? Is that correct?

Mr Hughes—Let me run through that for you. The 13 who have been found to be refugees will, provided they are security cleared, be getting the same visas as other refugees previously resettled from Nauru—that is three- or five-year temporary humanitarian visas, depending on their circumstances on arrival on being transferred to Nauru. At this stage, of the 13, 12 have

been security cleared and one has not. The one who has not will be coming on a special purpose visa and will be in alternative detention until a security clearance is received.

Regarding the 12 who are not refugees, nine of them have been security cleared. They will be coming initially on safe haven visas and then transferring to temporary humanitarian concern visas. The three non-refugees who have not been security cleared will also be in alternative detention until the security clearances are received. Upon their being security cleared, we will put them on the same visas as the other nonrefugees. The group of 25 is in fact in Australia at the moment and in transit to Melbourne.

Senator BARTLETT—That is on a specially chartered plane?

Mr Hughes—That is correct.

Senator BARTLETT—So, assuming security clearances work out, all 25 will be on temporary visas?

Mr Hughes—That is correct.

Senator BARTLETT—Protection or temporary humanitarian?

Mr Hughes—Either offshore temporary humanitarian visas or, for want of a better term, class 786 onshore temporary humanitarian concern visas.

Senator BARTLETT—When you say 'alternative detention', is that residence determination type detention or is that something else?

Mr Hughes—It is something else. If you want more details, I will have to ask one of my colleagues to explain precisely how it will work.

Senator BARTLETT—If that is possible, could you do that, briefly. It is not in a detention centre though?

Mr Fleming—No, it will not be in a detention centre, but it will still be in the community, together with, at least initially, the other group—although they are of course free to move on quickly, if they like, once they have visas. But we are trying initially to keep the group together and have basically a low-key non-uniformed GSL presence performing the detention function.

Senator BARTLETT—Okay, thank you. What is going to happen to the two that are remaining? I understand they have basically failed security clearance. Firstly, is there any opportunity or scope for that security assessment to be appealed or reviewed independently and, secondly, what is the plan?

Mr McMahon—In respect of their security assessment, there is no basis for reviewing it. ASIO made its assessment, and that stands. In respect of their future, Mr Hughes will have some comments.

Mr Hughes—Arrangements are being made with the Nauru government to see what temporary arrangements it might be possible to make for them to stay there in a manner that is suitable both to them and to the Nauru government.

Senator BARTLETT—So that then, in effect, we would be closing down the IOM mission—I think that is the technical term. Is that right?

Mr McMahon—We are still addressing that issue. We will have to work out what the arrangements will be in respect of the two. Certainly we are looking, obviously, at a significantly scaled down presence. But we would nevertheless still consider ourselves to have a responsibility in respect of the two and in respect of their care. But that has to be worked through yet.

Senator BARTLETT—But, assuming—and it may be a big assumption; I do not know—some agreement can be reached with the Nauru government, that would in effect end IOM's involvement anyway.

Mr McMahon—IOM still has a continuing involvement in Manus in respect of its maintenance, and in all probability it would continue with maintenance there, but these are issues that we would need to explore with IOM as well.

Mr Metcalfe—This is probably a good time to very briefly put on the record the enormous appreciation we have for the work that IOM have done in this area. They have been enormously responsive and have undertaken a very significant role over a period of time and have been very a good partner for the Australian government. Two weeks ago in Geneva the minister met the head of IOM, Mr Brunson McKinley, and personally thanked him. This is an opportunity to repeat that.

Senator BARTLETT—Regardless of whatever arrangements are reached with the Nauru government and the two Iraqi men who are left there, the department and the Australian government will maintain some ongoing overarching responsibility for their wellbeing. Is that what you are saying?

Mr McMahon—Correct. There is a duty of care there, and we obviously would not simply desert them on the island without some appropriate support.

Senator BARTLETT—Is DIMIA going to maintain an office on the island?

Mr McMahon—That is an issue that still has to be addressed. We are really turning our minds at the moment to the transition to other forms of arrangements on the island. I think we will know the answer to some of those questions in three to four months time, but we cannot really comment on it now.

Senator BARTLETT—My final question: with the ASIO assessments, if they had been in Australia, they would normally have been able to get an AAT appeal on an ASIO assessment. That is correct, isn't it?

Mr McMahon—I believe that is the case, yes.

Senator BARTLETT—But in their circumstance it is the same as someone who has applied for any visa from offshore and fails the security assessment. They would normally have no appeal right.

Mr McMahon—Correct. There is no application under the Migration Act, and the normal forms of review do not exist in that sense. Comparable forms of review do not exist.

Mr Metcalfe—On the issue of whether the security assessment is reviewable, that is an issue for ASIO. That would be a function of the ASIO Act.

Senator CROSSIN—In the couple of minutes I have, I want to go back to the incident with the transportation of the detainees by GSL in late July. I understand that a report was commissioned by DIMIA. Is that correct?

Ms O'Connell—Yes, a report into that incident was commissioned by DIMIA.

Senator CROSSIN—Who commissioned it?

Mr Williams—That was DIMIA.

Ms O'Connell—The department.

Senator CROSSIN—Not the minister's office? The department requested it.

Mr Williams—The department did it under the normal contract administration processes.

Senator CROSSIN—Why was it commissioned? Why did you decide to do a report?

Mr Williams—Because there had obviously been an incident that required investigation. We have an expert panel of external investigation providers who are able to do that for us, and we quite often use that.

Senator CROSSIN—An external panel of what?

Mr Williams—It is a panel of external companies who are able to provide us with expert advice and investigation capacity into some of these sorts of issues to help us with contract compliance and monitoring.

Senator CROSSIN—Which company would have been commissioned to do this report for you?

Mr Williams—That was Knowledge Consulting.

Mr Metcalfe—That is principally Mr Keith Hamburger, who is a former senior official of the Queensland government. He has undertaken a number of inquiries for us over the years.

Senator CROSSIN—What would have been the cost of that report?

Mr Williams—I do not have that information. I will take it on notice.

Senator CROSSIN—Does that company do all of the reports into incidents involving GSL?

Mr Williams—No. External providers are only commissioned on more significant incidents that might occur.

Senator CROSSIN—How many of those would that company have done in the last two years, say?

Mr Williams—Again, I would have to take that on notice.

Senator CROSSIN—What led the department to believe there might be a problem with the account of the incident provided by GSL?

Mr Williams—I just do not recall the chain of events now.

Ms O'Connell—Our initial inquiries suggested that there was nothing to sustain the complaints. I believe it may be the case that there still remains some doubt over whether our initial inquiries were thorough enough in determining whether or not the complaints were

valid. Therefore, we commissioned the investigation to have a thorough look at the complaints.

Senator CROSSIN—Was it not the case that you were misled by GSL?

Mr Williams—The initial reporting of the incident was not accurate, that is correct. That is something that we have taken up with them.

Senator CROSSIN—Do you mean that it was not accurate on the side of GSL?

Ms O'Connell—That is correct.

Senator CROSSIN—What aspects were not accurate?

Mr Correll—We do not have the information with us. We would have to check our records for that, but my recollection is that, after initially receiving information in this area, there had been some questions asked and some information had been fed back to the department. Subsequently, the department was able to access further information, which did really raise strong questions about the original advice provided by GSL at that stage. That is when a full investigation was initiated. We would have to take on notice the detail of that information, which we can certainly provide but it is not at our fingertips at the moment.

Senator CROSSIN—Following the investigation, what processes do you now have in place to ensure that any future report you get from GSL is accurate?

Mr Williams—We have an extensive process of contract monitoring that we apply, so we have our own staff from the DIMIA national office as well as local staff at each of the centres who look into incidents as they arise. We are able to get information from people involved, and in some cases where a complaint or information comes from a third party it is a useful source of information for us to verify. We use whatever information is available to us and, if something warrants investigation, we do so.

Senator CROSSIN—In how many other instances with GSL has this occurred?

Mr Williams—Has what occurred?

Senator CROSSIN—Where the information they have provided to you has not been accurate and you have been misled?

Mr Williams—Again, I would have to take that on notice. I do not know.

Senator CROSSIN—Do any come to mind?

Mr Williams—No.

ACTING CHAIR—Senator Crossin, it being past 6.30, it may be useful if you place the remainder of your questions on notice. We will adjourn for a dinner break.

Mr Metcalfe—Can I just confirm that we are now going to move to output 2 after the dinner break?

ACTING CHAIR—After we return from the dinner break we will be moving to output 2. Any remaining questions that the senator may wish to ask on output 1 can be put on notice.

Mr Metcalfe—So I can release those officers?

ACTING CHAIR—Indeed you can, and I would like to thank those officers for their input today.

Mr Mann—Can I just very quickly provide an answer to a question that Senator Nettle asked about the removal of Mr Parkin?

ACTING CHAIR—Yes, briefly.

Mr Mann—Senator Nettle asked whether he was asked to sign any documents. My information is that he was asked to sign our notice of intention to cancel and, after the cancellation, he was asked to sign an acknowledgement of the cancellation of the visa. I understand he did that in a cooperative fashion.

Senator NETTLE—Can I have a copy of those documents?

Mr Mann—I will take that on notice.

Proceedings suspended from 6.33 pm to 7.43 pm

ACTING CHAIR—We will now return to output 2.

Senator HURLEY—DIMIA has had quite a shake-up recently. Mr Metcalfe made the announcement that there would be significant structural changes. Will this affect the citizenship and multicultural area of the department?

Mr Metcalfe—Not to any great extent. The key division, the Citizenship and Multicultural Affairs Division, has been renamed the Citizenship, Settlement and Multicultural Affairs Division to reflect the full range of work that it does, but that has not brought any structural change below the division. The division is now formally part of a group of divisions reporting to Mr Rizvi, as deputy secretary, and then to me, whereas previously there was no deputy secretary particularly responsible for the division. I believe that that strengthens accountability and lines of responsibility.

In the state and territory offices, we have provided some increased funding for this area of activity, so that will reflect, I would hope, in better service levels being provided to clients. But, again, the structures do not change; it is simply a resourcing aspect. So the short answer is that this division has been relatively unaffected by the changes. There are some central service delivery aspects of the department which are being significantly strengthened, such as the establishment of a new client services division, a national training branch and a national communications branch. It is my expectation that those service areas of the department will provide stronger levels of support to this area than we have been able to in the past.

Senator HURLEY—I would like to talk about the settlement services area now, and particularly start off with the settlement planning. Earlier we were talking about apprentices who come to Australia. The budget papers state that the government will provide money to DIMIA and the department of education to enable full-fee paying overseas trainees to undertake new apprenticeships in Australia, and, on completion of the apprenticeships, the trainees will be able to apply for state specific and regional migration visas. After obtaining those visas, what is going to be the state of those applicants with regard to permanent residency applications?

Mr Rizvi—At the completion of their apprenticeship, they will be fully qualified tradespersons. As such, they will be applying for or will be able to apply for permanent residence visas.

Senator HURLEY—With regard to the overseas trainees who come to Australia to undertake these courses, is it simply by sponsorship? Is it not a matter of selection from overseas posts? Is it purely sponsorship—finding and seeking out the trainees?

Mr Rizvi—The responsibility for recruitment of the trainees will rest with the relevant training organisations and employers, usually group training organisations, although it will vary, I suspect, from state to state, where there are slightly different arrangements in place as to who would take the lead in terms of recruitment. But they would, in many ways, be recruited in much the same way as, for example, overseas students are recruited to Australia.

Senator HURLEY—This was touched upon briefly. Under what circumstances would those overseas trainees lose their ability to stay in Australia if they failed to complete their apprenticeship because of their own fault?

Mr Rizvi—If they were unable to complete their apprenticeship and meet the requirements of the relevant course, they would be in a similar situation to overseas students. At the end of that, they would be required to go home or they would be required to find another group training organisation or employer who would be prepared to continue their apprenticeship.

Senator HURLEY—So, if there is a decision that the trainee should return to their own country, is that decision reviewable?

Mr Rizvi—It would depend on the circumstances of what has happened. For example, if the circumstances are such that the employer makes the decision that they are really not up to the mark to complete the particular apprenticeship, the responsibility would be on the sponsor to ensure that the person was assisted to depart from Australia. That would be a responsibility of the employer. If the decision to leave the employer was that of the apprentice then the obligation would be on the apprentice to find another employer and training organisation.

Senator HURLEY—In terms of general migration now but still on sponsorship, is there any enforceable legal requirement for migrants sponsoring their relatives to Australia?

Mr Rizvi—There is an enforceable legal requirement as far as family stream migrants are concerned, as well as those skill stream migrants who are sponsored by family. There are legally enforceable requirements in that particular area. The nature of those requirements, the extent to which they are enforceable and the mechanisms that are used vary from category to category. For example, with parents the mechanisms are quite expensive. There is a bond arrangement and there is a substantial health charge involved. For spouses there is an assurance of support arrangement which is legally enforceable, but it does not have the same bond and the same mechanisms in place. If you are talking about humanitarian migrants, under the special humanitarian category there is an expectation that proposers involved will provide appropriate support and assistance to the individuals that they propose, but there is no legal requirement that is enforceable on those proposers.

Senator HURLEY—Does DIMIA have any way of checking whether sponsors under that humanitarian program have the capability to assist their relatives in the way that you describe?

Mr Rizvi—This is actually under 1.2, and we do not have those people here.

Mr Metcalfe—We understand that it is sometimes difficult to work out which outputs questions should go to. The questions about the trade skills visa were really under 1.1, and this question is really under 1.2. Those officers have now left us.

ACTING CHAIR—Given the circumstances, Mr Metcalfe, it is quite reasonable to take that question on notice.

Mr Metcalfe—We are happy to assist in any way we can. I do not know if Abul can elaborate further.

Mr Rizvi—I think I know some of the answers, but I am reluctant to commit myself. I would prefer to take that on notice.

Mr Metcalfe—We will take it on notice.

Senator HURLEY—How effective have the services provided to DIMIA by the International Organisation for Migration been in relation to the resettlement of new arrivals? In other words, are you happy with that?

Mr Vardos—The only interaction that my division, or my program area, has with the IOM is in the delivery of our offshore cultural orientation program prior to refugee and humanitarian entrants leaving to come to Australia. They provide a range of other services to the department, but that is the only interaction with outcome 2. We have evaluated that program and have found it to be successful. Some enhancements have been made. Its implementation has spread to a number of locations since the pilot was run about two years ago.

Senator HURLEY—How much does that cost the government?

Mr Vardos—I am sure we have in this mountainous brief a figure, but putting my finger on it—

Mr Metcalfe—We will check while we are talking and see if we can let you know.

Senator HURLEY—I am happy to have the cost of the services provided on notice.

Mr Vardos—To clarify: do you mean the cost of the full range of services they deliver across the department or just for our orientation program?

Senator HURLEY—The full range of services. If you can break it down for me into the various areas that would be good.

Mr Metcalfe—We will have to take that on notice.

Senator HURLEY—Going back to the sponsorship issue, is there any arrangement between DIMIA and any religious groups for funding migrants for resettlement in Australia? Is there any formal agreement or arrangement?

Mr Vardos—I am not sure what the core element is of your question. A number of organisations and individuals can propose people to come to Australia under the special

humanitarian component of the overall Refugee and Humanitarian Program. There can be 7,000 people under that program. Someone can propose an individual or an organisation can propose someone. It may well be that some of those organisations have a religious affiliation, but I cannot answer that question. Again, it is outcome 1. The Refugee and Humanitarian Program officers would be better placed to answer that in more detail.

Senator HURLEY—So the sponsorship of people coming to Australia is entirely in the refugee section? You do not deal with that under this settlement planning issue?

Mr Metcalfe—Sponsorship is a word that we use quite widely. In terms of the sponsorship of humanitarian entrants, yes, that is where an individual or a group in Australia would support someone's entry under the Refugee and Humanitarian Program. Of the 13,000 places, around 7,000 are reserved for that arrangement. But sponsorship is also used in the context of employers sponsoring people, or indeed family members sponsoring people under the family migration scheme. So there are definitional issues here as to precisely what information you might be seeking.

Mr Vardos—I can say that, under the Integrated Humanitarian Settlement Strategy, IHSS, a range of assistance is provided to people who come to Australia under the Refugee and Humanitarian Program. The 6,000 refugees of that 13,000 get the full suite of assistance available under IHSS. The 7,000 who come under the Special Humanitarian Program get some assistance from IHSS, but it is more limited than what the 6,000 refugees get. We can give you details on the range of assistance provided under that program.

Senator HURLEY—But you would have knowledge of how many people are coming in and who is coming in. Are you part of that planning process?

