



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS

ESTIMATES

**(Additional Budget Estimates)**

MONDAY, 12 FEBRUARY 2007

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE STANDING COMMITTEE ON  
LEGAL AND CONSTITUTIONAL AFFAIRS**

**Monday, 12 February 2007**

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

**Senators in attendance:** Senators Bartlett, Crossin, Evans, Hurley, Kirk, Ludwig, Sandy Macdonald, Nettle, Payne, Parry and Trood

**Committee met at 9.00 am**

**IMMIGRATION AND CITIZENSHIP PORTFOLIO**

**In Attendance**

Senator Ian Campbell, Minister for Human Services

**Department of Immigration and Citizenship**

**Executive**

Mr Andrew Metcalfe, Secretary  
Mr Bob Correll PSM, Deputy Secretary  
Mr Abul Rizvi PSM, Deputy Secretary  
Ms Carmel McGregor, Deputy Secretary  
Mr Peter Hughes PSM, Acting Deputy Secretary

**Internal products**

**Financial services**

Ms Louise Gray, First Assistant Secretary, Financial Strategy and Reporting Division

**Human resource services, internal investigations and property**

Mr John Moorhouse, First Assistant Secretary, Client Services Division  
Ms Alison Larkins, First Assistant Secretary, People Services, Values and Training Division

**Parliamentary and legal services**

Ms Robyn Bicket, Chief Lawyer, Legal Division  
Mr Des Storer, Principal Adviser to the Secretary and First Assistant Secretary, Strategic Policy Group  
Mr Tony Striegl, Acting Assistant Secretary, Ministerial and Parliamentary Services Branch

**Information technology and office services**

Ms Cheryl Hannah, First Assistant Secretary, Information Technology Services and Security Division  
Mr Peter McKeon, First Assistant Secretary, Systems Delivery Division

**Outcome 1: Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people**

**Output 1.1: Migration and temporary entry**

Mr Anthony Parsons, First Assistant Secretary, Migration and Temporary Entry Division  
Mr Paul Farrell, Assistant Secretary, Temporary Entry Branch

Ms Yole Daniels, Assistant Secretary, Business Branch  
Mr Gregory Mills PSM, Assistant Secretary, Migration Branch

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

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

Mr Alan Hutchinson, Acting Assistant Secretary, Onshore Protection Branch

Ms Judith O'Neill, Acting Assistant Secretary, Humanitarian Branch

Ms Rosemary Greaves, Assistant Secretary, International Cooperation Branch

**Output 1.3: Enforcement of immigration law**

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

Mr Dermot Casey, Assistant Secretary, Detention Health Branch

Mr Steve Dreezer, Assistant Secretary, Detention Operations and Client Services Branch

Mr David Doherty, Assistant Secretary, Detention Resources and Development Branch

Mr Vincent McMahon, First Assistant Secretary, Border Security Division

Mr John Rees, Acting Assistant Secretary, Entry Policy and Procedures Branch

Dr Wendy Southern PSM, First Assistant Secretary, Compliance Policy and Case Coordination Division

Ms Kylie Jenkins, Acting Assistant Secretary, Case Coordination Branch

Mr John Eyers, Assistant Secretary, Litigation Branch

Ms Deborah Jacka, Assistant Secretary, Review Coordination Branch

**Output 1.4: Safe haven**

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

Ms Judith O'Neill, Acting Assistant Secretary, Humanitarian Branch

**Output 1.5: Offshore asylum seeker management**

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

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

**Outcome 2: A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably**

**Output 2.1: Settlement services**

Ms Kate Pope, Acting First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Ms Paula Kansky, Acting Assistant Secretary, Settlement Branch

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

Mr Daniel Boyer, Acting Senior Manager, Integrated Humanitarian Settlement Strategy

**Output 2.2: Translating and interpreting services**

Ms Kate Pope, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

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

Mr Chris Greatorex, Director, TIS National

**Output 2.3: Australian citizenship**

Ms Kate Pope, Acting First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

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

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship Test and Values Statements Taskforce

**Output 2.4: Promoting the benefits of cultural diversity**

Ms Kate Pope, Acting First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

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

**Migration Review Tribunal and Refugee Review Tribunal**

Mr Steve Karas AO, Principal Member, Migration Review Tribunal and Refugee Review Tribunal

Mr John Lynch, Registrar, Migration Review Tribunal and Refugee Review Tribunal

Mr Rhys Jones, Deputy Registrar, Migration Review Tribunal and Refugee Review Tribunal

**CHAIR (Senator Payne)**—I declare open the public meeting of the Senate Legal and Constitutional Affairs Committee. The Senate has referred to the committee the particulars of proposed additional expenditure for 2006-07 for the Immigration and Citizenship portfolio and the Attorney-General's portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee is due to report to the Senate on 21 March 2007 and has fixed 30 March 2007 as the date for return of answers to questions taken on notice. The committee's proceedings today will begin with the examination of the Department of Immigration and Citizenship, followed by the examination of related agencies.

Under standing order 26, the committee must take all evidence in public session, and that includes answers to questions on notice. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. In 1999 the Senate, by resolution, endorsed the following test of relevance of questions at estimates hearings. Any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant to questions for the purpose of estimates hearings.

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 discretion to withhold details or explanations from the parliament or its committees, unless the parliament has expressly provided otherwise. The Senate has also resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits any questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. Any claim that it would be contrary to the public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis for a claim.

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**Department of Immigration and Citizenship**

**CHAIR**—For the record, I note that there are no outstanding responses to questions taken on notice from the supplementary budget estimates round of October 2006. I thank you, Mr Metcalfe, and your department for your assistance in that regard. I welcome Senator the Hon. Ian Campbell, representing the Minister for Immigration and Citizenship. I also welcome Mr Andrew Metcalfe, Secretary of the Department of Immigration and Citizenship.

Before we begin, on behalf of the committee I also want to record our appreciation of and thanks for the assistance given to the committee by the previous minister and her office in the operation of these estimates hearing and other matters. Senator Campbell or Mr Metcalfe, do either of you wish to make an opening statement?

**Mr Metcalfe**—Thank you for the opportunity to deliver an opening statement. In the interests of brevity and time I was going to read from a summarised version of what I prepared, but would seek your agreement to provide the committee with a full statement, which is slightly longer in some detail. I was also going to provide to the committee an updated document, as has been my practice over recent estimates hearings, setting out progress on reform and improved program delivery within the department. With your agreement, I will also provide that to the committee.

**CHAIR**—Thank you.

**Mr Metcalfe**—Since the previous hearing of this committee, we believe we have made significant progress with governance arrangements within the department, including implementing a governance and leadership program targeting our senior executive officers. One recent key development has been the fourth business release, Systems for People. This prepares us for the major release, commencing in April, of five portals for client self-service, case management, visa processing, compliance and border security. The College of Immigration, with the advisory board chaired by Mr Mick Palmer AO APM, is now training its second intake of students.

The department continues to manage a huge workload. As one of many examples, in the past financial year we provided over 600,000 telephone interpreting services. To understand our clients better, we have undertaken a series of structured consultations with our clients, with client representatives and with our service delivery staff. We are also establishing a framework for regularly surveying our clients. To ensure we are accessible across all modes of modern communication, we have made significant expansions to our contact centre network overseas and have also reviewed and improved the operation of our onshore contact centres in Sydney and Melbourne.

To round out the client service picture, we are also working to improve our responsiveness to clients. We have established a performance management committee to monitor the performance of our service delivery network and drive the adoption of better practice. We have centralised our client feedback in complaints management in a global feedback unit based in Melbourne. This includes improved computer support and will ensure that we have a clearer picture of the themes, trends and systemic issues as they emerge across the service delivery network. I want to be quite clear on this: our goal is to get things right first time and

every time, but our test as a client service organisation is not that mistakes are never made but how we respond to those mistakes and learn from them.

I was very pleased to see the Commonwealth Ombudsman say late last year that there had been a significant culture change in the department. Since the last hearing, the Ombudsman has reported further on individual cases referred to him. The government responded to those reports, and the department is working with the Ombudsman to ensure those mistakes do not recur. Each of those cases is a reminder of the importance of having fair and reasonable dealings with our clients, and I frequently stress this to all departmental staff.

I was also pleased that the Human Rights and Equal Opportunities Commissioner recognised in a report released last month that conditions within Australia's immigration detention centres had improved substantially. The report, in part, states:

It is clear to us that the Department ... has gone to great lengths to improve the approach and attitude of staff towards detainees in immigration detention centres over the last year.

I welcome that report. It shows that the hard work of the department is paying off and the reforms are being acknowledged.

**CHAIR**—Thank you very much. You said you would table a longer version of that.

**Mr Metcalfe**—I will.

**CHAIR**—Thank you very much. I will go to the program as printed, starting with general questions on internal product.

**Senator BARTLETT**—I would like an indication regarding the new ministerial team whether it has yet been decided what the break-up of responsibilities are: who has citizenship; who has ministerial intervention—those sorts of things?

**Mr Metcalfe**—I do not know whether it has been formally notified as yet, but it is my working understanding at this stage that Mr Andrews, the portfolio minister, will be responsible primarily for all work carried out in the immigration area with one or two minor exceptions, which I will outline, and will also have carriage of citizenship issues within the portfolio. That means that the parliament secretary, Ms Gambaro, would be responsible for multicultural affairs issues, language services and settlement issues but would also have some areas of responsibility within the immigration area, such as in relation to certain temporary entry programs, with the exception of the subclass 457 visa, migration agents, liaison and monitoring, regional migration and some other responsibilities, including client service improvement and detention health improvement activities.

**Senator LUDWIG**—In respect of the determination of 417s and the others, will that remain with the immigration minister?

**Mr Metcalfe**—At this stage, it is my understanding that the portfolio minister, Mr Andrews, would retain all consideration of ministerial intervention matters, unlike the previous arrangement where Senator Vanstone primarily considered matters referred under 417 and, Mr Robb, matters under 351.

**Senator LUDWIG**—When that is clear—I think in answer to Senator Bartlett you mentioned that you thought at this stage that was the break-up—or solidifies, could you provide a copy to the committee of what the exact break-up is and the staffing of both the

ministerial and the parliamentary secretary office, so we understand the support staff who are going to be in each of those offices.

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

**Senator LUDWIG**—Thank you.

**Senator CROSSIN**—I want to start with a general question about the current situation at the Port Hedland immigration detention centre.

**CHAIR**—You want to do that now instead of in—

**Senator CROSSIN**—These are more general questions about the future of the centre. Do you want to leave it until we come to it?

**Mr Metcalfe**—It is normally program 1.3, but we are happy take it when you wish us to.

**Senator CROSSIN**—I will leave it for 1.3 then if you have people for that.

**CHAIR**—I will make a note of that, Senator.

**Senator LUDWIG**—In terms of the financial year and the budget, how are you going with your underspends and overspends by output area? Do you have a breakdown of where you are at this point? We now have the additional portfolio statement. We have had a look at the budget from last year, and so we are running down to 30 June. I am trying to identify within the particular outputs and programs those areas where you are under or over as the case may be.

**Mr Metcalfe**—I would have to take on notice a detailed breakdown. In general terms, the department is currently in an overspend situation. It reflects the very high levels of activity across all our programs. We are working closely with the department of finance to ensure strategies as to how that is managed and we are obviously very carefully monitoring and managing our finances within the organisation. I think that reflects the fact that, although the portfolio's budget is higher than it has ever been because of the very substantial resourcing provided last year following the Palmer report, the level of activity, including that which is self-funded and found from within the base, together with increasing applications rates in some key areas of activity, means that we are having to work very hard to fund the sorts of results that we would wish to provide and live within our budget.

**Senator LUDWIG**—I am a little surprised: is this the first time this has happened for a while?

**Mr Metcalfe**—I cannot recall it happening. I have only been secretary, as you know, for 18 months, but my understanding is that the organisation traditionally reported underspends against expectations. The departmental budget is an extremely complex thing. It is not simply a certain amount of money which is provided and then spent across the year. It varies depending on receipts of income coming in from various areas where revenue is obtained. It is dependent to an extent on activity levels—for example, there is a reimbursement or reconciliation contained within the additional estimates statements of funding provided this year for increased activity levels next year. It would be my expectation that there may well be a similar reconciliation next year for increasing activity levels this year. So we are in what I would regard as a significant overspend situation which we have been aware of for some time.

We are managing that very carefully to ensure that our finances are properly managed but at the same time the results that are required by government and the community are provided.

**Senator LUDWIG**—You have touched on some of the questions I was going to go to. How much is the current overspend?

**Mr Metcalfe**—Presently, we have an approved overspend from the minister for finance of around \$14 million. Our best estimate is that the overspend at this stage for the year will be in the vicinity of \$50 million to \$60 million. That is on the basis of a mid-year review of activity and represents around three to four per cent of our budget. That size represents the best information I currently have. We are carefully managing that situation to ensure it is lower rather than higher, and we are working with the department of finance to ensure that there is a proper and stable financial footing for the organisation.

**Senator LUDWIG**—You might need to clarify this: in terms of the approved overspend of \$14 million, was that when you detected that you were heading towards an overspend? I do not want to put words in your mouth; that is why I say ‘when’.

**Mr Metcalfe**—That had been previously provided for as part of the 2006-07 budget process. It was known that there was going to be an overspend. The overspend has become greater than was originally forecast in the budget process and therefore requires careful management.

**Senator LUDWIG**—Is it your responsibility to notify the department of finance when that occurs?

**Mr Metcalfe**—Our internal monitoring indicated as early as about August-September that the department was spending above pro rata. Although early in the financial year, it was not possible to have any concluded views as to the end of the year position. In December, we initiated discussions with the department of finance, and in January we had more detailed discussions with them, which continue. We have recently undertaken our own internal mid-year review of budgets now that six months of figures are available, and the information that I provided before is based on that work.

**Senator LUDWIG**—When was the view provided that you were going from a forecast \$14 million overspend to something in the order of \$50 million to \$60 million? It is not small change.

**Mr Metcalfe**—We had been indicating to the previous minister for some time that there was a potential overspend and that we were taking steps to address that and minimise it. As I have said, the current figures are the ones based upon the end of December analysis and therefore are very recent.

**Senator LUDWIG**—When were you notified of that? You forecast \$14 million, which the department of finance knew about, and you are now saying that your estimate is \$50 million to \$60 million. That is not a one-fold or two-fold increase; it is a significant increase. When did you tell the department of finance that that was the forecast overspend and how did the department of finance respond?

**Mr Metcalfe**—We advised the department of finance late last year that, in our view, there was going to be an overspend higher than the previously approved overspend. I have said that already.

**Senator LUDWIG**—Yes, but I am referring to the scale of the overspend.

**Mr Metcalfe**—The quantum of \$50 million to \$60 million is a figure that we only arrived at since the end of December results have become available to the department. That was provided to the department of finance over the last couple of weeks, and we are currently working through strategies as to how that should be managed.

**Senator LUDWIG**—So it has come as a shock to you, has it?

**Mr Metcalfe**—No, it has not. I said that as far back as August it was clear that the scale of activity within the organisation was ramping up to deal with dozens of post-Palmer projects, very significant initiatives, major spending areas in systems and training and so forth, together with what I would regard as an increase in activity levels in certain key areas such as the 457 visa—and it is well known that that visa has significantly expanded in its use. The culmination of all those issues resulted in the mid-year review based on the end of December figures. But it had been apparent to the department's executive since early in the financial year that the tempo of activity in the organisation was greater than the budget would provide for. Therefore we have been taking prudent measures to limit what I would regard as discretionary activity while at the same time seeking to ensure that outcomes are in fact delivered.

**Senator LUDWIG**—When was the current minister advised that there was likely to be a \$50 million to \$60 million overspend?

**Mr Metcalfe**—The current minister was advised upon becoming the current minister.

**Senator LUDWIG**—I see. Merry Christmas, Minister!

**Mr Metcalfe**—Welcome to the portfolio, Minister. I would just add that these things are not entirely unusual given the highly dynamic nature of the portfolio budget and the very high tempo of activity. As I said before, it is not simply a set pool of money that remains stable across the year; there are policy initiatives—matters contained in the additional estimates here, for example—shifting workloads, pay rises to factor in and the need to settle and finalise contracts which may provide for higher costs than previously estimated. The culmination of all those things mean that we are spending a lot of time very carefully managing our finances to the tune of what is currently around a three per cent overspend.

**Senator LUDWIG**—I appreciate that; it is a question, though, of what you are now going to do about it. When did the department of finance understand that it was going to be \$50 million to \$60 million? Was that in December? And what was their response?

**Mr Metcalfe**—I have already answered that question, I think; I have said that we notified the department of finance in December that an overspend in excess of the approved level was likely on the basis of the information we then had, and when we received firm figures as a result of our own internal review of budgets, on the basis of the post-January figures or the December figures, a review occurred through January. We have now notified Finance as to the

quantum and reasons and we are currently in discussion with them as to how that should be addressed.

**Senator LUDWIG**—So they have not responded at this point in time?

**Mr Metcalfe**—I would regard it as a dialogue. It is not me writing a letter to the secretary and getting a letter back; my officials are in discussion with Finance officials and are working on strategies to resolve that.

**Senator LUDWIG**—And what are those strategies likely to be? Are you going to start pruning?

**Mr Metcalfe**—We have already done that, to a certain extent. The department's executive management committee has looked very carefully at all aspects of our finances. For example, the largest contributors to our expenditure are staff and staff salaries; that is the major thing that we have and we own. Staffing numbers have grown quite significantly over the last year or two, in response to increasing workload and in response to the government's very significant response to the issues in the Palmer report.