Mr Vardos—Certainly the refugee and humanitarian division is the division responsible for formulating the annual refugee and humanitarian intake. We then plan to accommodate those 13,000 people under the various programs that we have, either with IHSS service providers or torture and trauma providers et cetera. The biggest difference between the two components is that, with the 6,000 refugees, we actually know when they are coming and what their composition is in terms of age profile et cetera, and we have a significant role in settling them around the country and hooking them up to services. The issue with the 7,000 under the Special Humanitarian Program is that they come under their own steam—their proposers assist them—so we do not have as good a handle on when they are coming and where they are going to live. We can make an assumption that they will be hooking up with whoever the proposer is, in whatever part of the country they live. That is one of the challenges we face in making state governments, who provide a range of services, and our own service providers aware of where the SHP component is settling. There are some challenges because it is independent movement over which we have no direct control.

Senator HURLEY—Let us go back to the refugees briefly. You know when they are coming and you direct them where to go. Do you liaise with state governments on those kinds of issues?

Mr Vardos—The liaison happens at a range of levels. We do have a pilot program which engages state government with federal government to identify appropriate regional and rural locations which may be suitable for the settlement of refugees. A number of preconditions are

required for that happen. Towns have to be of a certain size, a certain range of services have to be available, we have to be in a position to provide outreach services under IHSS if they are not readily available, and there have to be employment prospects and reasonable housing. So, yes, liaison with state government happens quite comprehensively, because we will not engage with a local council in that program unless we have the prior agreement of state government.

Senator HURLEY—So you would, for example, be involved in the process of letting schools in Newcastle know that they are about to have 20 African children?

Mr Vardos—I am not certain that we have that micro level of engagement. The state government would certainly know and councils would know, but that is with the people that we have a direct role in placing. When it comes to secondary or tertiary movement, it is free movement and where people may go to settle is difficult to prejudge. I will ask my colleague Ms Pope if she has anything further to add on that.

Ms Pope—The only thing I would add is that we are looking at some other sources of information that we could provide to state governments about the Special Humanitarian Program, because we do not at this point know very much about those people's travel plans. We know that, for about half of them, the International Organisation for Migration, which we were talking about before, books their travel for them. So we are at the moment looking at whether we can use some of that information to get a better handle on when they intend to travel and what destination they have in mind. As Peter said, it would not cover secondary migration once they arrive in Australia, but it would give a key to that first step. On the refugee part of the program, we direct the unlinked refugees—those that do not have any friends or family or other connections that they identify in Australia—and we negotiate with the states about the placement of those people. Linked refugees can choose to go where they have links. It is actually quite a small proportion—only about 4,000—that are unlinked that we have some role in determining at least where they start out.

Senator HURLEY—I turn to settlement services. In the budget estimates hearings, Senator Kirk asked for a copy of the recommendations of the task force in relation to the settlement services review, but that was not released. Can you tell me why that was not released?

Mr Vardos—The report to government is an internal working document. It is not the department's gift to release that report. Ministers have taken the decision that the report is an internal report to government. There was a public version of the document put out—the *Review of settlement services for migrants and humanitarian entrants*. It has been in circulation for quite some time. But the actual report of the task force remains an in-house government document.

Senator HURLEY—What has been the progress on implementing the recommendations of that settlement services review?

Mr Vardos—We have implemented 49 of the 61 recommendations to date, either in full or in part, by way of works in progress.

Senator HURLEY—Are the remainder of the recommendations due to be implemented or are they not being implemented at this stage?

Mr Vardos—There is no definitive timetable as to when all 61 will be implemented. It is a progressive activity. In each budget cycle the minister of the day may choose to pursue remaining unimplemented recommendations or not.

Senator HURLEY—Is there any particular area or block of areas involving those remaining recommendations?

Mr Vardos—We can table a document that gives a matrix of where all 61 recommendations stand.

Senator HURLEY—Thank you. In the concluding paragraph of that report of the settlement services review, the review committee said:

> Public consultations and submissions to the review have generally supported the role of MRCs/MSAs with some refinements.

There has been quite a shake-up of the way settlement services have been provided. One of the losers, if you like, has been the MRCs, because they have had their core funding removed, despite the fact that the review found that they were generally supported. Did the department try any of those refinements that might have been suggested by that review? If not, why not?

Mr Vardos—Just to clarify, the funding arrangements in the current financial year are status quo. The new funding arrangements will come into effect on 1 July next year. This is the last year of the current arrangements. The review also recommended that there be some rationalisation in the way settlement services are provided. Instead of having two programs, one involving core funding to MRCs and MSAs and the other involving the settlement services grants program, it was recommended that they be combined, for a range of reasons, including efficiency, and in order to have a single administrative process that everybody can relate to. Despite the disquiet that you have referred to among the MRC community, it is yet to be proven that they will be losers in the process. Under the current arrangements, drawing funding both through core funding and through CSSS, they account for about 51 per cent of the total amount of money available for community grants funding. Those that have been preparing for the change—and it has been on the table since at least 2003 if not 2002—will be well placed to meet the challenges of the new program. Those that are well located, those that deal with the priority target group, I expect will continue to be competitive in the new environment.

Senator HURLEY—Let me give you an example. The migrant resource centre at Broken Hill is not well located, obviously. It is a small community; it cannot deal with targeted groups because the targeted groups are not placed there. They nevertheless have a small group of migrants and recent arrivals. They already know that their funding will not be continued. How are such groups in rural and regional Australia, MRC organisations, meant to cope with the new changes?

Mr Vardos—I will make a couple of comments and then see if Ms Pope has some further comments to make. It is not necessary that MRCs deliver settlement services. An MRC has a fixed structure, bricks and mortar, overheads and those sorts of things. It is entirely possible that the same range of services can be provided by other community organisations that already exist in a particular location. I am not personally familiar with what is available in Broken Hill.

Senator HURLEY—Not much.

Mr Vardos—But there are not-for-profit community organisations in the broad sense that are able to bid for funding under the new settlement grants program to deliver settlement services. I need to say, though, that the overarching priority of the government, which was initiated by Mr Hardgrave and endorsed by his two successors, is that the priority for access to community grants funding from our portfolio will be new and emerging communities that have arrived in the past five years. That is the overarching principle that is government policy.

Senator HURLEY—Why is that government policy then? What was the consultation that brought that about? Did some of the groups that were consulted say, 'We don't believe MRCs are providing the kinds of services that we need anymore; it needs to be more flexible'? What was the consultation done there?

Mr Vardos—It was over two years ago now that those consultations happened. I need to refresh my memory with a bit of homework as to the detail that emerged from those consultations. But I think it would be fair to say that there was a breadth of opinion. There were those that, as you said, supported MRCs and the work that they do. There were others who said that there were alternative and perhaps better methods of delivering settlement services. So there was diversity of opinion.

Senator HURLEY—Was the overwhelming opinion that there were better ways, that the current system was not working? Why did the government then choose one over the other if there was a diversity of opinion?

Mr Vardos—A judgment was made by the minister of the day that the best client outcomes would be achieved for the target group by having a single program for the delivery of settlement services and by combining those other two programs—having a single administrative process; one application process with clearly defined planning needs identified, which is part of the exercise—and that the ability to deliver those services be broadened to a number of community organisations rather than focusing on one stream.

It is a misconception that core funding to MRCs was a given every year. It was still a competitive process and some organisations over the past four years have had their DIMIA funding cease because of performance issues, for example, or being poorly located, the demographics had changed and they were still in an area that used to be a migrant-receiving area and the migrants had moved on. There were a whole range of reasons. In part, it is the inflexibility of having a fixed brick-and-mortar location that perhaps led to some inefficiencies in the way MRCs operated. But, as I said, I would really need to revisit a lot of the work that was done in 2001 and 2002 that led to the report.

Senator HURLEY—Having a fixed bricks-and-mortar location can often mean that people know where to go and are happy to go there because it is it called a migrant resource centre, rather than searching out another appropriate community group to go to. The minister, when he went to visit a couple of MRCs in New South Wales, said:

Migrant Resource Centres create a vital link between the incoming settlers and their new community by providing assistance in a variety of areas including language skills, housing and employment.

Through this support, migrants and refugees develop a sense of belonging and are able to contribute to their community socially and economically ...

I am not putting words in the minister's mouth but I think that sense of having a place to go might be part of that for a lot of migrants.

Mr Vardos—And other organisations may also be able to provide that meeting place. There is an issue that core funding basically went to paying for rent and utilities. There was no actual delivery of settlement services per se.

Senator HURLEY—No delivery?

Mr Vardos—If we are providing core funding to give an organisation the means to exist, we are effectively paying for the administration costs of that organisation. If that organisation is drawing funding from half a dozen different organisations, whether they be federal, state or local, the core funding is effectively subsidising the delivery of settlement services provided by a whole range of organisations. You cannot say that the DIMIA core funding is actually delivering federal government funded DIMIA portfolio settlement services. One of the outcomes is that, in bidding for funding under the new program, administrative costs have to be apportioned on a project by project basis rather than just a broad allocation of a grant to underwrite the operation of an organisation that then draws grants from a whole range of other organisations to deliver the services.

Senator HURLEY—Will there be a monitoring process—I am assuming there will be—to see how this change in the funding program affects the MRCs and general services to humanitarian and migrant groups?

Mr Vardos—There will certainly be a monitoring program to see whether the services that the government effectively is purchasing are being delivered and whether the client outcomes are what we are expecting to achieve. There are work programs, there are milestones to be met and there will be ongoing monitoring, as there is at the moment, through our state office network. That is not going to change. The scrutiny and accountability is not going to change. The key for us is client outcomes, and that is what we will be monitoring.

Senator HURLEY—How will you be monitoring that? Reading through estimates from February, I see that there was quite a lot of questioning on quantitative data regarding the clients of the MRC and community settlements schemes and a lot of discussion about the development of a computer program to input data and to assess that. Can you tell me what has happened since then?

Ms Pope—The system that we use to aggregate all the data about the management of the grants is called the grants management system. It collects all the reports that have to be made at certain milestones throughout the life of the grant, which include interviews that are conducted on site by our grant managers in our state and territory offices. They go to the organisation and do an online interview that is uploaded to our system. They have to submit financial reports, including an audited financial report at the end of the term of the grant at the end of the financial year. They also report on the delivery of outcomes and progress towards the implementation of the project that that grant was provided for. All of the grants are monitored on a state by state basis by our state and territory offices, and the information is aggregated in our grants management system.

Senator HURLEY—Perhaps I will be more specific. In response to a question regarding quantitative data on 18 February, the then senior assistant secretary of the settlement branch,

Ms Bryant, said, 'We proposed to issue a further paper to the sector seeking comment and input as we did previously from there.' She later said that there would be a new data system introduced by July 2006 and that, in the meantime, a manual method of collecting data from service providers has been used.

Ms Pope—Yes. The new system is called OSCAR, the online settlement client activity reports. This is what Ms Bryant would have been referring to in February. It is planned for introduction on 1 July 2006, as the new settlement grants program commences on the same date. It will be used by all the organisations funded under the SGP and the ongoing grants under the CSSS funding as well.

We have brought together a reference group of representatives from a number of organisations who hold current CSSS grants—and that includes several people from migrant resource centres—to work on the sorts of data that ought to be collected, the degree of onerousness that that will impose on the organisations and to negotiate about what will give the best balance of outcomes and to report information for us, without being overly burdensome on the organisations. So all the items of data that will be collected under that system are currently being negotiated, and our next reference group meeting is in the next couple of weeks to continue to refine the data collection.

Senator HURLEY—What is expected to be the cost of developing that system?

Ms Pope—I will have to take that one on notice, Senator. I do not have the detail of that with me.

Senator HURLEY—What about distribution and training? Will it be provided to the people who are successful in obtaining grants at cost or provided free?

Ms Pope—The system is an email based part of the internet, so it is something that they can readily access without additional cost, and that is one of the attractions of the system. The requirement at the moment is to provide the information manually and then rekey it or load it in from diskettes or what have you. So it will make it a lot easier for the organisations to use. And, yes, we will be providing training to the organisations. That sort of support is normally provided without any charge to the recipients of the grants. So in a similar way that we are providing training sessions and information sessions at the moment to those who want to apply for grants about how to go through the process and various aspects of the application process, we provide quite a lot of assistance and support throughout the year. We also have a help desk that they are able to contact basically between nine and five on working days.

Senator HURLEY—In relation to resettlement of new arrivals to Australia, basically, unless the MRCs have got a grant for the IHSS funding, they are no longer expected to provide any services for new arrivals; they would refer them elsewhere?

Mr Vardos—There are two issues here. The IHSS tenders have been concluded. That is a separate program from the settlement grants program. Some MRCs were successful in getting tenders under the IHSS and they will continue to be contractors to the department within the 20 contract regions we have around the country. If they won a tender, they will be a service provider under IHSS and the process will continue as in the past but with some enhancements. If they bid for funding under the settlement grants program—which is a combined CSSS and

MRC core funding—and are unsuccessful, that does not automatically mean that they will cease to exist, because DIMIA is only one of many funding sources in the community.

Senator HURLEY—Exactly. But if they are continuing their funding under the CSSS program and they were not successful in an IHSS grant, will they be required to refer anyone that comes to them—any new arrivals—to the other services that have been successful?

Mr Vardos—No, we will meet our obligations under current funding commitments. So if they have a current CSSS grant that rolls out one or two years ahead, then we will meet those obligations as first call on the new settlement grants program. During those two years, if they are not successful in getting funding in the first year of the settlement grants program, they could well be successful in the second year or the third year.

Ms Pope—I just wanted to add that we are also providing top-up funding to those grants in recognition that the core funding was to an extent underpinning those ongoing grants because they were structured on the basis that they had core funding in addition to the specific funding for those grants. So we are just finalising the arrangements for some additional money to MRCs to support those ongoing grants.

Mr Vardos—We are not going to let them hang out and dry. We are going to assist them to fulfil the obligations that they have entered into.

Senator HURLEY—One thing that is specifically excluded from their services under the new settlement grant program, the policy paper just out, is the provision of migration advice.

Mr Vardos—I think you may be referring to the discussion paper where that was the case. But, through the consultation process that I led during March and April, a number of issues emerged, including the one that you have just touched on. We made the case to the minister based on what emerged from those consultations, and we have added the provision of migration advice to humanitarian entrants who want to bring out family members back into the mix of eligible activities that we will fund.

Senator HURLEY—Only for that group?

Ms Pope—It is for the humanitarian entrants who have arrived in the past five years, yes.

Mr Vardos—Again, it fits in with the government's overarching priority.

Senator HURLEY—But beyond the five years no migration advice will be provided.

Ms Pope—They would not be clients under the SGP grant program if they were beyond the five years in any case.

Mr Vardos—We do have a copy of the final policy paper which was circulated. We could table that.

Senator HURLEY—Yes. I have it, thanks. I want to ask about emerging communities. This information is getting a bit old now, but the 2002-03 edition of *Population flows* states that, from October 2003 to June 2004, out of a total budget of $14.4 million, $4.9 million of CSS funding was directed towards small and emerging communities, $1.6 million towards rural and remote and $6.7 million towards refugee and humanitarian. How was that amount of money distributed among the emerging communities at the time?

Mr Vardos—We might have to take that on notice.

Senator HURLEY—Fine. Also, could we have a list of the recipients of that grant money.

Mr Vardos—Recipient organisations?

Senator HURLEY—Yes.

Mr Vardos—We can do that.

Ms Pope—For 2003-04?

Senator HURLEY—Yes.

Ms Pope—For 2004-05 as well?

Senator HURLEY—Yes, please. Part of the reason behind the settlement grants policy, I gather, is that new and emerging communities will be funded to become more independent, to establish themselves in the community. As we get a flow-through of migrant communities, the older communities get more established within the community and the money is quite properly directed towards the new and emerging communities. In this case there are a number of challenges in some of the new and emerging communities, particularly, for example, those from Africa. A number of those communities are very divided among themselves. Has the department a strategy for dealing with that when talking about funding for those communities?

Mr Vardos—You are right—the African communities, plural, are quite diverse. During the consultation process, many representatives from a range of African organisations approached me about this very issue. There is a move afoot on the part of some members of the African community to establish a national body, but that is their initiative. We will provide modest support at the margins, but it has to be a ground-up initiative that they support. Capacity building is an eligible activity under the settlement grants program, because we do want those communities to be able to become fully functioning organisations that can in their own right bid for funds under future grants programs to meet the needs of their communities. They would have to reach a certain level of maturity, as others before them have had to do, before they would have a reasonable chance of success to access funds under the grants program. Our advice to them has been to partner established organisations, which have a sort of mentoring role, to develop their own capacity.

Ms Pope—There is formal capacity for that under the settlement grants program for a sort of consortium arrangement or, as Peter said, a mentoring arrangement. So two organisations could put a joint submission for a grant together, the senior one offering the management experience and the junior one the community links and so on, if that were the way it broke down.

Mr Vardos—We have also encouraged the long-established communities that have built up a significant amount of infrastructure and social capital over the past 50 or 60 years—which are perhaps not getting the migrants that they used to—to use that knowledge, experience and capability to assist new and emerging communities. If that were the case then they would be eligible to access funds under the SGP but not eligible to assist migrants that came to this country 40, 50 or 60 years ago.

Senator HURLEY—I understand that. What about factional tensions within groups? There are ethnic factions within groups coming out from particular countries. Some of those

groups might be more active and stronger in forming the sorts of partnerships that you are talking about. So you might have one, two or three of those groups becoming eligible, applying for funding and developing while other groups are left behind. Are there any strategies for dealing with those kinds of issues where you have some factions and indeed some communities that are not properly developing being left behind?

Mr Vardos—Our objective is, hopefully, to not have anybody left behind and marginalised. But if there is no way that those organisations can organise because of factional, tribal or religious disputes—whatever the issue may be—then we would look to ensure that their needs are met by other, more established organisations. There would be little point in pushing to have a national body formed to represent every African community if that is simply not possible. At the end of the day, we may in the years ahead have to deal with three or four African organisations—the peak bodies. There may be more than that. But the fundamental issue that we need to deal with is their capability (a) to manage the funds that they have applied for, and (b) to deliver the services that they say they are going to deliver. They would be the principal drivers.

Senator HURLEY—So you will fund them and deal with them as they develop. Are you proposing any sort of training program or any way of dealing with groups that you can see are not developing?

Mr Vardos—The process is, as we have just described, through partnering with established organisations.

Senator HURLEY—Are you going to help people to partner?

Mr Vardos—Yes, through the settlement grants program we have that capability. But we do not have the capacity for DIMIA to directly run training courses or whatever for particular small groups. It will have to be done through community organisations that have a track record in doing those sorts of things.

Senator HURLEY—It seems like a circular argument to me. You will not fund or help groups that cannot help themselves. Does a group that perhaps does not have leaders in its community that are capable of dealing with DIMIA and other organisations just get left behind?

Ms Pope—We made the point before, but perhaps not as clearly as we might have, that there are two aspects to the settlement grants program. It focuses on individuals who have arrived in the last five years under the humanitarian program or those with low English skills. The other big part of it is the development of other organisations. For example, we could fund a grant that would provide leadership training to young people in organisations where there is not yet sufficient experience for them to compete in their own right. The organisation that was funded would be providing, for example, development opportunities to them. They could provide a whole range of grant services that would be about capacity building in small and emerging organisations. That is a direct goal of the settlement grants program in itself.

Senator HURLEY—So you would be relying on, say, Anglicare or some other organisation to see that there is a problem and apply to DIMIA for settlement grant funding?

Ms Pope—It is a bit more sophisticated than that in some ways. We do a very detailed needs based analysis of where the settlement needs are—in which communities and where individuals are focused. There is an element of demographic analysis as well as analysis of the capacity of organisations in that area to deliver. That is combined with existing grants to ensure that we do not overlap when we plan the next round of grants. So there is a whole infrastructure, I suppose, around the planning side of it. We would not necessarily look to organisations to dream it up themselves. In the advertisement for the grants program we have made it quite clear what we are looking for and where we are seeking it. We are not saying that we will not fund something that comes out of left field, in case we miss something. An organisation can put forward something that is not on our list of identified needs if they have identified something that we have not come across in our analysis.

Senator HURLEY—Perhaps I can deal with it by example. Say you have a small ethnic subgroup of Sudanese refugees, very few of them are in a particular state and there are settlement needs but they do not have an MRC nearby or anyone to organise them to apply for a grant. How will they get help?

Ms Pope—Where we have identified a need and no organisation comes forward with a bid to fill it, we reserve the right to seek out an organisation that can provide those services. That is the usual way we would seek to sort that out.

Senator HURLEY—So DIMIA would contact a group and say, 'We think we have a problem here. Will you—

Ms Pope—Yes. And organisational eligibility is broader in rural and regional areas. It includes local government organisations, which makes it broader than it is in the metropolitan areas, to address that issue as well.

Mr Vardos—In addition to the work we do to identify the needs, the needs based planning framework, our community liaison officer network that operates out of our state and territory offices maintains contact with about 6,000 community organisations or cultural groups across Australia on an annual basis. There is that capacity to identify where problems are emerging so we can do something about them. So there could be some crossover between the work of the community liaison officer network and what we are doing in the planning area.

Ms Pope—And the community liaison officers in the states would have been involved in the planning analysis done on a state by state basis.

Senator HURLEY—While we are on those settlement issues for the emerging groups and particularly talking about some African communities, there are obvious problems where people who come in have English as a third language or perhaps no English at all and need to start schooling and/or some sort of training. I realise that in some ways this is an education department question, but what kind of liaison is there between DIMIA and these educational institutions about assisting people in that situation?

Mr Vardos—There is an Adult Migrant English Program aspect your question, which I will ask Ms Ellis to address. AMEP does not cover school age children. The school system has to deal with them. We certainly advocate and engage with the federal education ministry to convey these issues, and they are also raised in the ministerial council.

Ms Ellis—When refugees arrive in Australia they are given information on how to get in touch with the service providers for the Adult Migrant English Program and they are assisted to register with that program so that they can commence classes.

Senator HURLEY—I will move on to migrant health resources. They are not mentioned specifically in the recent annual report that I can see. Can you tell me a bit about how DIMIA is handling health assistance, medical check-ups and examinations to new arrivals in Australia?

Ms Pope—There are a number of aspects to our health checking, as you would be aware, before people arrive in Australia. I will mention that we have commenced a pilot of pre-departure health screening, which takes place in certain locations in Africa in the 72 hours before people depart. This has partly been in response to the health status of some refugees arriving from Africa and the issues that the states have been facing in terms of their health status when they arrive. The protocol has them checked for a range of communicable diseases. They are treated for malaria and for some parasites that are found on the legs and feet, and they are generally checked for fitness to travel to Australia.

The outcome of this has been a pretty positive reaction from the states in terms of the health status of the arrivals and the fact that the states are receiving more information about them before they actually get here. So the health manifests, the records of the health examinations, from IOM—this is another job that IOM undertakes for us—are forwarded to my branch here in Canberra and we forward that information to the offices of the Communicable Diseases Network around Australia as well as to our state and territory offices, and they provide this information to the contractors under the Integrated Humanitarian Settlement Strategy for provision to doctors in Australia when they first hook them up into the medical services available in Australia.

That is the way the connection to doctors and Medicare happens. It is through the Integrated Humanitarian Settlement Strategy. They work closely with service providers on a state-by-state basis to ensure that the medical needs of new arrivals are met, which does not mean that every single arrival is taken to the doctor. People who are on undertakings, about whom there is an alert as a consequence of that predeparture screening, or who either look or state that they are ill on arrival are taken to doctors. In some states, there are specialised refugee or migrant health services, and in some cases all arrivals in those states do go through those bodies. In Western Australia, for example, 100 per cent of arrivals do go through that process, but it is not applied the same way in every state.

Senator HURLEY—Is it proposed to continue directing new arrivals to those migrant health centres where they are available?

Ms Pope—That is, to an extent, at the discretion of the IHSS service provider. They are not obliged to send them through those organisations, but in most cases they do because it is an obvious central point. They also develop some expertise in relation to the sorts of conditions that refugee and humanitarian arrivals might come to Australia with. So, while we do not mandate it, we certainly do not discourage it, and on a state-by-state basis it is funded and encouraged by the state governments.

Senator HURLEY—So the federal government does not provide any funding to migrant health centres?

Ms Pope—No.

Mr Vardos—Not directly but through the general transfer of funds from the federal to state treasuries.

Senator Vanstone—Which is substantial.

Senator HURLEY—I will turn now to AMEP administration. How many migrant families who are eligible for the 510-hour English program, AMEP, finish the course?

Ms Ellis—Of clients who exited in 2004, approximately 52 per cent completed the maximum number of hours of tuition to which they were entitled—that is, the 510 hours.

Senator HURLEY—Why is it so low?

Ms Ellis—Around 11 per cent exited with functional English. Approximately 37 per cent exited for some other reason. Sometimes people leave for family reasons or perhaps they have obtained employment and they decide to pursue the employment rather than continue with their English language tuition.

Senator HURLEY—There was a note in the annual report that said child care was a problem. Is that being addressed now? It said that child care is not available in a number of instances.

Ms Ellis—There have been some issues with some service providers who have failed to ensure that participants with under-school-age children were given access to child care within the period stipulated within the contract. Those breaches are being addressed with the service providers.

Mr Vardos—There is another dimension to that issue in that some of the participants at AMEP courses are wanting to use AMEP provided child care as a general child-care facility rather than just child care for the period when the adults are learning English, which is what the child-care component is supposed to do.

Senator HURLEY—So you are saying that that is part of the problem that is identified in the report? It is not a real problem?

Mr Vardos—It is part of the overall issue. There are a number of factors but there is this other issue that there perhaps is an intention to use AMEP child care for purposes for which it was not intended.

Ms Ellis—Service providers have cited limited availability of child care places within the community in the areas where AMEP participants are seeking to access tuition. They have also mentioned increasing child-care costs. The service providers are required—it is part of their contractual obligation—to arrange the child care. So the service providers are competing within the open market, if you like, in terms of accessing child care. Some service providers have on-site child-care facilities and other service providers seek to access child-care places in child-care centres run by other organisations.

Senator HURLEY—So by when is a breach required to be rectified?

Ms Ellis—When a breach is identified, we negotiate a plan with the service providers and negotiate a time frame within which they are required to address that breach. Then there is ongoing monitoring of those breaches.

Senator HURLEY—So what is the required time for this breach?

Ms Ellis—It depends very much on the circumstances of the breach. If there were, say, two instances—so, in two cases, child care was not provided within a particular period but the service provider committed to there being no further breaches—then they would be monitored. If there were no further breaches then we would accept that the matter had been resolved. If there were continuing breaches then we would continue to discuss with the service provider their obligations under the contract and ask them to identify strategies and advise us about the strategies they have identified to address the problem.

Senator HURLEY—Is there some sense of urgency about this? Obviously the lack of child care would be a severe hindrance to a lot of women in particular wanting to learn English when they arrive.

Ms Ellis—It is certainly a breach of contract that we regard as being a very high priority to be dealt with. It is a very serious matter and, yes, we discuss with the service providers as a matter of urgency the need for them to address those breaches.

Senator HURLEY—In the time since that report has been completed, how many have been in breach and how many have been rectified?

Mr Vardos—The information I have at my disposal indicates that in 2004-05 five of the 18 contracts breached contractual obligations in this area, which affected 54 clients in total, which was a reduction from 69 clients in 2003-04. That is the most recent data that I have.

Senator HURLEY—Would you have information about how many of those five have now rectified the problem?

Ms Ellis—It would generally be that the breach is when a child-care placement has not been provided in sufficient time to enable the adult to attend tuition within the required time. The breaches can be addressed subsequently so that it may be that two or three weeks later the child-care place is found and the adult is in tuition. But, nevertheless, there was a breach.

Senator HURLEY—Let us move on to citizenship at this stage. The budget papers state that changes to tighten eligibility will be made in light of minor abuses. Can you explain that statement? It is from Budget Paper No. 2 on page 230. It states:

Changes to tighten eligibility will also be made to the Remaining Relative category and the Close Ties provisions in light of minor abuses of the existing provisions.

Ms Ellis—'Remaining relative' is not an issue for citizenship; that would be permanent residence. I do not have Budget Paper No. 2 to check on that.

Senator HURLEY—We will move on then. The annual report says:

The integrity of Australian citizenship was strengthened through the introduction of new character checking procedures for applicants.

What is the new character checking procedure? How is it operating and how successful is it?

Ms Ellis—The new character checking procedure is that, when a person had spent 12 months or more outside Australia since they had been granted permanent residence or since they had migrated to Australia, they are required to provide updated police records checks for any overseas country in which they had resided. As far as we are aware, that procedure is working well. Clients are required to provide the updated police checks; they are providing them. There is some flexibility. Some people have spent periods of time outside Australia in countries where they have been holidaying, for example. Consideration is given on a case-by-case basis as to whether an updated police records check is required for every country in which they have spent time.

Senator HURLEY—There has been this ongoing review of the integrity of citizenship checks and the ongoing process of auditing. Why is there seen to be a requirement to tighten it now, as recently announced by the minister?

Ms Ellis—I am not sure what announcement you are referring to.

Senator HURLEY—There was an announcement that, as part of the new antiterror laws, there would be a tightening of security checks on Australian citizens.

Ms Ellis—Yes. Security checking has been announced and an amendment will be made to the Australian Citizenship Act to provide for refusal of an application or prohibition on approval of an application where a person has been assessed by ASIO as being a risk to security.

Senator HURLEY—Is that not possible now?

Ms Ellis—It is possible that some elements that would arise in the context of a security check would also be matters that would arise within character checking. But it is also conceivable that there would be some security related matters where to regard them as being a character issue is somewhat more difficult. Refusal on character grounds is where a person has failed to meet that requirement, whereas with security checking it will be a prohibition on approval of the application. The character assessment generally looks at a person's criminal record, but it is conceivable that someone may not have a criminal record, for example, but nevertheless be a security concern.

Senator HURLEY—Is there the possibility of an appeal against a negative decision on a character check at the moment?

Ms Ellis—Yes, there is—to the Administrative Appeals Tribunal.

Senator HURLEY—Will that same right of appeal apply to the security check?

Ms Ellis—With the security checking, the appeal rights will be in respect of the ASIO assessment, and that is a separate appeals process. It would be an appeal under the ASIO Act.

Senator HURLEY—In relation to the proposed citizenship changes under that announcement, there are a number of other changes proposed to the citizenship act that had previously been announced, including, for example, proposals to make it easier for people who had lost their rights to citizenship to retain them, and those amendments were supposed to be through, I think, by now. What is the timetable for those changes?

Ms Ellis—Some changes were announced last year, in July 2004; no time frame had been given for the introduction of those legislative amendments. The drafting of the bills is being finalised, but introduction into the parliament is a matter for the government and, of course, would take account of government priorities.

Senator HURLEY—I have letters from the minister that state that those citizenship laws are due to be passed around now.

Ms Ellis—Senator, the letters, as I understand it, referred to the fact that the draft legislation would be available for introduction in the coming weeks, but—

Senator HURLEY—And is it?

Ms Ellis—I expect that the legislation will be available shortly. As to when the legislation is introduced into the parliament, that is obviously a matter for the government.

Senator HURLEY—One of the other announcements that was made is that the waiting period for permanent residents applying for citizenship is to be extended by 12 months, from two years to three years. What about existing permanent residents, for example, who might only have a month or so to go before they could apply? After the bill is passed, would they have to wait another year?

Ms Ellis—The changes to the legislation will affect any application made on and after the date of commencement of the amendment to the legislation.

Senator HURLEY—Any application for citizenship?

Ms Ellis—Yes.

Senator HURLEY—So people who have been waiting for nearly two years will have to wait the extra year?

Ms Ellis—If they have not yet met the two years waiting requirement, and have not applied prior to the commencement of the amendment to the legislation then they will be subject to the new provision and, yes, will need to wait the additional period.

Senator HURLEY—That will have a significant effect on a number of people who are perhaps looking forward to bringing relatives over, or who are waiting to get HECS assistance, for example, to go on with their tertiary studies, and so on. Noncitizens cannot apply for federal government employment, so that may have quite a marked effect on the existing permanent residents.

Ms Ellis—Yes, Senator, it may.

Mr Rizvi—Might I say that, in respect of sponsorship rights, there are relatively few visas where the sponsor is required to be a citizen. For example, if you are a permanent resident, you can still sponsor someone to come to Australia as a partner, or you can sponsor people under the skilled Australian link program. You do not have to be a citizen. In terms of employment in the public sector, there are provisions where, in the national interest, people can enter public sector employment on a temporary visa arrangement if they are not citizens, pending the acquisition of citizenship. So there are arrangements in place that would reduce the impact that you are referring to, to some degree.

Senator HURLEY—Yes, well I will refer all my letters to you!

Mr Metcalfe—I would note, for the record, that I think a two-year qualifying period is probably the most generous arrangement, or the shortest period, of any comparable country, and three years remains a relatively short period, compared to developed economies around the world.

Senator HURLEY—I accept that. It is just that I think people who have got permanent residency have had a certain expectation, and it may be very difficult for them to adjust.