In order for the department to remain competitive, pay rises for staff are required. There was a pay rise paid about a year ago and I have recently made an offer to staff of a pay rise to commence at the end of next month, should they vote for that in a collective agreement, which will be subject to a vote over the next couple of weeks. All of those factors together mean that we have a dynamic situation to manage.

**Senator LUDWIG**—What does that mean for staffing? Are you going to be looking at cutting back on or not employing staff or at redundancies and the issues that you will then face?

**Mr Metcalfe**—For the last few months, having significantly increased our staffing levels, we have effectively not sought to fill vacancies through external advertising unless it was clear that the skills were (1) absolutely necessary and (2) unable to be provided from within the department. Certain specialist skills, or certain areas that are a priority—such as front-line client service staff—remain areas where we will continue to recruit, but we have limited recruitment and put a series of checks around recruitment to ensure that spending only occurs where budgets provide for that to occur, rather than simply having people recruiting even though their budget may not permit that.

**Senator LUDWIG**—Has any decision been made to cut back staffing at this point—to offer redundancies or otherwise reduce the level of staffing?

**Mr Metcalfe**—There has been no decision taken and I am not considering any issues that go to voluntary or other-than-voluntary redundancies. My preference is to manage our numbers through the normal turnover of staff as people retire, resign, move on or whatever. That represents several per cent in any normal year and I think that we will be seeking to manage our situation through that type of process. At the same time, we need to be very careful to continue to deliver the results, the reform and the client service we have committed to do.

**Senator LUDWIG**—I think you can recall that at last estimates I talked about a range of IT projects—

**Mr Metcalfe**—Yes.

**Senator LUDWIG**—and I think you explained a range of IT projects you had in train. Are any of those causing a cost increase or blow-out or are they within budget?

**Mr Metcalfe**—I will get Mr Correll to talk about particular details, but the major flagship program, Systems for People, which is a very significant area of expenditure—I think about \$188 million this financial year—is on track and on program, which I am delighted to hear, and employing close to 500 departmental on-contract staff. It is a very significant area of activity. We have a whole range of services, though, provided from our IT area, so it is not only the new IT; it is legacy systems and a whole range of contracts. We are obviously managing and monitoring expenditure on all of those programs very carefully, as we are with all of our programs.

**Senator LUDWIG**—So you say most of those that are coming are on track in terms of time and budget?

**Mr Metcalfe**—We could go through a long list in terms of the various initiatives we have in our IT area, but certainly the area in which the department's overspend has been, in part, identified is the area which provides day-to-day services to the department and provides the desktops—for example, the equivalent of the computer sitting in front of you. That is partly the result of internal decisions as to reallocating funds to areas of perceived priority, and that is part of our overall management of the situation. Unfortunately I cannot give you a simple answer to a complex question in that there is a highly dynamic and extremely complex set of cost factors and activities around ultimately the expenditure in the portfolio.

**Senator LUDWIG**—What we can do, though, is take some of it on notice, because I am concerned. In fact, I cannot recall a time when your budget has been in overspend heading towards \$50 million to \$60 million, especially when you forecast and spoke to the Department of Finance and Administration about an earlier amount which was significantly less, and it seems to be that the spending has continued. The areas where that is coming from interest me. Could you broadly describe them? You have indicated that for IT it is the desktop area, and perhaps we could have a little more information about that in particular but, in terms of the long list that you spoke about, the committee would appreciate a list of those major IT projects, the forecast cost and whether they are currently on time and in budget—not the minor projects clearly but those that are significant and that you would regard as significant for departmental operation.

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

**Senator LUDWIG**—Where is that \$50 million to \$60 million being fuelled from?

**Mr Metcalfe**—At the end of the day it is an amount of money spread across the organisation, but there are a number of business units within the organisation where the overspend tends to be concentrated. A couple of our state offices are spending in excess of their budgets—and we are working very closely with them on how we can manage that—and similarly a couple of operating divisions. I have already mentioned the area of our IT divisions, which deal with the provision of day-to-day services to our 6,000-plus staff.

**Senator LUDWIG**—What level is that currently at?

**Mr Metcalfe**—I do not quite understand the question.

**Senator LUDWIG**—How much is the desktop area in particular overspending at the moment?

**Mr Correll**—Basically in the services area over the last few years, as the department's staffing levels have grown, the costs of our security and services operations have been progressively growing. We have been trying to bring those back and reduce the amount of budget allocated to that area. This year there has been a significant reduction in the budget allocation to that area and, at the moment, we are projecting that that area will run over that reduced budget figure by something like \$40-odd million. In actual expenditure it is a figure similar to the expenditure of the previous financial year. We are trying to rein in the growth of costs in that area.

**Senator LUDWIG**—Are you saying it has doubled in 12 months?

**Mr Correll**—No, I am saying that the expenditure in that area is about the same this financial year as it was last year, but over a series of years it has progressively increased. It has increased consistent with a growth in staffing levels, and it needs to be appreciated that costs associated with supporting desktops and providing help services go hand in hand with overall staffing numbers in the department. So those costs have been increasing progressively over the last few years. This year we have been trying to reverse that trend and bring that back to a reduction in the overall cost growth. The reduction we have been looking at is to bring back that budget by a figure of about \$40 million this year.

**Senator LUDWIG**—So it has been overspent by about \$40 million?

**Mr Correll**—Against the reduced budget, on a full-year basis.

**Senator LUDWIG**—In terms of the \$50 million to \$60 million overspend, that contributed about a \$40 million to the overspend by the department?

**Mr Correll**—Correct.

**Senator LUDWIG**—Perhaps you could take on notice the number of staff that represents in terms of the increase in cost of that section for the last four years, how it has grown and where the increase has come from. If it has not come from the last year then clearly it has been increasing for a number of years. Is that the case or has there suddenly been an increase in staffing which has blown out the cost?

**Mr Correll**—No, it has been progressively increasing over the last three or four years, but that has been hand in hand with the growth in staffing levels. At present, we are looking at reviewing the costs associated with our services and security operations to establish whether the costs for providing those sorts of services are sound against reasonable benchmark figures and being able to then put arrangements in place if they are not soundly based.

**Senator LUDWIG**—Which state offices have been overspending? Can you identify them?

**Mr Metcalfe**—Currently, we are looking very carefully at activity in New South Wales and Queensland offices.

**Senator LUDWIG**—What is the level of overspend of each of those offices?

**Mr Metcalfe**—I will take on notice the projected overspend, but New South Wales was in the vicinity of \$10 million and Queensland about \$5 million.

**Senator LUDWIG**—Can you attribute any reasons to that overspend?

**Mr Metcalfe**—It is associated largely with increasing activity levels. Again, not all of our state offices are the same. You would be aware that our Brisbane office provides certain functions that other state offices do not have to deal with—for example, the presence in North Queensland and the Torres Strait is a particularly expensive area of activity. Sydney has roughly 50 per cent of our overall client case-load handling and operates in two locations: Parramatta and the CBD, with very high rent levels and also other issues. We are drilling down and working very closely with our state directors in those states as to the reasons for overspending. Ultimately, that goes to where the budgets are. Realistically, that ultimately goes, I suppose, to the overall funding of the organisation. You made the comment before that you had not seen the department in an overspend situation.

**Senator LUDWIG**—I cannot recollect that. By all means, set me straight.

**Mr Metcalfe**—I cannot recall it, either, but my experience is not continuous on these issues. A very significant part of funding that the department receives is associated with activity levels in certain areas. It is true to say that, some years ago, there were very high levels of activity in relation to very expensive activities, such as people smuggling, border security, operation of detention centres, processing of protection visas and litigation. It is a good thing that our detention levels are at record low levels. It is a good thing that our border security arrangements have proved robust and effective, even though we always have to keep a close watch on those issues. It is a good thing that our protection visa processing levels are much lower than they had been. For all of those reasons, moneys which would have come into the organisation—and I suspect which possibly contributed to the overall financial stability of the organisation—are not there in the same amount that they previously were. At the same time we have seen dynamic, increasing and changing workloads in other areas, such as certain visa categories. What I am saying is that there is a dynamic funding issue; it is not simply a set budget which is provided. It is a flexible funding issue which requires constant adjustments, such as the reconciliation from year to year, which I referred to earlier. It is those very issues which we are now discussing with the department of finance. Indeed, is our base funding for basic services appropriate? Of course, sometimes line departments and the department of finance have different views about those things.

**Senator LUDWIG**—I am concerned about some of the responses you have provided. Although you say the Torres Strait is peculiar to Queensland, it certainly did not appear on the map in the last 12 months. It has been there for quite some time, the same as the rising rents in Sydney. I am not sure what the current market is, but that certainly did not occur in the last 12 months, either. Regarding the issues themselves, it seems to me that you have mentioned some reasons which are certainly easily forecast, easily ascertainable and knowable. What concerns me is that there is a \$5 million overspend in Queensland, a \$10 million overspend in Sydney and you have a \$40 million overspend, in what seems to be a small area, in desktop support. It seems a bit extraordinary.