Senator CHRIS EVANS—It really goes to transition provisions, doesn't it?

Mr Metcalfe—Yes, and that is what we have just—

Senator CHRIS EVANS—What you are saying is: there are no transition provisions.

Ms Ellis—However, there are some exemptions from the residence requirement. In cases of significant hardship and disadvantage, exemptions have been announced in terms of being able to treat periods of temporary residence as permanent residence in Australia, for certain people, and some of those exemptions were announced in July last year.

Senator HURLEY—I will briefly turn to output 2.4, the cultural diversity and Harmony Day section. The Harmony Day program has different priority areas announced. The priority areas for the current round of grants were interfaith, new and emerging communities, Indigenous Australians and school and educational communities. Can you tell me how closely those are picked? There are a large number of applicants and not many applications are successful. One of the successful applications in Queensland, for example, is a sporting one: Harmony Hockey Arts, a project between hockey players in Queensland undertaking art to 'express and find solutions to issues of prejudice.' In what way does that comply with priority areas?

Dr Nguyen-Hoan—I think that you are referring to the Living in Harmony initiative and the grants program. It is not the Harmony Day program per se.

Senator HURLEY—Yes, sorry.

Dr Nguyen-Hoan—It is true that in recent years we have assigned certain priority areas to make it easier for applicants to focus with their papers. We have received 642 applications for this year. Most of them focused on interfaith issues, new and emerging communities, schools and the educational sector and Indigenous Australians. But there were others which focused on sport, the arts and the workplace. So we did not expect all applications to just focus on the priority areas that we set for them. Certainly, there were some very good quality applications on other aspects which may be the objective of the Living in Harmony initiative generally. Based on the quality of the application, we awarded some grants outside the focus areas.

Senator HURLEY—I think most sporting organisations would resolve racism issues within their own organisation, for example. A sporting community, like a hockey association, would generally resolve its own issues about racism with policies, initiatives and training of its own.

Dr Nguyen-Hoan—We certainly expect that most organisations in Australia would understand cultural diversity issues and try to grapple with how to address them. But, in many cases, we felt the applications were meant to bring players and spectators together in order to resolve certain local issues, to address community harmony or to encourage other similar

organisations to take part. So, indeed, they should be able to do it as a matter of course, as part of their core business but, on occasion, we feel that we would like to give them funding so that they can go out of their way to set an example for others.

Senator HURLEY—At the end of the announcement about the Living in Harmony grants, the minister made a note that the grants may not be continued next year. Can you explain that?

Dr Nguyen-Hoan—The funding for the current Living in Harmony initiative will cease in June 2006. We are in the process of seeking further funding. We do not know the result of that process. The minister did say that the current round would finish in this current financial year.

Senator HURLEY—But they are only short-term grants anyway, aren't they?

Dr Nguyen-Hoan—Yes, they are. We deliberately chose those which would be able to finish around June next year.

Senator HURLEY—Is there any question that the program is doing its job?

Mr Vardos—We conducted an evaluation as part of this process. The evaluation has shown that there is extensive community support for Living in Harmony. In fact, the people we consulted with want it expanded rather than reduced. I guess the minister's view is that when you go through a budget process the outcome is uncertain and you cannot guarantee it. But certainly as a department, in terms of what the community consultations and the evaluation have shown, we are strong proponents of the continuation of the Living in Harmony initiatives. What form they might take or what the component parts might be is a matter for government consideration.

Senator HURLEY—As a result of the Prime Minister's ministerial council with Muslim community groups, a program has been started with those groups. I think a number of the other groups in Australia feel that Muslim groups are not the only ones affected by the debate that has been raised about multiculturalism and that there is need to further increase the level of support for those groups.

Mr Vardos—The Living in Harmony initiative is the broad based anti-racism program that the government runs. I think there can be no doubt that the Muslim community at the moment is facing the most significant challenges in terms of community cohesion and harmony, and the government has taken the decision, which I think is very sound, that they need additional, focused support. What came out of the Prime Minister's summit was an ongoing reference group. The reference group has generated seven working groups, each focusing on a particular initiative. That can run in parallel with other programs that we are running under the multicultural affairs banner.

Senator HURLEY—But that Prime Minister's group is funded out of Prime Minister and Cabinet.

Mr Vardos—No. The funding has come to DIMIA, to my program area, Dr Nguyen-Hoan's budget appropriation, to deal with the activities that will come out of those seven working groups. It is part of broad output 2.4 activity.

ACTING CHAIR—I think there is an opportunity to table some questions on notice that senators have been waiting for. I understand, Mr Metcalfe, there may be some information available.

Mr Metcalfe—Yes. Mr Correll will be able to provide some of the information that we undertook to provide, but there is some other material that we need to do some further work on.

ACTING CHAIR—We really appreciate the effort that has been gone to in such a short time.

Mr Correll—In response to the questions asked earlier today by Senators Nettle and Ludwig, we have information concerning the various categories of the 221 cases referred to the Ombudsman. They have been broken down into four categories. I will table that information. In addition information was requested on a more detailed breakdown of the days in detention from the initial categories that had been included in the question on notice. We have provided a very comprehensive breakdown of that information in terms of dates and notice. I think there was also a question in relation to the group of 144 long-term detainees—this is different from the group of 221—submitted to the Ombudsman under section 486N of the Migration Act. We have information on the nationality for each of those submissions as well. The information that we have not been able to draw together this evening is related to citizenship details, which is material that, on checking within the department, we find we need to verify with the Ombudsman. So we will have to take that element on notice. But we have the remainder of that information that was sought earlier.

ACTING CHAIR—Thank you very much.

Senator NETTLE—Can I check: is the nationalities of the 222 detainees the bit you are saying you cannot do tonight?

Mr Correll—The request was for citizenship details and identifying details of Australian citizens in the 221.

Mr Metcalfe—Senator, because those 221 cases have been referred to the Ombudsman and because the Ombudsman is in fact inquiring into a range of issues, including citizenship and visa status of those persons, we think it is essential that we cross-check our perception on that with their perception on that so we have an agreed position, rather than us coming back and saying, 'This is what we think,' with the potential of the Ombudsman saying, 'Well, this is what I think,' and we are all then all over the place. So we will do some work and we will ask the Ombudsman tomorrow whether there is a way that we can try and provide that material as soon as we can, in advance of the normal reporting time for questions on notice.

[9.05 pm]

Office of Indigenous Policy Coordination

ACTING CHAIR—We now move to outcome 3, Innovative whole-of-government policy on Indigenous affairs.

Senator CHRIS EVANS—Mr Gibbons, because we have limited time tonight we will not be able to cover everything, so I want to talk to you mainly about evaluation and performance indicators in terms of your work. I think we all agree that in the area of Indigenous affairs, over successive governments, success has been rare and failure common. And if we use that as a starting point, measuring what work seems to me to be one of the most useful places to start. I would like to start with the COAG trials, because that is a scheme that has been going

now for five years and there does not seem to be much in the way of evaluation of how it is going. I know you agreed in 2003 that there would be evaluation. I see there was some talk earlier this year about how that evaluation and performance indicators would be agreed. Can you tell us whether that is now finalised, whether there are agreed evaluations, whether they have been conducted and what the performance indicators for the COAG trials are?

Mr Gibbons—The COAG trials have been running for three years, not five. I might ask my colleagues to go into the detail of the evaluation arrangements in a minute. I just make the point that the starting point was to determine that a course of action that had been running for about 30 years had not been producing results and to have the courage to make a significant departure from that venture into new approaches. I think that has been a significant milestone. The approach that we have been taking in the transition period has paid attention to the importance of evaluation. That, as we get longer into this process, will become more important, come more to the fore. Mr Yates might like to take you into some of the detail about the last few years on that.

Mr Yates—You are right, Senator—evaluation was recognised quite early in the piece as an important part of progressing the trials and ensuring that we picked up along the way what was working and what was not as governments attempted to work together in a very different way in the region in which the trials were operating. In 2003 the framework was broadly settled and it was progressed in 2004. I guess that is where the origins of some of the specific evaluations that are now being rolled out arose from. Of course, we have had quite a few significant changes in Indigenous affairs over the course of the last two years. That has affected the progress of that work. But it is pertinent to emphasise that these trials are very much a COAG-inspired initiative. Since they were established, there have been regular reports to COAG from both the Australian government and the states and territories. They have not been publicly released, but I understand, Senator, that you have received some material in response to questions at previous estimates hearings which was indicative of what one of the lead agencies was reporting in terms of lessons learned.

In the context of other processes, particularly that of the Senate select committee that was established to review the implementation of the new arrangements and the ATSIC amendment bill, we endeavoured to summarise in our submissions to that committee some of the lessons that were emerging from the trials. The trials were not and do not have a specified life of X years with Y dollars attached. They are an ongoing initiative. It is recognised, I think, on the part of all parties that substantial change was going to require sustained reforms in the way in which government did its Indigenous business. That said, we have been putting the flesh on the bones in terms of progressing that framework. I am going to ask the group manager of the performance group to talk about the status of the specific evaluations in each of the trial sites where we are working towards having reports late this year or early next year.

Senator CHRIS EVANS—You gave quite a fulsome answer, but it was not clear to me what performance indicators were agreed. We call them trials. I assume that means we are trying something, we will assess it and decide whether it works. Yet the whole thing still seems pretty vague. You talked about reporting to parliamentary committees et cetera, but that is a function driven by other people. The whole tenor of these changes and the new directions were about getting greater accountability and shared responsibility. I am just trying to

understand what formally the Commonwealth is doing three or four years on—I do not know exactly when they started; they were agreed in 2001—to assess the COAG trials.

Mr Yates—The commitment to establish the trials was in 2002. We did not really start to get under way in the selection of the trial sites and engage with communities until some time after that. We have really been running seriously for around two years. Of course, some of the sites were earlier than others, so the progress is different. They are not standard form trials. We had to work with the environments that we were going into. We had to work, obviously, with the nature and participation of the state or territory government that we are working with and adapt the trial very much to the environment in which we were seeking to work differently.

Senator CHRIS EVANS—Sure. I guess what I am saying is that we are representatives of the Commonwealth parliament and we have to approve your funding. How do we assess whether the COAG trials are working or not? When do you think it is fair that we make that assessment? How do we make that judgment and what information will you provide to us that allows us to make that judgment?

Mr Yates—Is fair to say that much of the reporting around the progress of the trials has been to COAG itself rather than publicly. It has only surfaced in the broad sense in some of the commentary or material we would have covered in our annual reports and so on. We are now getting to a point where we want to commit to a systematic process so that we can share publicly the outcomes of the evaluations of the individual trials. I will ask Ms Bryant to speak to the status of those trials, recognising the diversity of circumstances that exist across the different trial sites.

Ms Bryant—I will give you a little background. From the time officials agreed to an evaluation and committed to the evaluation in October 2003, we sought advice on the best way to proceed with that. We received a report from the Albury Consulting Group and Kate Sullivan and Associates in August 2004. That report basically recommended the approach that we are now proceeding to adopt, and I think you have heard reference to that in the Prime Minister and Cabinet evidence that it would have a formative evaluation phase and then a summative evaluation phase.

Senator CHRIS EVANS—Is this the report you got in August 2004?

Ms Bryant—That is correct.

Senator CHRIS EVANS—And you are moving to implement it now?

Ms Bryant—No. From the time we received that report, in late 2004 and early 2005 we basically negotiated an approach and consulted with each of the Commonwealth lead agencies. As you would appreciate, there are more than half a dozen of those. We have also consulted with each of the state and territory jurisdictions that have responsibility for the relevant COAG trial sites. We have talked to them about the objectives of the COAG trials. You asked what the performance indicators were. The COAG trials themselves had a number of key objectives: to tailor government action to identify community needs and aspirations; to look at the coordination of programs and services; to encourage innovative approaches; and to look at blockages or red tape et cetera. Bearing in mind those objectives, we have developed a

quite detailed evaluation framework, which I am happy to table and make available to the committee.

Senator CHRIS EVANS—That would be appreciated.

Ms Bryant—Basically, that framework looks at the history, conditions and challenges at the start of the trial, the processes, the interim outcomes and the areas where we might need to improve to get better outcomes from the trials as they progress.

Senator CHRIS EVANS—Are you saying that this framework concludes commentary on the interim outcomes or that you need to have them?

Ms Bryant—It will include commentary on the lessons learnt to date of the interim outcomes that we have seen.

Senator CHRIS EVANS—Is that in the document you are handing up?

Ms Bryant—Yes, this will be in the document that I am handing up to you. Having agreed to that framework in the first half of this year with the states and territories, we have now been proceeding to let a number of external and independent consultancies. Among those external consultancies, a consultant has already being selected in the ACT and has commenced work. Consultants have been selected in the ACT, South Australia and Western Australia, and they have been agreed with the state governments and the Commonwealth lead agencies. Contracts are about to be signed with all three, I believe. In the other states and territories—

Senator CHRIS EVANS—Are they consultancies or evaluations?

Ms Bryant—A consultant has been selected to undertake an evaluation against that framework I have just handed up.

Senator CHRIS EVANS—So are we going to end up with eight different contractors providing eight different evaluations?

Ms Bryant—Against a common framework, there will be eight independent reports provided. There will then be, if you like, a meta evaluation that will look at the common lessons across all eight sites. Because all eight sites have quite different circumstances, they began in different places. The environment in each site was quite different at the outset.

Senator CHRIS EVANS—But isn't that why they were chosen? So we had a diversity of experience.

Ms Bryant—That is correct. But, equally, the lessons learnt, the outcomes and so on can expect to vary, given the different circumstances in each.

Senator CHRIS EVANS—So, when you said 'the interim outcomes', this is not the actual interim outcomes. The interim outcomes will be assessed by the consults?

Ms Bryant—That is correct. The consultant will look at the questions you see there under point 3—what has worked and not worked from the community's and the government's perspective, whether one part of the trial is working better and why and whether there is better coordination somewhere. It will look at each of the types of questions that I have given you on that framework document.

Senator CROSSIN—Can you tell us the name of the consultants that you are about to sign a contract with or you have signed a contract with?

Ms Bryant—I think there is probably no reason to avoid doing that. In the ACT, the successful consultant was Morgan Disney. In South Australia, the consultant selected is Urbis Keys Young. It Western Australia, the successful consultant is Quantum Consulting.

Senator CROSSIN—Are they contracted at a particular amount?

Ms Bryant—Because the contracts are yet to be signed, some negotiations are in their final phases. For those three consultancies, the estimated cost ranges between $20,000 and $42,000 or $43,000 for each evaluation.

Senator CHRIS EVANS—Who is contracting this—you or the state government?

Ms Bryant—In some cases it is OIPC. In some cases, it is jointly with the states because they are paying part of the costs.

Senator CROSSIN—What criteria did they had to meet to win the tender process? Did they have to prove they had experience in evaluating activities in Indigenous communities? Did they have to have cross-cultural experience?

Ms Bryant—I do not have the statement of requirements in front of me. But from memory—and I could check that for you subsequently and give you further advice—they did include their expertise in carrying out evaluative work and their familiarity with and demonstrated capacity to work with Indigenous communities.

Senator CROSSIN—If you could take that on notice and provide us with that, that would be useful.

Ms Bryant—I can give you the statement of requirements.

Senator CHRIS EVANS—What is the timetable for the eight consultancies to be completed?

Ms Bryant—I believe the first three will be completed in the next few months, so they will be available later in 2005 or in the first couple months of 2006. The other five I would expect also to be available in the first half of 2006 but, because they are some weeks behind the others, they may be a month or so later.

Senator CHRIS EVANS—Who will they be available to?

Ms Bryant—The evaluations will certainly be available to the lead Commonwealth agency and the state governments and of course we will be providing feedback to the communities at the relevant trial sites.

Senator CHRIS EVANS—Does that mean they will get a copy of it or not?

Ms Bryant—There is no reason we would not be giving them a copy. The reports do not exist yet, of course, but that would be our intention.

Mr Yates—At the end of the day, as for any government report, the decisions about release will be a matter for the minister or respective ministers involved.

Senator CHRIS EVANS—I understand the process; I just want an answer to the question: will they be released to the communities? Do we know yet, or has that decision not been made?

Mr Yates—I think part of the process would certainly involve giving feedback to the communities about some of the key findings. Whether the actual report is released is, I guess, a decision that will have to be made at the time.

Senator CHRIS EVANS—That is what made me a bit concerned. Feedback is one thing, but providing a copy of the report is another. I thought there was a distinction made by Ms Bryant that I wanted to explore.

Ms Bryant—In one location, the actual evaluation is a tripartite arrangement. That is in Wadeye in the Northern Territory. So they are formal partners and would of course receive the report. In the others, the arrangements with the communities vary slightly and I think the circumstances would be judged, as Mr Yates said, at the time.

Senator CHRIS EVANS—Why have you gone for a tripartite arrangement on one and not the others?

Ms Bryant—It reflects the nature of the involvement of the community council in Wadeye, the Thamarrurr council.

Senator CHRIS EVANS—What does that mean?

Senator Vanstone—It meant what she said.

Senator CHRIS EVANS—I did not understand what it means. Why wouldn't you allow the community to be involved in the assessment of the other seven? I suppose that is the more direct question.

Ms Bryant—We encourage engagement by the community at whatever level the community seeks and sees fit to have. In the Northern Territory, the Thamarrurr council is very actively engaged in matters and has sought a formal involvement in the process. In other locations, the communities have not sought that extent of involvement.

Senator CHRIS EVANS—I would have thought, with the objective being mutual obligation and shared responsibility, that that would extend to evaluation as well as to the other aspects of the trials.

Senator Vanstone—One key thing that the trials relate to is recognising that each community is different. They have all got different situations and different arrangements.

Senator CHRIS EVANS—That is true of the departments and the nature of the trials as well. Everyone accepts that. That is a statement of fact and I accept it. I want to know why there is not a tripartite approach in the other seven.

Mr Gibbons—As Ms Bryant made clear, we are not imposing anything on the communities. We are trying to encourage the communities to participate. Where they have chosen to participate we have readily agreed. Where they have chosen to keep a step back we have had to accept that position.

Senator CHRIS EVANS—So you are telling me that the other seven have chosen not to participate in the evaluation.

Ms Bryant—We anticipate that at least one more community may have that formal level of involvement—that is, Shepparton in Victoria. They are actively pursuing discussions with us about the degree—

Senator CHRIS EVANS—They have been quite active in doing their own evaluations, haven't they?

Ms Bryant—Yes, they have indeed.

Senator CHRIS EVANS—They are obviously keen in measuring the outputs.

Ms Bryant—Yes. And we expect that they will likewise wish to have a close involvement in this process. Those discussions are ongoing and are a little way from being concluded yet. In the other locations it very much depends on the level of engagement the community seeks to have.

Senator CHRIS EVANS—I gather you are indicating to me, Mr Gibbons, that effectively if they want to be involved you are happy for them to be involved. Is that the case?

Mr Gibbons—Certainly.

Ms Bryant—Absolutely.

Senator CHRIS EVANS—That is a bit of a different impression from that which your earlier answer gave. That is fine. What happens once you get the consultant's reports back? What happens next?

Ms Bryant—As you can see from the document I gave you, one key issue in the evaluation will be what refinements we need to make to the trial arrangements to try to maximise the benefits and improvements over the remaining life of the trial. Obviously, we will be looking at that in the specific locations. We will look at the lessons that are common across the sites, and then seek to agree with the states and the responsible Commonwealth lead agencies on a number of enhancements to the arrangements that maximise the benefits over the remaining life of the trial.

Senator CHRIS EVANS—I take it from that that the trials will continue whatever the evaluation—even if it is highly critical. When are the trials due to finish? They are funded to 2008-09, aren't they?

Mr Gibbons—The states, in principle, are committed to continuing the trials. But, in the context of the development of the bilateral agreements with the states, some of the states are taking an evolutionary approach. For example, in Queensland, with an agreement that has now been reached with that jurisdiction, they are looking at an approach which effectively sees the flexibility and innovation that has been available in the COAG trial extending across the state. They are looking at an approach that sets out in a schedule to the agreement arrangements that will apply on a regional basis across the state. So, in a sense, you might see the COAG trial arrangements that have operated in Queensland being replicated in other locations and set out in a schedule. That is something that might be picked up in other agreements as well.

Senator CHRIS EVANS—That is a proposition for Queensland.

Mr Gibbons—Yes. And other state jurisdictions that we are talking to.

Senator CHRIS EVANS—Will that all be driven through DEWR as the lead agency?

Mr Gibbons—No. The bilateral relationship is our responsibility.

Senator CHRIS EVANS—That is right. That is why I am having trouble following you. It is quite different context, isn't it? I know it is evolutionary, but as I understand it you have a lead agency, DEWR, doing the Cape York stuff. You are now saying there is a bilateral between the state and Commonwealth governments.

Mr Gibbons—You have got a secretary of a department that is taking a lead on behalf of the Commonwealth, but OIPC playing a coordinating role in the COAG trial arrangement. The relationship we have in each jurisdiction will be influenced or determined very much by what emerges in the bilateral agreements and will evolve over time. You might recall we have an agreement with the Northern Territory that was signed almost a year ago. That is evolving. We are adding schedules to it, defining the extent of the cooperation and the nature of the work that we will undertake together.

Senator CHRIS EVANS—Does that mean that the COAG trial evaluation is not all that central to the development process—that you have sort of moved on from that model?

Mr Gibbons—It is an important element, but this is an evolving area of public policy. We will certainly be taking up the findings of these evaluations when they are available to us, but it is almost certain that many of the findings will be discovered in the course of routine engagement and acted upon before the reports are available to us. We are not fixed on a particular course. We are writing this on a daily basis, reviewing what is working and what is not.

Senator CHRIS EVANS—I accept that and I have got no problem with that. I am a supporter of evolution theory, so you can count me in, but I also have a responsibility as a parliamentarian to work out whether we are spending our money wisely. There has been a lot of criticism of this area, about the accountability of ATSIC and other organisations. I am trying to hold you accountable and the COAG trial accountable and I want to know how I know and how the public knows what is working and what is not working, not what someone says may have worked. What is the evidentiary base? What are the performance indicators? How do we judge the COAG trial? We have got a consultancy that will report to you, the state government and the lead agency. How do we find out what has occurred and what the evaluation is? I am still not clear what the performance indicators are.

Mr Gibbons—As officials working for the federal government, we will report to our respective ministers. At the end of the day, I imagine, these reports will be considered by the ministerial task force and ultimately it will be the chair of that committee who takes the decision on the arrangements for release.

Senator CHRIS EVANS—So there is no capacity for you to provide any assurance today about whether or not those assessments or evaluations will be available outside of the departmental structures?

Senator Vanstone—You have just been given an answer as best as any public servant can give it to you. What he has basically said is that they will do the appropriate assessments and reporting, they will report to the ministerial task force and the task force will then make a

decision. There will be a range of options for ways in which the task force would then share information, but that will be decided much nearer the time.

Senator CHRIS EVANS—I know what he said, Minister, and I accept that. Will you make the reports available publicly?

Senator Vanstone—I have just indicated that I envisage at this point that the task force will consider those reports and consider the manner in which it will make public comment or information available about the COAG trials. I am not expecting any drama here. I am just not going to commit to something without having discussed it with my colleagues. That is all.

Senator CHRIS EVANS—I did not expect any drama. That is why I am a bit surprised by the answer. We have been talking about evaluation of these trials for some time now. I think 2003 was the first discussion. I am trying to work out what you have agreed to and what we are going to be able to measure success or failure against. It does not seem that there is necessarily an end point to this yet, but when will the final reporting take place? What is the time frame for that?

Senator Vanstone—I am told that some will be by the end of this calendar year and the others will be by the end of this financial year.

Senator CHRIS EVANS—Unless I am mistaken, we are in November already and we have not had the contracts. It is going to be a pretty short evaluation then, isn't it, if we are going to have them by the end of the year?

Ms Bryant—When the contracts are signed will obviously have a bearing on it, but we anticipate that from signing it will only be a matter of two or three months until we have these interim reports.

Senator Vanstone—That is why my original answer was correct.

Senator CHRIS EVANS—I thought you were much closer to the mark, Minister, given how these things occur.

Senator CROSSIN—When are the other states and territories likely to have their consultancies bound or approved?

Ms Bryant—It is difficult to give you a precise timing. The statement of requirements for a tender for Queensland is being developed. In the case of Victoria, we expect to go out with a request for quotation or tender very shortly. In Tasmania it is likewise under way. Proposals in the Tasmanian case were due with us at the end of October, so those documents are being evaluated at the moment but no consultant has been selected. In the Northern Territory we are waiting on input from the community on the draft statement of requirements and the proposed process.

Senator CROSSIN—Can I clarify that what you have handed up tonight is called the statement of requirements, or is it the evaluation framework?

Ms Bryant—That evaluation framework forms part of the statement of requirements. We have put it all on one page for you so you can see it. It is the common framework that is used across all eight sites. In the eight sites there may be variations to that—additional questions or

whatever—that the community, the state governments et cetera want to pursue in particular locations, but that is the common thread that underlies them.

Senator CHRIS EVANS—Will this include an assessment of the performance of the lead agency?

Mr Yates—Certainly. The first dot point under 'Working Together' addresses that pretty directly.

Ms Bryant—As do the various dimensions of it: coordination et cetera.

Senator CHRIS EVANS—Yes. That is a more general point, isn't it, Mr Yates? That is the process of what has and has not worked for the lead agency arrangements and why. It is not under the interim outcomes measures. But if you are telling me that it will be assessed, I am happy.

Ms Bryant—Under item No. 2 there are the kind of working relationships that have or have not been built, how the sharing of responsibilities has worked, whether governments have delivered on their commitments and undertakings et cetera. So there are a number of quite specific dimensions of the performance of lead agencies that would be captured by those questions.

Senator CHRIS EVANS—I thought you were telling me that section 3 was really the interim outcomes consultancy project. You are telling me that they have to assess all of these. Is that right?

Ms Bryant—The consultant will prepare a report that covers all four parts of this framework.

Senator CHRIS EVANS—I see. Okay.

Ms Bryant—They will seek to document the history et cetera.

Senator CHRIS EVANS—Do I take it then that there is a more policy sense, given Mr Gibbons's analysis of the evolutionary process—that it is more likely that in future OIPC will be providing more of a leadership role rather than individual agencies?

Mr Yates—With the benefit of the new arrangements in Indigenous affairs that commenced in July last year, there is an evolving position with the governance of the trials so far as the Commonwealth is concerned. The lead agencies are still active players but OIPC, for its part, is playing a more active part in conjunction with their agencies in guiding the progress of the trial.

Mr Gibbons—And the trials are influenced by development of a bilateral agreement.

Senator CHRIS EVANS—So it is fair to say that the responsibility of the lead agency in each case is likely to be lessened and OIPC is to take a greater role. Is that a fair assessment or not?

Mr Gibbons—It will happen in some cases. It may not happen in others. It depends on, one, the position that the state government takes in the context of the evolving agreement and, two, arrangements that are agreed between OIPC and the lead agencies.

Senator CHRIS EVANS—But effectively the emerging philosophy seems to be that you are coordinating all the agencies. I am not being critical. There just seems to be a certain logic that having a separate lead agency take responsibility for a one-off when you have OIPC attempting to coordinate the lot seems like an arrangement whose time has come and gone.

Mr Gibbons—I think OIPC will expand its role of coordination in these sites. That is a different question to whether there will be personal involvement of a secretary of a Commonwealth agency. I think that will continue and that has been a useful aspect of the recent experience in Indigenous affairs in broadening the understanding of Indigenous issues.

Senator CHRIS EVANS—I accept that. Forgive me, I am not great on your acronyms—I am still trying to get over my Defence experience with acronyms. Your ICCs are seeking to play some of that role in these regions anyway, aren't they?

Mr Gibbons—ICCs?

Senator CHRIS EVANS—Is it ICCs? Have I got the right acronym?

Mr Gibbons—That is the multiagency office set up as the coordination centre, yes.

Senator CHRIS EVANS—So if we look at these trial areas, you have a lead agency responsible for the trial but you also have an ICC in the same region coordinating Indigenous policy.

Mr Gibbons—We do, yes. That is right.

Senator CHRIS EVANS—There seems to be an obvious duplication or potential bureaucratic conflict.

Mr Gibbons—Having the experience and interest of a secretary of a department is a valuable asset.

Senator CHRIS EVANS—Sure.

Mr Gibbons—The role of OIPC does not displace that aspect of it, but coordinating the activities of government on the ground is our role.

Ms Hawgood—If I can just clarify. Typically, the lead agency teams on the ground are part of the ICCs. In fact, I cannot think of a location where the lead agency team is not co-located in the ICC.

Senator CHRIS EVANS—That is what I thought. I thought they were operating on the ground.

Senator CROSSIN—With each of your COAG sites, I noticed that the *Shared responsibility, shared future* document of October 2003 talks about ensuring greater links between business and Indigenous communities to help promote economic independence. Has an economic analysis of each of the COAG sites been undertaken? For example, can you tell me what the average weekly wage, income, of each COAG site might be? Can you tell me what the average yearly income might be in each COAG site?

Ms Hawgood—The answer to your first question is no, there has not been an economic analysis done across every COAG site. There have been various different profile documents done of various trial sites and different sorts of information collected as part of those profiles.

I think there has been some recent work done in Murdi Paaki that provides some of that sort of information. I need to check that; I do not have the material with me.

Senator CROSSIN—Are those profile documents available to this committee?

Ms Hawgood—They could be. Some of them are at different levels, so some of them are now a couple of years old; others are more recent and more updated. But I can have a look at what we have.

Senator CROSSIN—If you could give me, say, two of the most recent updated ones, particularly in the Northern Territory. Let us say that at Wadeye, for example, the average monthly salary is $800 per person. That is probably a great exaggeration, but let us say that $800 per month per person is the average monthly income. If you have not measured that, how are you going to measure after five years what economic benefit there is to the community? If you do not know what the base income per person is now, how do you know if it has improved in five years time? Are you aiming to lift it 10 per cent or 20 per cent over five years, or is there no such indicator?

Ms Hawgood—Perhaps to clarify, when the COAG trials started there was no funding as such for the COAG trials as a whole. That was basically because the COAG trials were not about new money but about more effective use of existing government expenditure.

Senator CROSSIN—I think you are misunderstanding me.

Ms Hawgood—Sorry, if I can come to it—

Senator Vanstone—One second: could we let an officer answer the question? If you are not happy with the answer afterwards, you can ask more.

Senator CROSSIN—I think you are misunderstanding me. I am not meaning—

Ms Hawgood—I was going to come to your—

Senator CROSSIN—Commonwealth money per head.

Ms Hawgood—Yes. The expenditure in the trial sites was then typically done through shared responsibility agreements. They were based on priorities set by communities. So Wadeye set 'give all kids a better chance' as the priority and their focus was very much on improving education standards, so the baseline data that was collected was more about education. So there was not a situation where a total picture in terms of baseline data for every community in every trial site was done at the start of the trials or has even been done by now. It has been based more around the priorities identified by the community. The baseline data has been established around that, and then we have worked from there.

Senator CROSSIN—Have you ever looked at any of the work that the World Bank does in relation to its community development programs overseas?

Ms Hawgood—I have looked at some of that over time.

Senator CROSSIN—It strikes me that part of the key that is missing in the evaluation here is baseline data and performance indicators, because they have never been set. At the end of the day, after five years there may be no domestic violence at Port Keats. Every kid may well be going to school. But unless you have a program in place that seeks to lift the average monthly income, after five years most people at Port Keats could still be earning $800 a

month. What is the economic stimulus and what is the indicator for achieving the third dot point in your objectives in having these sites?

Ms Bryant—If I could add something here, the evaluation of the COAG trial sites—the formal evaluations by independent consultants, as opposed to the ongoing dialogue and efforts to learn—will take place in two formal phases. There is the process we have already discussed, where the consultancies are being let at present. The reports will be available in the 2005-06 financial year. There is also proposed to be a second phase of the evaluation in 2007-08. Part of what we will do in this first phase is examine the adequacy of baseline or ongoing performance monitoring reports. You will see that as a formal step in part 4 of the evaluation framework that I have handed you. It is a specific issue for the consultant to look at. They will assess what baseline data is in place and whether any additional baseline data needs to be in place so that in three years—the early phase of the trials having been largely a set-up phase—there will be an adequate base for an impact assessment at the end of that time.

Senator CHRIS EVANS—What will you be doing between 2005-06 and 2007-08?

Ms Bryant—At this stage, we see the first evaluation phase as being formative, to use the language which we have used in earlier discussions. Basically, we are looking at whether the arrangements have been established and whether the baseline is in place to allow us to assess impact.

At this stage what we can assess, in a qualitative sense, is: are relationships working, is cooperation improving and so on. We will attempt to assess those things. Most of the types of impacts that Senator Crossin speaks of, in terms of impact on income and impact on a number of Indigenous indicators, are very slow to move and they take an extended period. So we are not expecting to be in a position to measure substantive impact for another two or three years.