**Mr Metcalfe**—I would not characterise it in that way. That actually provides desktops to 6,000 people, and as Mr Correll was saying, it is a straight mathematical factor that more staff equals more desktops equals more cost.

**Senator LUDWIG**—Perhaps you could provide us with a breakdown of what the additional staff are, if I have not already asked for that. You might also want to include in the IT a description of what the IT project is rather than simply a name.

**Mr Metcalfe**—Yes, we will give a descriptor. For example, System for People, as you know, is a close to \$500 million project over four years. We are spending \$188 million, the budget is on track and there are important releases happening next month. What I think is important in this conversation, which is a very proper conversation to have, is that the department is managing record levels of activity, record levels of business improvement and a large increase in staffing in a dynamic budget context. And we have to work on that very carefully. The result of the forecast overspend has meant that we have, very properly, moved through our areas of expenditure and looked very hard at whether things that were being done should have been done, and should have been done in the way they were.

**Senator CROSSIN**—Mr Metcalfe, I want to follow up on a couple of things. You mentioned earlier that the division of responsibilities between the minister and the parliamentary secretary was still being decided. Is that correct?

**Mr Metcalfe**—It is my understanding that the minister has reached a view, but I am not sure whether he has made that public or finally provided advice within government. So I thought, to assist the committee, I should give a general reflection of my understanding but make it plain that that will need to be checked. Therefore, I undertook that I would take that on notice.

**Senator CROSSIN**—On 30 October last year in estimates you outlined for us the responsibilities that Mr Robb had at that time. Can you take on notice a comparison of Mr Robb's duties as you outlined in estimates last year compared to what the new parliamentary secretary may be doing.

**Mr Metcalfe**—I will take that on notice. There are two clear areas of change. Firstly, the parliamentary secretary will not have responsibility for citizenship issues; that is a matter that will now be undertaken by the minister. Secondly, the minister intends to deal with all ministerial intervention requests rather than the previously split arrangement. I will take that on notice.

**Senator CROSSIN**—Does that include 351 applications?

**Mr Metcalfe**—That is correct.

**Senator CROSSIN**—I understand that as of last October the parliamentary secretary had nine staff and two DLOs. Is that still the case?

**Mr Metcalfe**—I have not seen a final allocation to the new parliamentary secretary.

**Senator CROSSIN**—Can you take that on notice as well.

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

**Senator CROSSIN**—I understand that the previously-named department of DIMA had launched a promotional DVD. Is that correct?

**Mr Metcalfe**—You may want to give me a little more detail. I suspect we undertook various promotional activities on various topics. There may well be several promotional DVDs relating to visa categories or whatever it might happen to be. I am not quite sure what you are talking about.

**Senator CROSSIN**—My understanding is that it was just a general promotional DVD that was developed.

**Mr Metcalfe**—I am aware that our Western Australian office undertook as a project a DVD which might be able to be played in public contact areas of the department where clients are waiting, to provide people with information about departmental services. It might be played at exhibitions where staff of the department are talking with students or possible migrants. It was a project undertaken by Perth and which I think was fairly recently released.

**Senator CROSSIN**—You are talking about the department having a range of DVDs. Is there one that was more recently produced, rather than—

**Mr Metcalfe**—I think we are being speculative here. I think what you are talking about and what I just mentioned might be the same thing, but I would probably need a little more detail from you as to whether that is what you are in fact talking about.

**Senator CROSSIN**—Do you have an idea of the cost of that?

**Mr Metcalfe**—I will have to check. I should be able to give you that during the course of the hearing.

**Senator CROSSIN**—You do not have it with you?

**Mr Metcalfe**—I will see if someone here knows it and I will come back to you shortly.

**Senator CHRIS EVANS**—In terms of the broader issue, the problems with the DVDs were raised with me by one of my electorate staff, so it might have been just Western Australia. I think you were going to withdraw it—is that right?

**Mr Metcalfe**—If it is the same one I am thinking about, it was recently released but it will obviously need to be updated given the change of name in the department. I suspect that that is what you might be talking about, but I am at a loss here as to whether that is in fact the one.

**Senator CROSSIN**—I think we are talking about the WA DVD. Are there any other promotional DVDs your department has produced that can be used right across the board?

**Mr Metcalfe**—I will have to check, but certainly the department has a communications requirement and capability and we provide DVDs, some for public consumption and some for internal consumption. For example, I recently recorded a DVD that is used in training courses for staff.

**Senator CROSSIN**—I am talking about promotional ones.

**Mr Metcalfe**—If we are talking about an external promotional DVD, I think we are talking about the one that was produced in our West Australian office.

**Senator CROSSIN**—We are looking for the actual cost of that DVD—how much it cost to produce it.

**Mr Metcalfe**—We are checking on that, as I said.

**Senator CROSSIN**—Do you know whether that DVD is still in use or has been scrapped because of the change of the name in the department?

**Mr Metcalfe**—I will check on that as well, but it would not be my expectation that it would need to be scrapped. It may well be that the voice-over needed to be rerecorded to change the name of the department from Immigration and Multicultural Affairs to Immigration and Citizenship, and I would not think that that would be a particularly significant part of the cost. The DVD that I think we are both talking about was essentially produced to provide information for clients and potential clients about the range of services provided by the department and was tailored into a series of fairly short grabs or packages specific to overseas students, potential migrants or more general clients sitting in public areas. I saw a presentation of that DVD in what I thought was its final form when I was in our West Australian office on, from memory, 22 December last year. Someone has reminded me that we also produced the annual report on DVD as well. That is something that we are seeking—to move more and more away from paper based reports into a DVD format for obvious cost savings and savings of paper.

**Senator CHRIS EVANS**—It would be a long DVD if you were going to do the annual report on it.

**Mr Metcalfe**—No, it is amazing what you can fit on a DVD.

**CHAIR**—The wonders of modern technology, Senator Evans.

**Senator CHRIS EVANS**—I meant in terms of sitting down to watch it. The annual report is riveting, and I make a point of reading it every year.

**Mr Metcalfe**—I was going to suggest that perhaps on the first half day of Senate estimates we should watch it together!

**CHAIR**—Now there's an idea!

**Senator CROSSIN**—I am sure you do not intend people to watch the annual report. I am sure it has been compressed.

**Senator CHRIS EVANS**—I am not sure that is right. I think Mr Metcalfe is telling you that he does want you to watch it.

**CHAIR**—It has been read by Mr Metcalfe and members of the executive. It could be quite interesting.

**Mr Metcalfe**—On the DVD, you actually get me talking at you rather than having to read my words in my secretary's overview.

**Senator CROSSIN**—You will be able to podcast it next.

**Mr Metcalfe**—So it is a very entertaining DVD.

**Senator CHRIS EVANS**—Did you get any dramatic training for that?

**Mr Metcalfe**—It comes with a childhood in country Queensland!

**CHAIR**—That is possibly more information than we needed! Could we go back to questions.

**Senator CROSSIN**—Can I ask you to take on notice a list of DVDs that are currently produced for internal and external use, the cost of the production of each and the intended use of each.

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

**Senator CROSSIN**—Thank you. I read somewhere recently that you had produced floor sized jigsaw puzzles for staff in the department.

**Mr Metcalfe**—I will have to check on that.

**Senator CROSSIN**—If you could. I am pretty certain I read somewhere that jigsaw puzzles had been produced for—

**Mr Metcalfe**—I think that we will stop at nothing to try and ensure that staff understand what their job is and that we will stop at nothing to ensure that the culture that we develop in the organisation is built around our strategic themes of having fair and reasonable dealings with clients, of being open and accountable and of having well-trained and supported staff. Any device you can find to ensure that those themes and objectives are captured by staff—rather than them just reading a dry, boring report or statement—is worth while. I said in my opening statement that, on a department which had been rightly accused of having aspects of poor culture, there had been some pleasing comments made by the Ombudsman and the Human Rights Commissioner in recent times.

**Senator CROSSIN**—Going to the activity that will now be generated due to the change of the department's name, no doubt there are plans to change signage, stationery, shopfronts and advertising. Is that correct?

**Mr Metcalfe**—That is correct. I will get Ms McGregor to answer any questions you might have on this issue.

**Senator CROSSIN**—So there is a plan to rebadge the department under the new name?

**Mr Metcalfe**—The name has changed and therefore we do need to identify ourselves by our name.

**Senator CROSSIN**—Tell me about what that will mean in terms of signage.

**Ms McGregor**—The name change will impact on several elements of our presentation, notably signage. We anticipate that will be one of the more expensive elements, although these sorts of things are not terribly significant in the greater scheme of things. Our early indication of costs around signage is around \$20,000 for the changes nationally. That would go to taking off 'multicultural affairs' and replacing it with 'citizenship' and those sorts of things.