Senator CHRIS EVANS—I accept that, but you cannot do it if you never measure them in the first place either. That is why we are asking: what are the KPIs? That is the language every other department runs at me: KPIs. I finally worked out what it meant. That is the current usage, as I understand it. It seems to change every three or four years to protect the guilty. What are the KPIs, or whatever other language you use, for the COAG trials and what is your baseline data?

Mr Yates—It varies between different trials. In Shepparton there was a big focus on improving Indigenous employment, with some targets about how that was to be achieved. We will be able to actually measure what the impact of that work will be through: are we achieving an increase in the incidence of employment for Indigenous people?

Senator CHRIS EVANS—So you measured the level of employment in 2003 or whenever the Shepparton trial started?

Mr Yates—The particular structure of that arrangement was to identify 100 positions over a certain time frame, and whether or not that is realised is able to be measured. Wadeye is in fact the one trial where very extensive baseline data have been developed and are committed to by the respective parties, and that is partly because it built on earlier work that was in train prior to the commencement of the trial. So there was in fact quite extensive research that was undertaken as part of the foundation laying, if you like, for that particular trial. That was partly a reflection of the scope of the issues that the parties saw as relevant to progress in that

trial site. So there has been independent research undertaken in Wadeye, with reports by John Taylor from KAPA that are quite extensively seeking to paint a picture of the landscape. Our ability to actually gather some of the information that Senator Crossin pointed to is often a function of how disaggregated a set of data we can obtain through census or other information as well. That is often a constraint.

Senator CHRIS EVANS—Thank you for that. But I am still not clear: are we saying we are going to establish the baselines after the initial evaluations, or did you establish baselines and performance indicators when you started the trials?

Ms Bryant—Baselines were established at the times the trials were established. What we are looking at at this interim phase is the adequacy of the baseline that was established.

Senator CHRIS EVANS—The adequacy of the baseline?

Ms Bryant—Did we identify sufficient performance indicators? Did we collect data on a sufficient range of them? If not, we will now go through the discipline of ensuring that, for the remainder of the trial, we identify any additional indicators that are necessary and collect them now so that in three years time we will have a full and adequate range. But at this stage what we are doing is going through the discipline of checking on the adequacy of the baseline at this interim phase. But a baseline was established for each trial.

Senator CHRIS EVANS—Where is that available—the baseline for each trial?

Mr Yates—To the extent that we had it, it was in the profiles that were referred to earlier by Ms Hawgood as we sought to provide an overview of the situation within the trial site.

Ms Hawgood—And each time that funding was injected into a trial site there was a set of baseline data and performance indicators around that particular funding for the particular initiative that was being funded.

Senator CHRIS EVANS—Mr Yates said 'to the extent that we had it', though. I assume there is some suggestion that we do not necessarily have complete and adequate baseline data for all of this—or is that an unfair interpretation of what Mr Yates said?

Mr Yates—I think the data will vary considerably between different sites. In the AP lands in South Australia, the amount of material that we had to rely upon or draw together was more limited than it proved to be in Wadeye, for example. In Western Australia in the Kimberley trial area we again commissioned a major piece of work to inform the work that was occurring up there in that trial area.

Senator CHRIS EVANS—When you commissioned that work, did you then formally adopt KPIs, formally register, watch the benchmark? I understand you have reports and information; it is a bit more nebulous. Have you got a baseline set of information and KPIs for each of the trials?

Mr Yates—It is not quite as straightforward as you would have it. This is not a COAG trial program with program dollars aimed at achieving certain specific goals with certain specific KPIs and where we see how that program rolls out in the Kimberleys, the APA lands and Cape York. That is not the nature of the beast. The particular intervention strategy was very much wrapped around the circumstances of individual trial sites.

Senator CHRIS EVANS—I accept that.

Mr Yates—And the issues that the communities themselves were telling us were important to them were the things that we worked on.

Senator CHRIS EVANS—I accept that. I accept that the KPI and the baseline might be different in all eight. I am asking you whether you have satisfactory baseline information and KPIs for all eight even though there may be different indicators and baseline information.

Mr Yates—I think Ms Hawgood said that, where we were committing to specific action, we had the detail that we required. This evaluation, I think, will highlight any areas where that baseline data was inadequate for the purpose. I do not think we can say, without committing to the evaluation that we are now progressing, aye or nay that the relevant information that would be ideal to have was in fact collected when the trial started.

Senator CHRIS EVANS—Do you think that is very satisfactory?

Mr Yates—This was a pretty experimental initiative that was being taken.

Senator CHRIS EVANS—I know.

Mr Yates—And there was a fair bit of learning as you go necessarily on the part of all governments involved and, indeed, on the part of the communities themselves.

Senator CHRIS EVANS—I am not being critical, but part of learning is measuring and assessment. This government is very strong on assessment, examination, production of results and education. What I want to know, really, is how do we work out whether they worked or not. That is what I am trying to find out. I may well be very enthusiastic about them. Do not get me wrong; how do I, or anybody else—

Senator Vanstone—It is not sounding that way.

Senator CHRIS EVANS—I accept that some experimentation was required, Senator Vanstone. You have talked about mutual obligation, shared responsibility; I am trying to work out how we work out that what we have done, as the Commonwealth, has worked.

Senator Vanstone—The officers have told you what our plan is. I have indicated to you that, at a point nearer to the end of what the officers do, that information will go to the ministerial task force and the government will obviously have to respond or make public some information in relation to that. I am not envisaging there will be any drama in relation to that. I indicated to you earlier tonight that I am simply not going to commit without having discussed it with my colleagues. Over and above that, what the officers have made very clear is that this is quite experimental, quite different. Government of both political persuasions at both levels, state and federal, have poured money in for years and have been spectacularly unsuccessful. This is not something I am blaming the previous Labor government or previous Liberal governments for; Liberal and Labor at all levels have not achieved what they wanted to achieve. It has all been done in the best of faith but it has not worked.

Senator CHRIS EVANS—We are at one on that.

Senator Vanstone—We had to go on new ground. It is not always possible, when you are embarking on a new direction, to make an assessment of where you need to be at the end of it. Some things have to have a degree of flexibility about them if one of the key things you are

saying is that we have all remained far too siloed—I think that was the trendy word, although that has become a bit boring now; but that is the word I will use. We have all stayed on our own patch and we have to work together, be more flexible and coordinate. Some of these things are not easily measurable and some of them require a change of plan—to say: 'Okay, we made a three-year outline of what we thought we were going to do. It's not going to work; we'll have to change that,' and not be, if you like, consistently stupid or stupidly consistent. We need to recognise when it is going wrong and to shift. Senator, if you are not happy when the report has come out with what has been done, you will have plenty of opportunity to criticise. Hopefully there will be some signs of hope and we can all agree together to pick up those bits and move with them and we can recognise the bits that are not working and discard those or modify them, as may be apparent.

Senator CHRIS EVANS—How do we do that?

Senator Vanstone—You will have to wait and see the evaluation report. It is a chicken and egg situation. You are asking for it before it has come. You will get your chance.

Senator CHRIS EVANS—I am not looking to find fault. I do not want to play politics with this. I want to work out what works. I think you and I have a fairly common view about this, which is: you find out what works and you do that. I do not have a problem. What I do want to know is: how do I find out whether it works? What is the evidence based research? I do not want to just read a glossy pamphlet put out, with all due respect, by the department that says, 'It's a great success.' I want to know what the benchmarks and the performance indicators were so we really do know whether it worked or whether someone is just trying to cover the fact that a lot of money went down the drain.

Senator Vanstone—I understand what you want. But I also understand the officer has told you that there will be a different focus in different areas, so there will be different base material collected. They have also said that it may become apparent at the end of the evaluations that the base material that was collected was not sufficient for the purpose or better material needs to be collected as a sort of second benchmark for the next period. All of that will become apparent, and you will have your chance.

Mr Gibbons—There is another perspective that is important here. These trials have not concluded. The situation is not that we all lined up three years ago and started trials, they have concluded and we are now evaluating. We are embarked on a process that is going to take many years. We are in the early phases of it. The COAG trials were the very early phase. Since they began at the state level and at the Commonwealth level, changes have been made to the way Indigenous affairs is managed. Very significant change has occurred in some states and also at the Commonwealth level. I think this program has a decade ahead of it before we see real change on the ground. The level of failure of past approaches is so significant it will take that long to turn things around. Early in the piece we will establish through these formative evaluations a reasonable baseline.

Senator CHRIS EVANS—So what you are basically saying to me is that you do not have it now but as a result of this process we will start—

Mr Gibbons—We have some now.

Senator Vanstone—He is not taking away from what has earlier been said. He is just making the point. He did not say, 'We don't have it now.' He simply said that there was an additional perspective, to add on to what you had already been told. The additional point he was adding on was not to say, 'By the way, what we've just said is ridiculous.' He did not say, 'We haven't got it now.'

Senator CHRIS EVANS—But what Mr Gibbons said was that it would be a long-term process.

Senator Vanstone—With respect, that was your response—'So you're saying you haven't got it now.' That is not what Mr Gibbons said at all. He said there is an additional perspective to look at. The additional perspective is that there have been decades and decades of things that have not worked, and it is a completely new approach. It is not an approach that says, 'We'll try another three-year program and we'll throw a bit more money at this aspect or that aspect.' We will try a completely different way of working. We might wonder why we did not think of this before—why any state governments did not think of it and why we federally did not think of it, either when you were in power before or before the COAG trials started, when we were in power. We can wonder that all we like, but we have figured it out now.

Senator CHRIS EVANS—No, you have figured out you are going to try something different.

Senator Vanstone—With respect, we have figured out that it is not effective to have state governments and Commonwealth governments each spending money according to what their relevant bureaucrats have decided without consulting specific communities, because they have different circumstances and different aspirations, and that the three levels have to work together.

Now, deciding that is one thing, but getting it to work in practice is another, starting with people who have not been asked their opinion for decades and decades and building up trust to work together—building up trust between state and federal governments to work together when they have not, with respect, had that experience either when your lot or ours was in government. It is not littered with stellar stories of intergovernmental cooperation. So there is a lot of groundwork to be done here. We are not simply saying: 'Right, got a new idea, new program. In three years time you will see how whizzbang it is.' It is exactly as Mr Gibbons said: it is a completely different way of working. And there is a long way between the concept of that and actually getting it to work on the ground.

Ms Hawgood—There is another point to be made, just following on from what the minister has said, as to why holistic baseline data was not collected at the beginning in every site, with benchmarks and performance indicators against that data. The trials never pretended to cover everything or to try to fix everything, try to change everything from the beginning. In fact, on the contrary, the decision was that the focus should be on particular issues, particular priorities, that the community identified. The basis for that was that it was more likely to work if you had that kind of community buy-in. For example, in Murdi Paaki, one of the big issues was governance, and many initiatives have been developed and progressed in that Murdi Paaki region around governance. There are also baseline data and performance indicators around all of the activity associated with that issue of governance.

Senator CHRIS EVANS—So is that going to be measured in this assessment that was given to me as attachment A?

Ms Hawgood—Yes.

Senator CHRIS EVANS—My concern is that you are saying: 'We had this new approach. We wanted to give it a go; that's why it was called a trial.' No problem. There were differences in approach, different departmental agencies—no problem, they might have different indicators. But what you seem to be saying to me today, three years on, is, 'We are now going to work out how we might evaluate the program and we won't know anything really till 2007-08.' I have no problem with Mr Gibbons thinking it is a 10-, 20- or 30-year plan, but I would like to get some indication a bit earlier than that of whether or not we have gone down the right path—whether or not in 20 years we say, 'Mr Gibbons was a visionary but he got it wrong.' I think it is fair enough to ask for some assessment earlier than that. I accept that the indicators will take a long time to move, and I am not arguing any alternative to that. But, equally, while we say the old system has failed, there are no guarantees about the new approach; I do not think anyone pretends that. It just seems to me that it would be reasonable, when you call it a trial, for us to be able to have an interim assessment against a benchmark. To be honest, after this discussion—I do not want to labour it—I am not convinced we are going to get that.

Ms Bryant—There are a number of things that the trials seek to measure, things like changes in income, employment, education or whatever for Indigenous people, and with all those it will take some time, as Mr Gibbons has said, for us to see the shifts; they will be slow to move. There are other things that we are looking at, such as the way we do business with communities, the way we coordinate across government with the states et cetera. With those things, it is quite difficult to have a quantifiable performance indicator around them, which is perhaps part of our inability to say to you, 'Well, we've got performance measures,' because some of those things are more qualitative and so on. This evaluation process now will look at the qualitative issues: is coordination being improved, is the way we interact with communities et cetera being improved, is the way we work with the states et cetera changing and so on? I think there will be quite specific indications that those business processes are changing or not changing, as the case may be, as part of this process. The things that are quantifiable and measurable in terms of long-term impact on communities will be slower to shift, and we are seeking the specific advice of consultants to find out if there is any quantifiable thing that we could collect that we are not, and how we could improve our measurement of the more qualitative things. So we will explicitly address both of those issues as part of the evaluation.

Senator CROSSIN—Can I ask a question there. In part of your answer, you talked about how you determine changes in income. That is one of the very questions I asked 20 minutes ago. If you do not know now what the average monthly income is in a place like Port Keats, say, or at Wadeye, how are you going to know if it has changed in five years time? If we are talking about breaking the welfare cycle in these communities, if you do not have a strategy in place to lift the average income for Indigenous people, how are you going to know if these COAG trials are effective? You may well stop domestic violence at Port Keats. You may well get 100 per cent more attendance. But how are you going to move these people out of the

welfare cycle if you do not have a strategy to lift the average monthly or yearly income? If you cannot tell me what it is now, how do you know if these people are going to be pulled out of the poverty deathtrap in five years time? How are we going to measure that?

Senator Vanstone—I will tell you what: if in five years time all the kids in Wadeye are going to school and no one is getting bashed, I for one will be very happy. I am not saying that would be enough, but I would invite you around for a crate of French champagne.

Senator CROSSIN—But if 95 per cent of that community is still on CDEP—

Senator Vanstone—As I said, we will still have further to go.

Senator CROSSIN—Let me finish. If the average income in that family is still only $880 a month, what have we achieved?

Senator Vanstone—What we would have achieved is a lot fewer people being bashed. Indigenous people are the most likely to be the victim of a bashing.

Senator CROSSIN—They will still be poor, though.

Senator Vanstone—If you go to a metropolitan area, people think that they are going to get bashed by an Indigenous person who has had a few drinks. They are the most likely to be victims—women specially. I think they are something like 12 times more likely to get a thorough belting.

Senator CROSSIN—No-one is disputing that with you but at the end of the day they are still going to be caught in the welfare trap, aren't they?

Senator Vanstone—But you raised the point: in five years, what have we achieved? If we achieved that much in that community, I for one would be very happy. I did say that we will still have further to go.

Senator CHRIS EVANS—But you would accept that poverty is one of the things that drives those sorts of the social conditions, wouldn't you?

Senator Vanstone—I understand that poverty can drive some of those things, and I have not said that we would have done enough.

Senator CHRIS EVANS—I am not saying you are.

Senator Vanstone—But I prefaced it by saying that we would have further to go but we would be very happy. I imagine everybody in this parliament would be. I cannot think of anybody who would not be happy to say that in five years we turned around a cycle of bashing-up and kids not having a choice. One of the things we would do if we got higher attendance rates would be to at least give kids the choice of whether to stay. There will be some communities—and I do not want to go into naming them now; I have not tried to do an exhaustive list—where Indigenous people, First Australians, choose to stay. It is not obvious that, other than real jobs in community services, presumably under the employ of state governments, there is much in the way of economic development likely. There might be a roadhouse or a few things, but you cannot just whiz prosperity into any location. But that is true for all Australians, not just First Australians. But if we could get kids not being mistreated, women not being bashed and young boys not under fear of getting the daylights belted out of them and we could get people going to year 12, the kids would have a chance,

wouldn't they? They would have a greater chance than they have now of making another choice—and that is to go somewhere else and extend their training, such as getting a TAFE qualification in a nearby larger community, and make that choice. But right at the moment they do not have that choice. I for one would be very happy if we got that far.

Senator CROSSIN—I do not want to have a debate with you about this tonight but, at the end of the day, kids at Port Keats do have that choice. They are not moving to Alice Springs or Darwin to undertake a TAFE course but, if you look what things like the World Bank are doing, international research will show you that, if you do not have an indicator to raise the economic situation of individuals and families in those communities, you can get a whole pile of kids to school but, if there are no jobs in that community or if there is no industry being developed—

Senator Vanstone—I understand that. I can refer you to speeches I have made where I have made exactly that point—that, where there are not real jobs, it is about time people started being honest with communities. But that is not a reason to not work on all the things that can be worked on in those communities where people make a choice to stay there, even though there are no realistic options for larger scale development. Unless you are suggesting, which I do not think you are, and I am not trying to verbal you here, that government should say to people, 'I'm sorry; there is no possible economic development there. You have to go'—and I am not suggesting that myself and I do not think you are—

Senator CHRIS EVANS—A few of the right-wing commentators are starting to lead us down that path, though.

Senator Vanstone—But I am prepared to say, and I have said it before—ages ago, well before tonight—that we do have to be honest with communities about whether there are those options there other than the ones I talked about, the general community service jobs that would be about, so that kids have a realistic choice and a real understanding of what is likely. No-one from this government has suggested that the new way of working is suddenly going to produce economic development in every community around Australia—quite the opposite. We have been very frank about where we think there are opportunities and where there are not. Where there are opportunities, of course we want to work on them. But let us not say the new way of working is all about and only about getting economic development and the development of industry in every Indigenous place, because it is not about that. In some places, it will not be realistic. That does not mean those kids should not—because their parents have chosen to stay in that sort of place—be given the chance to live a good, safe life in childhood and into their teens and to get a good education and have a realistic choice about what they then do with their life.

Senator CROSSIN—You have just given us a good speech as to why you needed performance indicators at the very beginning of this process.

Mr Gibbons—Can I comment on that, Senator, because—

Senator CHRIS EVANS—Mr Acting Chair, I appreciate this is a really interesting discussion, but we have very little time with the officers and I have a lot of questions. I am happy to have this sort of philosophical debate—and I am as guilty as anyone—but I think—

Senator Vanstone—I am sorry, but it has just been repeated ad infinitum—when the answer has been given by officials time and time again—that, if you do not have economic benchmarks in the beginning—

Senator CHRIS EVANS—Senator Vanstone, I am happy to talk to you about it privately or have a debate in parliament, but this is estimates.

Senator Vanstone—With respect, Senator, I am giving you an answer at this point.

Senator CHRIS EVANS—I have not asked you a question.

Senator Vanstone—These are two-way streets; they are not cross examinations. Estimates committees are two-way streets and they always have been. I do not intend to let this point go. The simple point is: that point had to be made because, time and time again, it has been put in the record by Senator Crossin that, if you do not have economic development benchmark indicators, pretty much you are getting nowhere. Time and time again the officials have responded. There are different focuses in different areas and it may be well before you get to economic development that these things are on. That point needed to be cleared up.

Senator CHRIS EVANS—You have got a difference of opinion. We have done that. Mr Acting Chair, I just think we ought to get on with it. That is all.

Senator Vanstone—Sure.

Senator CHRIS EVANS—We have got 45 minutes left and I could go on for three or four hours. I want to ask some questions about SRAs. It is the same theme, Mr Gibbons, as I suggested earlier tonight—measurement, evaluation, how we measure, in this brave new world, whether we are actually getting it right or getting it wrong. What are the formal evaluation processes for SRAs?

Ms Bryant—I can address that. The framework we have developed to evaluate SRAs is that each individual SRA has a set of tailored performance indicators that are specific to the content of that SRA. That is one dimension of the framework for evaluation. The second, for individual SRAs, is that we will conduct a qualitative review of each individual SRA as well. They will be conducted typically about 12 months after the SRA has been signed, but otherwise at an appropriate point if it is a longer term SRA. We are calling for tenders for a panel to undertake the qualitative evaluation work. It will be in the press on this coming weekend of 5 November. The successful consultant, we envisage, will actually start those qualitative assessments in the first few months of 2006—so around February 2006.

Senator CHRIS EVANS—Are you suggesting that there will be one successful tenderer?

Ms Bryant—No, it will be a panel. Given that there will be, over time, several hundred of these things—

Senator CHRIS EVANS—But you are not going to let each one individually; you are going to have five or six on the panel and they will allocate them for assessment?

Ms Bryant—Yes, we will have a panel of half a dozen or whatever, and they will get a certain number of them each. They will be asked to go out and do them. A second element of the overall evaluation approach is to look more systemically at the SRA framework rather than at the individual SRAs themselves. There will be an implementation review scheduled

for the second quarter of 2006, which will draw together the lessons learned from the individual qualitative reviews and performance indicator analysis which will start to be available by then, and make recommendations about improving the effectiveness of the SRA process overall. Then there will be an effectiveness review to look at what effect these SRAs are having three to four years after the SRAs were first signed.

Senator CHRIS EVANS—Can you tell me about the performance indicators for each SRA. I have looked at your web site and I can't seem to find the whole SRAs. Are they published—the performance indicators?

Ms Bryant—Each individual SRA certainly has performance indicators in it. I would have to check what is in the public information on our web site about each SRA.

Senator CHRIS EVANS—They seem to be more in the nature of summaries, and they don't seem to show the performance indicators either.

Ms Hawgood—No, that is right. They just have summary descriptions on the internet.

Senator CHRIS EVANS—Will the performance indicators be publicly available?

Ms Bryant—We can certainly look at those again. The same basic approach applies as applied earlier. As the results of the evaluations become available, we will obviously be providing advice to the minister, who will have an opportunity to make a decision about the range of information that is made public.

Senator CHRIS EVANS—There are two issues, aren't there? One is whether your assessments of performance indicators are made public and the other is the performance indicators themselves.

Ms Hawgood—We can make available to you the performance indicators that are in the SRAs, with the SRA documents. The only qualification that I would put on that is that we would want to ask the communities who are partners to them if they are happy for that information to be made available.

Senator CHRIS EVANS—Is that why you don't publish the full SRA?

Ms Hawgood—It is, because while in most cases communities are very happy for that information to be made public, we have had one or two where they have said that they prefer it not to be—I think until they have some experience with the SRA. I could make that information available to you. I would just want to take that first step of checking back with the communities.

Senator CHRIS EVANS—Okay. I am also interested in the interaction between the trials and the SRAs. Mulan has been one that has received a lot of publicity, but that is inside the East Kimberley COAG trial as well. I think there have been three SRAs signed at Mulan. Were the first two more to do with implementing the COAG trial—is that a fair assessment of their purpose?

Ms Hawgood—They were not all about the COAG trial; they were all related to people in the communities in that East Kimberley COAG trial. The first ones were more focused on healthy activities for youth. There were two or three that were focused on those issues.

Senator CHRIS EVANS—There seemed to be less mutual obligation in the first two—is that fair? The other one was more about the trial and providing services?

Ms Hawgood—There may have been. Certainly, as people have become more used to working in this way, both government people and community people, I think it is fair to say that there has been some strengthening of mutual obligation arrangements. Ideas about that have primarily come from the communities. They have become more sophisticated at working that out.

Senator CHRIS EVANS—But it is fair to say that the third one, which I think was December 2004, has much more that sort of flavour about it. Isn't that right?

Ms Hawgood—Sorry, Senator, which one is that?

Senator CHRIS EVANS—The third one, which I think is December 2004, has much more of the shared responsibility flavour about it; isn't that right? I have not got full copies of the first two, but—

Ms Hawgood—Sorry, Senator, I am just finding that particular one.

Senator CHRIS EVANS—This is the one that got a lot of publicity about face washing—

Ms Hawgood—Sorry—you are talking about the one specifically about Mulan? Yes, that is true. When the community sat down to do that, they had a range of about, I think, eight to 10 areas, from memory, where they wanted to have some mutual obligation wrapped around things.

Senator CHRIS EVANS—So, in terms of that one, have the fuel bowsers been installed?

Ms Hawgood—They have not yet been installed. They are actually on their way—

Senator Vanstone—I think that was the position last time, that they were on their way.

Ms Hawgood—The information that I have is that Australian Fuel Distributors are expected to put these on a transporter heading for Mulan on 3 or 4 November. There were some things that needed to be done at the community level to prepare the way for that, including cleaning up the contamination from the old fuel tank site, and some decisions that they had to make about the type of fuel tank and bowser arrangements that they wanted.

Senator CHRIS EVANS—So the reason it has taken from December 2004 to, hopefully, November is that it is the community's fault that they have not been installed?

Ms Hawgood—No, I am not saying that. I am just saying that there were some things that had to be done.

Senator CHRIS EVANS—Wasn't this your side of the bargain?

Senator Vanstone—With respect, Senator, that is a bit of a verballing. You were given a pretty fair answer about what—

Senator CHRIS EVANS—Which implied it was the community's fault. I am just asking whether that is the department's view. This was your side of the responsibility agreement.

Ms Hawgood—No, I am not implying that it was the community's fault. I am just saying that—

Senator Vanstone—It has taken time.

Ms Hawgood—There were some things that needed to be done to prepare the way.

Senator CHRIS EVANS—So when did the community start meeting their side of the obligations?

Ms Hawgood—Immediately, Senator.

Senator CHRIS EVANS—And what was your major commitment as part of that SRA?

Ms Hawgood—That was the provision of the fuel bowsers.

Senator CHRIS EVANS—So, 11 months later, you have not delivered on your side of the bargain?

Mr Gibbons—I am sorry, Senator—our commitment was to provide, to the community organisation, the funds for them to acquire a fuel bowser.

Senator CHRIS EVANS—So you are saying you have given them the funds but they have not done it?

Mr Gibbons—We made the commitment some time ago. The community have worked at their own pace to prepare for the receipt and installation of the bowser.

Senator CHRIS EVANS—So your responsibility ends at writing the cheque?

Mr Gibbons—It does not end at writing the cheque. Our engagement is a continuing engagement. But we are not—

Senator CHRIS EVANS—What has your engagement been in getting them the bowser?

Mr Gibbons—We are not out there every day, cracking the whip and saying, 'You haven't installed your petrol bowser, get to it.' The community have been working on that issue. I think they have had a problem: they lost their community CEO; they have had to recruit another person; that has caused some delay. I am not blaming the community for that.

Senator CHRIS EVANS—But you are not taking any responsibility either, Mr Gibbons.

Senator Vanstone—Do you think Mr Gibbons or the Commonwealth is responsible because a CEO has to be replaced?

Senator CHRIS EVANS—This is your mutual responsibility, Minister. Your terms: 'shared responsibility' and 'mutual obligation'. I have got a copy of the document which you signed off on as a government in 2004. I understand the community have done their part. There are reports of great success, although I also understand they had started it sometime before the SRA commenced, but that is up to you, what you negotiate. But it seems to me a glaring concern that your part of the bargain, in this brave new world of shared responsibility, has not been delivered. You have not delivered on your side of the bargain.

Mr Gibbons—That is not correct. That is a misrepresentation of the circumstances.

Senator CHRIS EVANS—Well, why is it, Mr Gibbons?

Mr Gibbons—I have explained it to you.

Senator CHRIS EVANS—You say you write the cheque and that is the end of your responsibility.

Senator Vanstone—I do not think banality and bad faith will help Indigenous people here, Senator.

Senator CHRIS EVANS—Thanks for that, Minister. Why have you not ensured the bowser has been delivered?

Mr Gibbons—Senator, we are not running the community. We are not going into the community and saying, 'Put this bowser there. Dig the hole and put the tank there.' The community wanted a bowser. That was part of the mutual obligation deal. We agreed to provide the funds, which we did, to enable the community to acquire a bowser.

A number of things had to done to prepare for its arrival. First of all, they had a buried or underground tank that had rusted. There was a lot of underground contamination. There were other issues that the community had to deal with. They were working through that. They were not pressing us to get the bowser last month or three months ago. They were working at their own pace.

Senator CHRIS EVANS—So the key performance indicator for this SRA will not include whether you got the bowser in, it will be assessed against the community's performance.

Mr Gibbons—The performance indicator in this relates to the success of the community initiative to reduce the incidence of trachoma.

Senator CHRIS EVANS—I see. So the only thing we are assessing is their side of the bargain.

Mr Gibbons—We have delivered our side of the bargain.

Senator CHRIS EVANS—I am told that if I drive up to Mulan on the weekend there is no bowser. So I do not think you have delivered, Mr Gibbons. I think on any reasonable assessment, if the bowser is not there, it is pretty hard to say you have delivered.

Mr Gibbons—The bowser has been available for the community for months. When the community is ready, it is ready for them.

Senator CHRIS EVANS—I thought we had moved away from blaming the Aboriginals for all the problems.

Mr Gibbons—I am not blaming them.

Senator CHRIS EVANS—What has happened to mutual responsibility if you do not take any responsibility?

Mr Gibbons—You are assuming that the community wanted the bowser six months ago.

ACTING CHAIR—Perhaps I can help for a moment. I am somewhat frustrated because I do not really want to interdict and I understand that time is precious. Perhaps, from your experience, you can relate to me the period of time it takes to do a project of this size in an Indigenous community. You may not have mentioned the EPA process under the clean-up. It is not because it is an Indigenous community; it is because it is a long way from anywhere. For the process of exchanging a total set of piping, tankage and bowser, would you, in your experience, say that 11 months is too long a time? I think that is the notion of this discussion at the moment. I think it would be good to try to give some indication to Senator Evans about

the normal length of time that that sort of process would take. Frankly, in my experience, at 11 months they are doing pretty well.

Mr Gibbons—I am not experienced enough with the delivery of this sort of equipment to give you a precise figure. All I know is that we have been making inquiries of the community regularly to see if they needed assistance because we are as anxious as anyone to see the bowser installed and delivered.

Senator CHRIS EVANS—What can we say, then, about the community meeting their obligations, Ms Hawgood? Have you got an updated assessment of their performance?

Ms Hawgood—In relation to the trachoma rates, there has been a decline in Mulan from 37 per cent to 16 per cent.

Senator CHRIS EVANS—Didn't that occur before the signing of the SRA?

Ms Hawgood—There was some progress before the signing of the SRA—

Senator CHRIS EVANS—Seventeen per cent is the figure I have that was reported before the signing of the SRA. Is that wrong? The *Australian* certainly quoted it.

Ms Hawgood—I cannot answer that. The figures I have are—

Senator CHRIS EVANS—So you are saying that there has been a reduction—

Mr Gibbons—There was an effort by the community, before the shared responsibility agreement was signed, to deal with this problem. The people who were active were anxious that part of the community were ignoring this issue and they asked us to assist. They saw the prospect of a reward of a bowser, which was wanted by everyone, as sufficient leverage to encourage the whole community to engage in practices that are recommended by the World Health Organisation. That was the proposition they put to us. It was quite a sensible proposition and one that we were very happy to support.

Senator CHRIS EVANS—I accept that there has been leadership in their community and, obviously, the reduction of the trachoma rates is a really great result, but I am just trying to ask whether we are assessing this as a result of the SRA or whether or not—

Ms Hawgood—I understand that there is some more information that will be available in the near future for a check that was done over the last two months. I would be happy to provide that to you.

Senator CHRIS EVANS—My understanding is that it was going 18 months before they signed the SRA and they had already got the trachoma rates down to 16 per cent.

Ms Hawgood—Not far enough, because the reason they wanted the SRA was to give extra impetus to that.

Senator CHRIS EVANS—I am sure building community support is very important. I am just trying to ascertain how we are going. The SRA in Mulan was signed in December 2004 and you are looking to have a 12-monthly review. I assume that it will be somewhere near the front of the queue for assessment.

Ms Bryant—That is correct.

Senator Vanstone—For the record, Senator Evans may be right. The community may have already been doing some of these trachoma prevention measures and have sought the SRA to give greater impetus to those measures. His view, if his view is that they were in place before—

Senator CHRIS EVANS—I am relying on media reports on it.

Senator VANSTONE—sits uncomfortably with the views expressed by Labor spokespeople at the time—quite a number of people; put it that way—that this was a racist and paternalistic demand by the Australian government. And I thank the senator for making the point.

Senator CHRIS EVANS—I do not think that is the point I made—

Senator Vanstone—I think that is what the record will show, Senator. You will not climb out of it. It is there.

Senator CHRIS EVANS—I appreciate your commentary, Minister. Once you take responsibility for everything that Philip Ruddock has done I will start taking responsibility for all our spokesmen have said. There is certainly a lack of responsibility being shown in both your portfolios at the moment.

Senator Vanstone—I am not asking you to take responsibility for anything other people have said. I am simply highlighting that the point you have made is at odds with what other people have said.

Senator CHRIS EVANS—Congratulations, Minister, it was a big hit; but can we get back to where we are going with the SRAs? There was some talk about holistic SRAs and RPAs. It seems to me that the RPAs have dropped off the radar a bit. Looking at the annual report et cetera, there does not seem to be as much focus on them. I use that observation as a way of introducing the question: what is happening with the RPAs? Are they a priority? Or is the priority progressing SRAs?