**Senator CROSSIN**—What about stationery?

**Ms McGregor**—If I can go through the sorts of things we have analysed at this point: it will impact on our uniform and corporate wardrobe, business cards, correspondence templates, fact sheets, forms, automatic email messages, voice greetings and scripts provided to staff, on-hold messaging, signage, the website, the intranet and service delivery systems. In

terms of the stationery, much of that would be generated by the templates, so we do not anticipate large costs around that.

**Senator CROSSIN**—What is your estimate of the total cost of changing?

**Ms McGregor**—We are still working that out. We may be able to give you a better figure in the next few weeks.

**Senator CROSSIN**—Have you worked it out for any of those areas that you identified? You have given me the figure of \$20,000 for signage. Are there any other specific areas that have been identified?

**Ms McGregor**—Not specifically. The \$20,000 is the one that we are most clear on at this point.

**Senator CROSSIN**—There is no estimation of what this is going to cost?

**Ms McGregor**—Not as yet.

**Senator CROSSIN**—When you talk about corporate uniforms, what are you referring to there?

**Ms McGregor**—We may have indicated in previous estimates that we were introducing a consistent uniform for our border staff and that we would make elements of that available on purchase with tax deductions to the remaining members of the department staff. On each of the uniforms there is a tag, which previously would have had 'DIMA' on it. That will need to be changed or badged over. Some of the border staff have the word 'immigration' on their shirt or their jacket or whatever, so that will not need to change. We are currently looking at low-cost options that would mean people could just either iron on something over the previous 'DIMA' tag or stitch something on. That is work that we have underway at the moment. That will not cause any increased cost to staff, and we think it will be pretty small in terms of what it will cost to the department.

**Senator CROSSIN**—I might get you take that on notice. I am assuming you will have the breakdown of the costs per area and a total cost by the time answers to question on notice are due back, which is on 30 March.

**Ms McGregor**—That would seem reasonable.

**Senator CHRIS EVANS**—Including sewing patches over the old ones?

**Ms McGregor**—It is still being explored. That could be an option. Or, in this modern day, they could be replaced by iron-on transfers or whatever.

**Senator CHRIS EVANS**—I thought the minister ordered that you sew on new patches—is that right?

**Ms McGregor**—No, it is something that we have been pursuing because, as part of the tax deduction that you can get by purchasing the wardrobe, you are required to have the acronym or name consistent with the title of the department. However, there is leeway in that regard for people. It is not as if we all have to rush out and sew it on by tomorrow or whatever else. We do not want anything tacky either, so we are exploring our options around that.

**Senator CHRIS EVANS**—All the new uniforms have a departmental badge on them.

**Ms McGregor**—It is an embroidered acronym. It was ‘DIMA’. You would have ‘DIMA’ near the pocket on your jacket.

**Senator CHRIS EVANS**—I noted you have added an ‘A’ to your new acronym. Will people have to sew something over the top or put a new transfer on it—is that right?

**Ms McGregor**—Yes.

**Mr Metcalfe**—The reason we are doing it that way is that it was only very recently that we introduced these arrangements so that staff had access to purchase a corporate uniform using tax entitlements. Many staff would have only just expended money. As they come to replace clothing down the track, that will be less of an issue. But, as Ms McGregor said, there are some reasonably sensible, low-cost options: either wearing the departmental name badge over the top of the area where the acronym is sown or looking at some iron-on transfer that might be low cost and yet ensure that they are reflected as being staff of the Department of Immigration and Citizenship.

**Senator CHRIS EVANS**—Does the department subsidise the uniforms or is the full cost met by the staff?

**Ms McGregor**—There are a couple of elements to this. In terms of the border entry staff, the cost is fully met by the department. In terms of the other items, people like me who purchase a uniform have to pay for it themselves, but there is a significant tax deduction by it being accepted as a corporate wardrobe. I am disappointed I forgot to wear it today. I am just back from leave.

**Senator CHRIS EVANS**—So am I! I thought the minister would stand out as the only one not in the uniform.

**Ms McGregor**—I might whip home at lunchtime and come back with it on.

**CHAIR**—Hopefully, we will have moved off uniforms by lunchtime.

**Senator CROSSIN**—When a change like this occurs, do you get compensation from Treasury for such a cost to the department or is it part of your \$60 million overspend?

**Mr Metcalfe**—I could be glib and say I hope it costs about \$50 million, but I will not do that. We think it will be a minor cost and it will be part of the overall discussions with the department of finance as to the department’s financial situation. I would note that these things are not unusual—changes of names associated with administrative rearrangements or whatever. It is only a year ago that we were the Department of Immigration and Multicultural and Indigenous Affairs. We have had local government responsibilities at various times and we have been called Immigration and Ethnic Affairs. Name changes do occur and we seek to minimise the cost of the transition. Fortunately, these days letterhead and various other things are not a cost. Templates are a very minor cost. The templates can be changed quickly. But some things of course are new. Our website obviously has to have name changes made through it. We are doing that in the most cost-effective way that we can.

**Senator CROSSIN**—What was the cost when you went from DIMIA to DIMA?

**Mr Metcalfe**—We would have to check on that. I am not sure.

**Senator CROSSIN**—You might want to take that on notice for me.

**Mr Metcalfe**—Yes.

**Senator CROSSIN**—Generally, would you be expected to wear this cost within your budget?

**Mr Metcalfe**—Within the extremely complex financial arrangements that I referred to before as to the department's base resourcing, additional resourcing, unexpected resourcing and new policy activity based resourcing and whatever, this will simply be part of that discussion which revolves around a whole range of things.

**Senator NETTLE**—Was the recent rollout of uniforms in December last year? I saw that mentioned in a recent report.

**Mr Metcalfe**—It would have been around then. Ms McGregor might have the detail.

**Ms McGregor**—From December the new uniforms were to replace the existing, seemingly ad hoc, arrangements that were in place around the various states.

**Senator NETTLE**—The new uniforms for the Department of Immigration and Multicultural Affairs were rolled out in December—is that right?

**Ms McGregor**—Yes. Staff at the border entry points commenced wearing them on 15 January. That was the start date.

**Senator NETTLE**—When was the name change?

**Mr Metcalfe**—The Prime Minister made the announcement just after Australia Day, I think.

**Senator NETTLE**—So a week after the uniforms?

**Mr Metcalfe**—Yes. He did not check with me as to whether we had just rolled out a uniform, but—

**Senator NETTLE**—Could we get a cost for the rollout of the uniforms that happened in December?

**Ms McGregor**—I may have that here.

**Mr Metcalfe**—Just to recap while Ms McGregor is looking for a figure: you would be aware, on coming into Australia, that quarantine officers have a standard uniform and that Customs officers have a standard uniform. For reasons that we are not entirely sure about, the department of immigration have had a requirement that its staff, at the border points, properly identify themselves by wearing a recognisable uniform. But the thing that was a bit unusual was that different uniforms had crept in in different offices and so, were you to come through Sydney airport, you may well have found an Immigration officer who would have looked quite different from the one that you would have seen if you had come through Adelaide airport.

We have sought, over the last year or two, to move to a more modern but standardised uniform for our officers, who clearly need to be identified in that border entry situation as being Immigration staff. And that is what resulted in the rollout which commenced finally on 15 January. At the same time we did that, though, we had had a lot of staff who were evincing a desire to access a departmental uniform on a voluntary basis so that they could obtain that

using tax concessions, and we were very happy for our staff to be able to identify themselves in that way. So there are two elements of what we are talking about here: the compulsory uniform that is there for our border entry staff and some related staff who work in seaports, and the voluntary uniform that Ms McGregor referred to having purchased and many other staff have purchased which is available on a voluntary basis but with, like with any other company or agency, the ability to take advantage of tax concessions.

**Ms McGregor**—I will have to take that on notice, Senator.

**Senator NETTLE**—Okay. I remember previously there was a consultancy paid for, for the new slogan, and that, as a result of that new slogan, there were water bottles, stress balls, the jigsaw puzzles that Senator Crossin was talking about, lanyards and a whole range of other equipment made. Are any new versions of those being done with your new name on them?

**Mr Metcalfe**—You are wrong, Senator; there was no consultancy paid for associated with the slogan. There was an internal competition within the department, and the slogan, ‘people our business’, was chosen entirely from within the resources of the organisation. We have promoted that slogan in many ways. It is contained on our letterhead and our website and in things such as the DVD that Senator Crossin was talking about before. And I just remind you, Senator, because I know that at a previous estimates hearing you sought to belittle this activity of promoting a positive culture in the organisation—

**Senator NETTLE**—But I think—

**CHAIR**—Could you let Mr Metcalfe finish, please, Senator?

**Mr Metcalfe**—Senator, you issued a press release belittling the efforts that I was undertaking to promote an organisation which had a strong value basis that we deal with people and we need to therefore, by definition, show humanity in what we are doing.