Mr Gibbons—Both RPAs and SRAs have priority. Ms Hawgood can talk about SRAs, but RPAs have been a priority. They are much more complex arrangements. They take more time to bring to conclusion. We have signed jointly with the West Australian government and the community of Warburton a regional partnership agreement—it was signed some months back—that covers entirely the communities of the area.

Senator CHRIS EVANS—Is that the only one so far?

Mr Gibbons—We are working on others in other communities. But we can only work as fast as the community capacity permits. You will see over the course of this year others emerge as communities are ready.

Senator CHRIS EVANS—From looking at the records, I can see signs of only one. Do you think a few others are close?

Ms Bryant—There is considerable work being done in about seven or eight other locations. In the Pilbara there is an RPA under development which has a focus around sustainable employment opportunities. That one will be developed with the Australian and state governments, industry and Indigenous organisations and people in the region. It will be

specifically focused on the 5,000 job opportunities that will become available in the Pilbara in the next five to 10 years.

Similarly, there is one under way in the east Kimberley that is focused on employment and will involve industry and governments. There is also one under development in Cape York which has a particular focus on welfare reform. It covers four communities in Cape York. There is one under development in Port Augusta, in the Flinders Ranges. Again, that one is around economic development. It involves the Australian, state and local governments, business organisations in the town and Indigenous organisations and people. In Wollongong there is one being developed around health and law and justice issues primarily, with an economic development focus as well. So there are examples of a number that are quite progressed

Senator CHRIS EVANS—I am very keen on the Pilbara one, because I think that is a once in a generation opportunity for employment for local Indigenous communities in the Pilbara. I have been speaking to the mining companies about that. I would hate to see us miss that opportunity. One of the issues that strikes me with the RPA structure is who do you negotiate with. I am trying to understand what your principles are in relation to that. We have lost the ATSIC structures. Obviously the native title representative bodies provide some structures out there, but they are not necessarily suited to this work. How do you determine who you negotiate with for an RPA?

Ms Hawgood—It could be a range of different Indigenous organisations, depending on the particular focus of the RPA.

Senator CHRIS EVANS—How do they get legitimacy?

Ms Hawgood—Indigenous organisations typically have elected boards and represent particular groups of people. Sometimes that might be around particular issues; sometimes that might be more broad. For example, the Nganyatjarra RPA was negotiated with the Nganyatjarra Council, which represents 12 communities on the Nganyatjarra lands. It does not represent all of them, but it represents that group that has chosen to be represented by that council in a whole range of ways, including how it interacts with government.

Senator CHRIS EVANS—The question then is: what if somebody comes from that region and says to you, 'I didn't consent to this. We're not part of that. They don't represent me'?

Ms Hawgood—Those 12 communities have already signed up to it. It does not purport to represent anyone beyond those 12 communities.

Senator CHRIS EVANS—I am playing devil's advocate, but say a few people in one of those communities say, 'That wasn't with our authority.' It seems to me to be a problem for you. How do you get the legitimacy with who you negotiate with? Your legitimacy is that you represent the Commonwealth government. You are negotiating with different types of groups, depending on the situation; I understand that. And the structures are different. But I am a bit concerned about what happens when somebody says, 'I wasn't consulted,' or 'I didn't consent.' Within the communities I know you have a consultation process, but does it go beyond that?

Ms Hawgood—I suspect that you would invariably get somebody somewhere in a community who would say, 'I wasn't consulted.' But, in relation to the Nganyatjarra RPA, there is a whole structure involving the chairs of each of those 12 communities on the council. Arrangements are in place locally for decisions of that council to be disseminated within communities. But that is not an absolute guarantee that every single person in that community feels that they are part of this. That was not the case with ATSIC either.

Senator CHRIS EVANS—That is why I am asking the question. We have a long history of this issue. I am just wondering how you determine who has legitimacy to negotiate and how you assess their support for that. I presume that you are not having a vote of all the communities on these things. I am not suggesting that you should, but I am just wondering how you deal with that issue.

Ms Hawgood—Using that as an example, the council came to us with representatives of all 12 communities on the council, so it was a legitimate body.

Mr Gibbons—In the Northern Territory, for example, a land council has approached us to talk about a regional partnership agreement. In the Northern Territory we have also, in the context of the agreement, got discussions under way about regional partnership agreements with the new regional authorities that are being set up by the Northern Territory. It varies, depending on where we are working.

Senator CHRIS EVANS—So a thousand flowers are blooming—at some stage that might provide a bit of a problem, mightn't it, in terms of overlap?

Mr Gibbons—If the community of interest is not large, there is an SRA available to accommodate the interests of the people. The regional partnership agreements, as the name implies, tend to cover a bigger area and deal with issues that are appropriately addressed in a regional context. For individual or small family interests, SRAs are more appropriate.

Senator CHRIS EVANS—So what has happened to the holistic SRA concept? Is that still being pursued?

Ms Hawgood—Yes, it is. Really, by that we mean building on the small SRAs that are already in place. Most of the SRAs to date have been around one or two issues. In many communities now, people are interested in building from that initial work to something that is a bit more comprehensive and covers more issues in the community. In some communities, people have come to us more or less at the other end of the spectrum having worked out some big picture goals and wanting to work back from there, starting not just with a small SRA but with something that covers a range of issues.

Senator CHRIS EVANS—Can you give me the numbers of SRAs, RPAs and holistic SRAs that have been completed so far? Do you have those to hand or do you want to take that on notice?

Ms Hawgood—I can give you the number of SRAs: 116 have been completed. I will say 116 at this table, but they are being completed all of the time, so by tomorrow that figure may change slightly. It is a moving feast.

Senator CHRIS EVANS—You had a target of 100 at the start of the financial year, didn't you?

Ms Hawgood—We had a target of 100 for last year and I think a target of 100 again for this year.

Senator CHRIS EVANS—My information says it was 100 for 2005-06.

Ms Hawgood—It was 50 last year and 100 this year; I am sorry.

Senator CHRIS EVANS—So you are already ahead of target? You have signed 116?

Ms Hawgood—Some of those were from last year. We had 76 in place at the end of last financial year and now there are around another 40.

Senator CHRIS EVANS—So did the target of 100 mean 100 new ones or 100 in total?

Ms Hawgood—It was 100 new ones.

Senator CHRIS EVANS—I see. I am getting the two concepts confused. You had a target of five holistic SRAs for this financial year?

Ms Hawgood—That was for this year.

Senator CHRIS EVANS—How is that looking?

Ms Hawgood—I think we will achieve that. There is work going on in a number of locations, as I mentioned, where people have either come back to us to say they want to build on small SRAs or they want to start with longer-term goals.

Senator CHRIS EVANS—Have you signed any yet for this year?

Ms Hawgood—No, we have not.

Senator CHRIS EVANS—What happens in the event of a dispute about obligations in an SRA or an RPA being met? What is the dispute resolution process? If a community says that you have not delivered on your part of the bargain or you believe they have not delivered on their part of the bargain, how is that resolved?

Ms Hawgood—Through discussion. Each SRA has as part of it a two-way feedback mechanism that allows for regular feedback over the period of the SRA between the partners. We would hope, therefore, that we do not get to a situation where someone has reneged on an obligation and that in fact we are able to pick up on that early in the piece and, if there is a good reason why that obligation is not able to be met, we are able to work with the community to refine that.

Senator CHRIS EVANS—I presume that works for them too if they think you have not met your obligations?

Ms Hawgood—Absolutely—it is a two-way process.

Senator CHRIS EVANS—So if I am a community and I think you are supposed to have provided some housing under the agreement and I think you have not met that, what do I do? You say we discuss it. We have got another debate going on about power relationships in this parliament, and we have all been around long enough to know that discussion does not resolve all issues. That is why we have lawyers. What is the next step when the discussion does not work? What rights does a community have or the Commonwealth have to seek to resolve a perceived or an alleged failure to meet their obligations?

Ms Hawgood—In terms of both parties, if funding has been provided for housing or any other issue then there is a funding contract underpinning that and either party has rights under that funding contract.

Senator CHRIS EVANS—I do not want to go into the individual case but I think that at Cunnamulla there is a dispute about housing and whether renovation to housing has occurred. I do not want to go through the specifics of who said what to whom but if they are saying that you have not fixed at the houses and you are saying that they have not done the training or whatever is required, does it just not happen or is there an arbitrator?

Ms Hawgood—There is no SRA in Cunnamulla.

Senator CHRIS EVANS—Is that some sort of separate agreement?

Mr Gibbons—That is a longstanding matter where, over many years, a community organisation was funded by ATSIC and more recently by FaCS to provide maintenance and has not provided the maintenance. It employed people and spent the money but it did not provide the maintenance.

Senator CHRIS EVANS—If that was not an SRA I did not want to get involved with it. I want to understand the principle, not the example, so I do not want to get distracted on what is clearly not a helpful example. I still want to understand the principle. I do not think it is rational or reasonable to think that at some stage in an SRA there will not be an argument between the Commonwealth or the state or whoever and an Aboriginal community that one side has not met their obligations. I am trying to understand, after discussion and goodwill and all that stuff is exhausted and you still do not agree, what happens next? Is there any process agreed?

Mr Gibbons—There are various avenues. As Ms Hawgood mentioned, there is a contractual basis in a lot of cases where the Commonwealth's contribution is money. It is open also, I would believe, for the community to raise the matter with perhaps the Ombudsman or to raise the matter with the minister. It will not end with officials.

Senator CHRIS EVANS—What about the other way? In, say, the Mulan example, if you do not believe the community have met their obligations in terms of the trachoma campaign, the rubbish and the other obligations, what recourse do you have if you have already put the petrol bowser in?

Mr Gibbons—If it has been an up-front contribution, and we are concerned to protect our interests a bit more than make an up-front contribution in all cases, then we do not have much recourse. But given that we are in for the long haul and not walking away from a community because of a failure, we will take it into account in the next arrangement. There are going to be failures.

Senator CHRIS EVANS—As I say, I am just trying to explore the resolution of disputes, which I think are inevitable. It would be naive to think we are not going to get disputes. There is no dispute resolution procedure as part of the SRA?

Ms Hawgood—Yes, there is. Every SRA has a dispute resolution process, but that is locally designed, so no two are the same, essentially.

Senator CHRIS EVANS—All right. I might ask you the same question after the first dispute and see where it has gone.

Senator CROSSIN—I have a few quick questions I wanted to follow up on from the last estimates. Mr Gibbons, back on 27 May I asked if the National Day of Healing committee had received any federal funding. You were going to check and confirm that, and I am sorry but we cannot find any record of an answer to that.

Mr Gibbons—We did provide an answer in writing, Senator, that the—

Senator CROSSIN—To the committee?

Mr Gibbons—It was on the day, actually. I have a copy here. It was Mr Yates who provided the response. He said:

We have endeavoured to establish some information to assist in that regard. We understand that the Department of Health and Ageing provided some funds to assist the organisation with a number of its activities this year, including the launch of the National Day of Healing. Together, those amounts add to just over $20,000.

Since that answer, we have been able to establish with the Department of Health and Ageing the following—that in the 2005-06 financial year the department, through the Office for Aboriginal and Torres Strait Islander Health, provided the National Sorry Day Committee with link-up funding of $22,075 plus GST for its annual conference. This funding is provided on a yearly, one-off basis under the link-up annual appropriation. Historically, funding has been based on the funding amount plus indexation. At this stage the NSDC have not requested any additional funding, one-off or ongoing, for this financial year. They say that decisions regarding one-off funding in the 2005-06 financial year will be based on requests for one-off activities, the eligibility of these activities and the availability of funding.

Senator CROSSIN—All right. Under Indigenous women's programs, I understand there were to be two research projects. Can you tell me what those projects might be and what they involve in the way of participation and funding?

Mr Gibbons—Yes. I think Ms Tim can answer that for you, Senator.

Ms Tim—Senator, you are referring to the performance information for outcome 3 for 2005-06 in the portfolio budget statements—

Senator CROSSIN—Yes.

Ms Tim—where it is suggested that we estimate that there would be two programs funded this year, and we have just come through the first quarter. I think there are about 170 grants that have gone out this year. Included in those are a couple of research projects. Of the two proposals that are under way, one is for the Pilbara Indigenous Women's Aboriginal Corporation, and they have been provided with $94,000 for that, and the second is for the Ngarrindjeri Land and Progress Association.

Essentially, those research projects focus on two areas. The first is researching the impact of programs on women and the second component, as a result of doing that, is providing women with information about the programs, the policies and the services. The issue that seems most important to the women, through those projects, appears to be an interest in how

those services can be provided in a culturally sensitive manner, particularly to women in those areas.

Senator CROSSIN—What is the cost of each of those projects? They are what you call research projects; is that right?

Ms Tim—Yes.

Senator CROSSIN—And what are the amounts for each of those?

Ms Tim—In both those projects, research is one component of them. The entirety of those projects covers a couple of other things, but both of them, for this year, would like to focus on an aspect of research. For the Pilbara Indigenous Women's Aboriginal Corporation it is $94,600, and for the Ngarrindjeri Land and Progress Association it is $10,000.

Senator CHRIS EVANS—Let's ask a couple of quick questions about the ABA before the chair rises. He has had a couple of long days, so he is probably keen to go. I wanted to ask whether the minister has approved any expenditure over the ABA account in recent times. I know there are a number of applications pending and there were also some election commitments.

Senator Vanstone—There have been, and the officers can give you the details.

Mr Gibbons—We can give you the details, Senator. Under the—

Senator CHRIS EVANS—Do you want to table that, Mr Gibbons; have you got the list prepared?

Mr Gibbons—I am not sure whether my notes are decipherable. We can take it on notice and give you a response very quickly.

Senator CHRIS EVANS—No, I just thought if you had a document there you could hand it up, but please read it.

Mr Gibbons—There is $20 million under grant payments that is available for distribution. On the advice of the advisory committee, we have made $3 million available to provide some preventive interventions in communities in the central desert area in the context of a petrol sniffing strategy. There are another four projects—I have not got the individual details here—that have been supported on the advice of the ABA advisory for $2½ million. There is a contribution that the ABA made to be the ALRI leasing scheme of up to $3 million. There is $50 million set aside for economic development. At this stage, again, on the advice of the committee, the Centrefarm Aboriginal Horticultural project has been supported with funding of $330,000. They are the details I have in front of me. If there are others, we will—

Senator Vanstone—There is something I think to the Central Land Council in relation to—

Senator CHRIS EVANS—Wasn't there a pipeline proposition or has that collapsed?

Mr Gibbons—That was part of the $50 million for economic development. But the pipeline has been abandoned.

Senator CHRIS EVANS—Yes, that is what I heard.

Mr Gibbons—The money is still committed for that.

Senator Vanstone—There is something provided, too, I think, to the Central Land Council in relation to funerals and things.

Mr Gibbons—That is right.

Senator CHRIS EVANS—But the $50 million has not been allocated as such.

Mr Gibbons—No.

Senator CHRIS EVANS—It is a subsection of the money that is held in the account—

Mr Gibbons—That is correct.

Senator CHRIS EVANS—that the minister has committed to spend on economic development. Is that fair?

Mr Gibbons—I have some more details here. There is $1.9 million towards to the development of a secondary college in the Tiwi Islands, $300,000 for Central Land Council funerals and important ceremonial activities. They were part of that small grant. One of the projects from that $2½ million I mentioned before is for the Thamarrurr Regional Council program on weed eradication control, control of feral animals and support for local ranger units. That was a quarter of a million dollars.

Senator CHRIS EVANS—I might put the details for those on notice. Is there are time frame for the election promise of $50 million for the economic strategy for Indigenous Australians?

Mr Gibbons—It does not lapse, if that is what you are asking.

Senator CHRIS EVANS—Is there an intention to spend it in a particular financial year?

Mr Gibbons—Not in a particular financial year. Given that it is about economic development, we are encouraging interest from Indigenous people and we consult with the Aboriginal advisory board on this. A number of proposals are awaiting consideration.

Senator CHRIS EVANS—Has the suggestion for a comprehensive Indigenous art development strategy, to be funded from the ABA, been progressed?

Mr Gibbons—Off the top of my head, I cannot remember. I will take that on notice for you.

Senator CHRIS EVANS—Could you find out whether that has been progressed, for how much and which stakeholders are represented in terms of the funding?

ACTING CHAIR—Senator, being that it is past 2300 hours, there may be some other questions you wish to place on notice.

Senator CHRIS EVANS—I am happy to follow the ABA ones up with some specifics. The questions really go to how much has been spent, on what and when and so on. They can be covered by questions on notice.

ACTING CHAIR—I would like to thank all who appeared before the committee today, particularly the minister and the secretary. I also would like to thank Hansard and the parliamentary reporting service, the room attendants and the assistance they gave everybody here today.

Committee adjourned at 11.04 pm