**Senator NETTLE**—We have had discussions over years now about the culture within this department. You have addressed that as being a serious issue and it is something that we have talked about. I think it continues to be an issue of public debate and I will get on further in my other questions to this question of cultural change that I note you addressed in your opening statement. It is a serious topic that we have discussed here on several occasions. And on one of those we heard about all of the equipment—I think there were coffee mugs and water bottles that were made—

**Mr Metcalfe**—There was some internal promotional material to remind people about the sort of organisation we need to be.

**Senator NETTLE**—So my question was about whether you have produced any more of that sort of equipment for the department with the new name.

**Mr Metcalfe**—With the Department of Immigration and Citizenship?

**Senator NETTLE**—That is right.

**Mr Metcalfe**—The answer to that is definitely no, because the name change has only just occurred and, indeed, I think you are right in saying that we are now a long way down the path in terms of the culture change in the organisation. I am glad that you—

**Senator NETTLE**—I was saying that we have been talking about it for a long time.

**Mr Metcalfe**—Yes. Well, I would hope that you have recognised the sorts of comments that are being made by many hundreds of thousands of clients and key opinion leaders about this issue.

**Senator NETTLE**—Yes, I will get onto it later.

**Mr Metcalfe**—We will continue to use training courses and various other things to remind officers about their obligations and the culture. In dealing with a budget that is very tight, one of the sorts of things you obviously look at is whether or not that sort of internal promotional material remains necessary.

**Senator PARRY**—I would like to move from uniforms to other major internal investigations. Under the latest report, for 2005-2006, 229 allegations were investigated. Were they investigated by the internal investigations unit?

**Mr Metcalfe**—Do you have a page reference that you are looking at?

**Senator PARRY**—I believe it is in your opening overview.

**Mr Metcalfe**—In the secretary's review, is it?

**Senator PARRY**—It also compares it to 2004-2005, with 205 allegations investigated. It is in the early stages of the report; I cannot put my finger on it now.

**Mr Metcalfe**—I will get Mr Correll and Ms McGregor to talk about that. There are essentially two broad areas of internal investigation, and that is why I wanted to ascertain what you are particularly focusing on. One goes to areas where there might be allegations of corrupt behaviour by departmental officials. We do get those complaints. On very rare but regrettable occasions they are proven. We are obviously determined to run a very clean organisation. There is a separate statistic about what you would regard as internal staffing complaints, where a person might be regarded as having breached the code of conduct through their performance within the organisation. I am just not too sure which statistic we reported on and which one you are focusing on.

**Senator PARRY**—There was an indication of one prosecution as a result of the 229 allegations.

**Mr Metcalfe**—Right. Did you have any particular question, or was it about the general description?

**Senator PARRY**—Just generally in relation to those, I wanted to know whether they were all investigated by the internal investigations unit, if that is the correct title. I cannot find a reference to any unit in the report.

**Ms McGregor**—There is an internal section, known as the Values and Conduct Section, which has a team of qualified investigators responsible for investigating allegations and breaches of the code of conduct. However, where necessary we also bring in external investigators, so it is not solely conducted by the Values and Conduct Section.

**Senator PARRY**—Where would you access those external investigators?

**Ms McGregor**—A lot of them would be on a panel through the Public Service Commission and those sorts of things.

**Senator PARRY**—How many permanent staff would you have in the values and conduct unit?

**Ms McGregor**—We will have to take that on notice. It is somewhere around 10 to 12, but I will get the correct number for you.

**Senator PARRY**—Thank you. Under whose line does that fit within the organisational structure? I could not find anything. I presume it is under yours?

**Ms McGregor**—Yes. Ms Alison Larkins is the General Manager of the People Services, Values and Training Division, and it is within that division.

**Senator PARRY**—You have indicated that you get external assistance. Do you feel that the staff you have are competent and do you know their backgrounds for investigation work?

**Ms Larkins**—We have two classes of investigation. We do both code of conduct matters and internal fraud. We have a mix of people with Public Service background and people with police background from a number of different Australian police forces. They all have investigations training.

**Senator PARRY**—This may be something to take on notice, but do you know the ratio for the number of employees compared to other departments with internal investigation processes? Do you know where you fit?

**Ms Larkins**—No, I would have to take that on notice.

**Senator PARRY**—That would be great; thank you. Do you know—this might be another question on notice—the cost of the running of that particular unit and also the external advice, consultancy or investigations that are conducted?

**Ms Larkins**—Yes.

**Senator NETTLE**—I have some general questions on the issue of climate change and the impact that that has on people movement and people coming to Australia. My recollection, from when we talked about this last time, was that it was not an issue that the department had looked at or done any planning for. I want to follow it up to see whether it is an issue that, since then, the department has begun to look at.

**Mr Hughes**—Yes, I recall the discussion we had, which I think started off with some discussion of the legal difference between a refugee under the refugee convention and a person who might want to leave their home country because of an environmental disaster of some sort. I think I said at the time that we do not have any specific contingency plans in relation to anyone who has to leave their home because of an environmental disaster. But of course every year, when we are planning the migration and humanitarian programs, we have a scan of the range of possibilities and demands that might be made on the migration or humanitarian programs. To date, there really has not been any specific demand to resettle people as part of any international response to environmental disaster. If there were such a circumstance, if people in a particular country had to leave their homeland because of environmental disaster and find another home, I think that would be part of some major international effort and Australia would have to consider, in any particular circumstance, what part it played.

We have certainly seen in the past that we are able to respond quickly to quickly developing humanitarian disasters caused by persecution or war. I quote, for example, the fact that we were able to bring 4,000 Kosovars to Australia at very short notice under the Operation Safe Haven arrangements. Equally, not long after that, we were able to bring 2,500 East Timorese out of Dili to Australia at very short notice because of the temporary need for safe haven. I think we have shown in the past that we have a capacity to respond quickly to developments and I am sure we would be able to do that in the future if the need arose and if the government made a decision to assist in the evacuation of people because of an environmental disaster.

**Senator NETTLE**—Were you saying that Australia had played no role in accepting people because of environmental disasters? I am just clarifying whether you were talking about Australia playing no role in that area globally—

**Mr Hughes**—I am saying that there is no current demand on us—

**Senator NETTLE**—On Australia?

**Mr Hughes**—Yes.

**Senator NETTLE**—We talked last time about requests from Pacific island nations for Australia to discuss with them migration plans for the future, for people to come to Australia as a result of sea level rise. I spoke previously about representations made to the Australian government on this issue. At the time, the minister was the only person to respond. She did not think the department had been involved in any of those discussions. I thought I would ask again whether the department of immigration or any other department has been involved in any discussions with Pacific island nations about people coming to Australia because of rising sea levels.

**Mr Hughes**—I think you asked a question on notice about that, to which we provided the answer. Our research was that in 2002, we believe, there was a request from a Pacific island nation to consider the possibility, if sea levels rose and made the country uninhabitable, to take some people.

**Senator NETTLE**—And that request was rejected in 2002?

**Mr Hughes**—My understanding of the response—and I do not have the details—was probably similar to the one that I have just given. I think the response of the Australian government at the time was that, if any such situation became imminent, Australia would consider its position, along with other countries that might be involved in an international response. I do not think that the matter has been pursued since then, because I do not think the environmental disaster that the country was then concerned about has actually manifested itself. It does not mean that it will not, but my understanding is that the request has not been pursued since then.

**Senator NETTLE**—It has certainly led to action in other countries, with New Zealand responding to that request in 2002 by now taking a number of migrants coming from Tuvalu because of this issue. We spoke at the last estimates about requests from Kiribati that had occurred at the last Pacific Islands Forum. I am wondering whether you can address that issue. You have only spoken about one instance in 2002. In 2006 I understand there were

requests at the Pacific Islands Forum. Was the department of immigration involved in any of those discussions?

**Mr Hughes**—I do not have any information on the 2006 occurrence that you are referring to. I will have to check on that. Our inquiries had only turned up the request in 2002.

**Senator NETTLE**—You spoke in your first answer about analysis work that the department has done on migration movements generally. Is this done by a particular section within the department? Can you outline which section in the department looks at those migration movements generally, in order to inform movements?

**Mr Hughes**—Various parts of the department take an interest in world migration movements. The Refugee, Humanitarian and International Division, particularly, has a focus on humanitarian movements around the world, but not exclusively—also broader migration movements. The Migration and Temporary Entry Division is particularly interested in labour movements around the world. Also the Strategic Policy Group of the department, recently formed, in a new initiative that has been introduced, does a broad scan of developments around the world that might have an impact on potential migration movements and Australia's involvement in them.

**Senator NETTLE**—Have either of those two areas you talked about—including the refugee and humanitarian section—looked at the issue of people movement as a result of climate change?

**Mr Hughes**—Not in any detail at this stage, although we are aware that it is a potential issue.

**Senator NETTLE**—Does 'not in any detail' mean some preliminary study or analysis has been done, or nothing?

**Mr Hughes**—It means not in detail—no detailed work has been done. We know that it is an issue that arises from time to time—it is quoted from time to time—but as I said there are no current demands on Australia to take people fleeing an environmental disaster.

**Senator NETTLE**—So no reports or analyses have been done by that section.

**Mr Hughes**—Not of the kind that you are looking for.

**Senator NETTLE**—Has there been any analysis done of the comments made in the Stern report about this issue? We talked about this at the last estimates. The Stern report talks about large scale and disruptive population movement occurring as a result of climate change. Has the Stern report been looked at by any of the department's sections that deal with people movement?

**Mr Hughes**—I think the department has looked at the Stern report, but that does not mean that we produced any internal documents at this stage flowing from the contents of the Stern report.

**Senator NETTLE**—Do we have someone coming to the table to add any more detail on this?

**CHAIR**—No, Senator: I think Mr Hughes has answered your question.

**Senator NETTLE**—So at this stage there is nothing more to report about any information the department has on climate change and the impact on people movement?

**Mr Hughes**—Nothing more to report, apart from the fact that, as I said, we are aware that it is a potential issue and there are no current demands. In the past, when demands of this nature have arisen and an international response has been required, the Australian government has been able to move very quickly—more quickly than most—to play its part.

**Senator NETTLE**—Does the section within the department that looks at people movement look at future people movement? You have been saying that there has been no current demand on Australia so you have not looked at this issue but I want to address the issue of planning and whether, in that planning about future people movement, you have been looking at the issue of climate change.

**Mr Hughes**—We are developing our long-range planning capacity through the work now intending to be done annually by our strategic policy group. We also have annual program consultations with the community and interested organisations in Australia to take on board views of the community in Australia about how we should conduct our migration planning. I guess that is another opportunity for those more long-range ideas to be incorporated in our planning horizons.

**Senator NETTLE**—You said that the department had looked at the Stern report. What section of the department was that? Who within the department has read the Stern report?

**Mr Hughes**—I cannot say specifically which areas of the department have looked into it but I can find out for you.

**Senator NETTLE**—I would appreciate it if you were able to do that. I will move to another general issue, which is whether the department has been involved to date in any planning around the access card proposed by the government.

**Mr Metcalfe**—Yes, we have.

**Senator NETTLE**—Can you outline for us what level of involvement and what kind of involvement the department has at this stage?

**Mr Metcalfe**—Others may have a little bit more detail, but I am a member of a committee of secretaries which is involved in discussions with the Department of Human Services on the development and implementation of the access card. That group is chaired by the secretary of the Department of Human Services. Our specific involvement is around the fact that, as I am sure you well know, one in four Australians were born overseas. So quite often their base identification will relate to documents that are held by our department—the original migration documents or other documents that might exist.

So we have been having some discussions with the Department of Human Services as to the ultimate process whereby people will be able to verify their identity prior to the issue of the access card in the same way that Department of Foreign Affairs is cooperating with the Department of Human Services because so many million Australians hold a passport, and there is obviously identification material there as well.

It is very early days at this stage but we may have some other involvement—for example, when it comes time to register for the card we would expect that a certain number of people

who will be accessing the card may require translating or interpreting assistance. So our telephone interpreter service may be an aspect of the overall service support for the introduction of the card.

**Senator NETTLE**—Are there any other areas? Are they the only two?

**Mr Correll**—I participate on a deputy secretary working group chaired by the Office of the Access Card within the Department of Human Services.

**Senator NETTLE**—What issues or involvement does the Department of Immigration and Citizenship have on that committee?

**Mr Correll**—Again, issues associated with registration processes for persons acquiring the access card, potential implications in legislation—with any linkages between legislative developments for the access card and immigration legislation—and broadly to ensure that, from an immigration perspective, we are able to keep abreast of developments with the card and are able to contribute where there are implications for immigration business.

**Senator NETTLE**—If we imagine a future where the access card is in place, what level of interaction would the department then have? You were talking about registration in terms of setting it up but I want to ask about when the access card is in place. Then what interaction would the department have with any access card?

**Mr Correll**—I think for the future it will depend on the way the access card is utilised. But it may well potentially be used together with other documents when people are attempting to do transactions, including transactions relating to immigration matters. What we are trying to do is keep in close touch with the way the card is developing so that we can appreciate where there are those cross implications into the immigration portfolio. We are not what you would call 'at the centre' of the agencies affected under the access card development, such as some of the welfare agencies.

**Senator NETTLE**—I am trying to get an understanding of how you might interact. Do you mean that for overseas travel, for example, people might show their access card? I am just trying to get an idea of what kind of involvement you envisage.

**Mr Metcalfe**—My current understanding is that our involvement or use of the access card will be no different than our current involvement with the Medicare card. The access card is replacing, I think, 30 plus different cards currently issued variously by Medicare, Centrelink, the Department of Veterans' Affairs and whatever to simplify the processes for a very large number of Australians who require access to government services through those methods. On occasion some people seek to indicate to us through the use of a Medicare card and various other documentation who they are. I know the access card is not an identity document but if a person wished to show it to us then of course we would look at it. But it will not be a travel document. The passport will remain the travel document, and for foreign nationals a visa will be an essential part of a travel document. So, for people coming to or departing Australia, either an Australian passport or a foreign passport will be the primary means of identification.

**Senator NETTLE**—Because the card is designed to be for use in accessing government services—

**Mr Metcalfe**—That is correct.

**Senator NETTLE**—would you envisage that when people came to a Department of Immigration and Citizenship office to deal with matters they would use their access card in order to reach the services of the department of immigration or to identify themselves as you just described?

**Mr Metcalfe**—No, because at this stage the sort of services that we provide are not those services. The services the access card will provide access to are essentially government payments and benefits for veterans, benefits under Medicare and benefits through Centrelink and associated areas. It is not necessary to produce a Medicare card and it will not be necessary to produce an access card to obtain an immigration service. The vast majority of our clients are foreign nationals, of course, who would not have an access card if they were only temporarily in Australia. If they were here on a permanent basis and had an access card we would usually know about them. If they sought to provide a range of documentation to us establishing who they were in the way that people provide their drivers licences, credit cards and whatever, we certainly would not be averse to them providing the access card as part of that overall set of information.

**Senator NETTLE**—I am just trying to imagine other uses. Would compliance officers be able to ask to see someone's access card for determining citizenship? Is that something you would imagine—

**Mr Metcalfe**—No. Essentially our officers are working in an environment where, if a person asserts that they are a citizen, we need to have a reasonable suspicion that they are an unlawful noncitizen to take any action. A person certainly would not be able to be compelled or otherwise to provide an access card in that circumstance. But if a person said: 'Look, you've got the wrong person. This is me. Here's my access card,' and volunteered it, of course you would not reject that.

**Senator NETTLE**—What implications do you think the existence of such a card would have on the sorts of cases that we have talked about before, of the Cornelia Raus and the Vivian Solons of the world?

**Mr Metcalfe**—We are getting into the hypothetical here.

**Senator Ian Campbell**—I can answer that. I had a discussion last week with the minister for transport from Queensland, the Hon. Paul Lucas. When referring to the Queensland government's drivers licence smart card, which they are going to bring in, he said, 'Had his card been in existence'—the Queensland smart card—'then the Cornelia Rau episode would not have occurred.' You may wish to comment on that.

**Mr Metcalfe**—The only additional comment I would make is that it would not have occurred had Ms Rau chosen to show it to us. Of course, as Palmer found, Ms Rau successfully managed to indicate to a number of government authorities, not just the immigration department, that she was an entirely different person. Palmer's report in relation to Ms Rau ultimately went to the length of time it took to establish a real identity and the conditions of the circumstances at that time.

Ms Solon's was a very unfortunate case because, of course, she did assert that she was an Australian citizen. Ultimately, a combination of factors, including the fact that she was recorded in departmental systems under many different names and identities led to the terrible

mistake that was made in relation to her departure. Had she had an identifying document, whether it was a Queensland or New South Wales drivers licence or an access card or whatever, then maybe it would have assisted. I do not think the access card would relieve us of the duty to properly and positively establish identity, and that is one of the very clear lessons that have come out of those particular cases. A negative presumption that if a person cannot prove who they are means that they must be illegal is completely inappropriate. There has to be a positive finding that in fact a person is an unlawful noncitizen. In the overall suite of material that a person had around them, if an access card was present and could contribute that would be a good thing.

**Senator NETTLE**—It is envisaged that the access card will help immigration with some identity issues—is that right?

**Mr Metcalfe**—If a person has it on them and voluntarily provided it to us then it could help.

**Senator NETTLE**—Was the department of immigration involved in consultations in the lead-up to the announcement of an access card?

**Mr Metcalfe**—Yes.

**Senator NETTLE**—Can you outline the department's involvement?

**Mr Metcalfe**—It was the normal intergovernmental-interdepartmental consultation on matters that ultimately went for decision to government. As you would be well aware, on any major issues that go to policy or major programs that may have an impact on the portfolio there is a consultation process, and we were involved in the usual proper way.

**Senator CROSSIN**—Following on from that, are you suggesting that if either of the two people that you referred to had an access card and if they could not find it or did not produce it, then it would not have been of any use? Would they have had to willingly produce it and show it to you for it to be of any use?

**Mr Metcalfe**—My understanding is that we would not have any grounds to compel a person to provide an access card. Quite deliberately, the legislation says that it is not an identity document; it is owned by the department. A person has to choose to use it. With either of those cases, had they had a Medicare card—and they may well have had one—a veterans card, a credit card or whatever, they are all material things. It is not a case where we would say, 'Show us your access card to prove your identity.' If a person says, 'This is who I am', of course we would look at that material.

**Senator NETTLE**—I want to go to some general questions around ministerial interventions and how they are being handled. I understand that prior to leaving the portfolio Senator Vanstone dealt with a number of ministerial intervention cases. Is there any way that we can get the number of those that were dealt with in, say, in December and January—in the last period of time before she left the portfolio?

**Mr Metcalfe**—We would have to take that on notice, I would suspect.

**Senator NETTLE**—Perhaps you could do that. Since Senator Vanstone has finished her period as minister, I would also be interested in how Senator Vanstone's record on ministerial

intervention compares with the minister prior to her, Minister Ruddock. We have talked about that here before.

**CHAIR**—You mean you want the statistics, Senator Nettle?

**Senator NETTLE**—Yes, and any other general comments that the department wanted to make.

**CHAIR**—I am sure the department can provide the statistics.

**Mr Metcalfe**—I am certainly happy to assist. I just note that Mr Ruddock was minister for over seven years. If the statistics are readily available and have been compiled—they may well have been compiled previously—then of course we will provide them. But it would be an unreasonable burden to look back over 10 years of statistics. I would want to look and see whether it would be a reasonable use of resources.

**CHAIR**—That is a reasonable caveat, Mr Metcalfe.

**Mr Metcalfe**—We may well have provided that material; it is simply a question of finding out.

**Senator NETTLE**—I was imagining you might have, but I thought the Senator Vanstone part would not have been a drama.

**Mr Metcalfe**—That is three years, and I think that is reasonable.

**Senator NETTLE**—In the process of ministerial interventions, I want to understand the dates that they are provided to people. If you get notice that a decision has been made and it has a particular date on it, is that the date on which it was made? Are they backdated? How does that process work?

**Mr Hughes**—I hope I understand your question correctly. Usually someone would get, first, a letter asking them to undertake health and character checks as an indication that the minister was proceeding to consider the case favourably. Then they would get a further letter if the minister was satisfied with the health and character checks and decided to intervene. My understanding is that, from the date of that further letter, they would have a visa.

**Senator NETTLE**—In a situation where they have been refused a ministerial intervention, how does that work?

**Mr Hughes**—That might happen in a couple of ways: either the guidelines are not met and the person is notified that the guidelines are not met or it might happen after the minister has looked in detail at the case but has declined to consider it or intervene.

**Senator NETTLE**—If you get a letter saying that you have had a ministerial intervention rejected, has the intervention been rejected from that date? Do you backdate those letters? How does that work?

**Mr Hughes**—I do not think that we backdate letters. They would be signed after the matter had been decided.

**Mr Metcalfe**—I think what you are describing here, Senator, is that if a person is notified of a decision that the minister will exercise her or his powers, the person is notified that the

minister has formed that decision and the letter invites them to make the necessary plans as to what their future will be.

**Senator NETTLE**—In the gathering of statistics within the department, do you separate ministerial interventions on the basis of which migration agent was involved in assisting with the application?

**Mr Hughes**—No.

**Senator NETTLE**—The issue of ministerial interventions has been raised in the Senate committee inquiry into migration. Has there been a review of the way in which ministerial interventions operate in response to concerns raised in that Senate inquiry?

**Mr Hughes**—The approach to ministerial interventions is constantly being reviewed and updated as different ministers consider how they personally wish to use their powers. Senator Vanstone, for example, had recently considered some changes to the way that she used her power. She had consulted with some community groups on her ideas. Those changes were not implemented before she left the ministry, so it would be a matter for the new minister to consider how he would like to use his powers.

**Senator NETTLE**—Do you know which community groups were consulted in that process?

**Mr Hughes**—I can get you a list of those. The minister personally met, for example, with Amnesty International, the Refugee Council of Australia, I think a representative of the refugee law centre in Victoria and a representative of the Victorian foundation for survivors of torture and trauma. I cannot remember the details of other people present at the meeting, but we can get them for you.

**Senator NETTLE**—You said that there were changes due to come about as a result of those consultations.

**Mr Hughes**—Senator Vanstone was certainly considering whether to make some changes to the operation of the system and had started the process of discussing these with community representatives. But, as I said, she was not able to finalise those before leaving the ministry.

**Senator NETTLE**—Can you outline what those changes were?

**Mr Hughes**—At the time, Senator Vanstone was looking at ways of identifying any issues that needed to be considered through ministerial intervention much earlier in the process so that they did not only arise at the time when people were potentially leaving Australia. This was so that any issues could be identified and considered quickly without the need for them to come to the fore very late in the piece at the time of departure or to reduce the incidence of multiple intervention requests from people who might put in four, five, six, seven or eight requests over a long period.

**Senator NETTLE**—That sounds like a complementary protection model.

**Mr Hughes**—It is one way that that could be achieved, but it can also be achieved through ministerial intervention.

**Senator NETTLE**—It sounds similar to what Senate committees and others have recommended in the past in terms of a complementary protection model.

**Mr Hughes**—It sounds like the end that the Senate committee was trying to achieve. The Senate committee thought that the best means would be an up-front complementary protection visa. I think Senator Vanstone was trying to achieve the same end but through an adjusted ministerial intervention process.

**Senator NETTLE**—Has the new minister signalled whether he will pursue this course of action?

**Mr Hughes**—I think it is a little early for that.

**CHAIR**—Senator Nettle, I am keen to move on to outcome 1 at some stage. Could you give the committee some indication of how much more in general you expect to cover?

**Senator NETTLE**—I do not have much more to cover in this area of ministerial intervention; then I have one other area that I want to cover in general. I want to ask about the process of repeat ministerial interventions. I could be wrong about this, but I understood that Minister Vanstone had instructed that all repeat ministerial interventions be processed within two weeks. Is that right?

**Mr Hughes**—I will ask Mr Illingworth to assist me with that question.

**Mr Illingworth**—The department had adopted a 90-day target as an interim measure to deal with all of our processing of ministerial intervention requests under the humanitarian stream. That is section 417. Within that time frame, repeat requests where there were no new issues raised were handled much more quickly than that. The 90-day time frame was crafted as an interim step, with the more complex submissions in mind where new issues were raised. I am not aware of a formal target of two weeks. But there certainly were cases where the department was finalising repeat requests where there was no new information within time frames of that order and indeed, in some cases, significantly shorter.

**Senator NETTLE**—You said the department was working to 90 days. When did that come into place?

**Mr Illingworth**—That was introduced around the middle of last year.

**Senator NETTLE**—Was that a guideline or a requirement? How did that work?

**Mr Illingworth**—It was a target. We had a large number of cases on hand and we wanted, essentially, to move them through. We set ourselves a target of 90 days. And then there was a process where we essentially managed the case load that we had on hand to best deliver a very quick turnaround for new people coming into the process.

**Senator NETTLE**—What has been the success rate in meeting that 90-day target since it was introduced?

**Mr Illingworth**—We implemented it through the six-month period from midyear to the end of the year. So, essentially, by the end of the year we had moved from a position where we had a significant number of cases on hand, many of which were a month or two months—perhaps more—old, to a point where we had very few cases on hand and most of them were within the 90 days.

**Senator NETTLE**—So is the plate clear, so to speak, in the sense that the intention would now be that you could meet that target of 90 days?

**Mr Illingworth**—That is our aspiration, although there are issues about funding which we will need to address. It is a target which we applied internally in the department, so we are thinking about how we might best sustain that capability on an ongoing basis. But at the moment we have pretty much a clean slate.

**Senator NETTLE**—You talked about funding—do you mean in terms of staffing numbers to meet that target?

**Mr Illingworth**—We have met that target but it was an interim target, as I mentioned, and now we are thinking about how best to establish a process that can, into the future, produce strong support for the minister in a timely fashion; whether that is with a 90-day time frame, what the resource implications are and all of those issues are matters that we are looking at now.

**Senator NETTLE**—When do you think those issues may be resolved in having an understanding of what staffing resources you need to meet that 90-day target?

**Mr Illingworth**—It will take a little time, not least because we would want to ensure that the support that we provide to the minister reflects his expectations and his preferences. As he looks at the case load he will no doubt form his own views about how the department could best provide support to him in this area.

**Senator NETTLE**—In that process of clearing the backlog or clearing the slate that you talked about, in the last six months, do you have any concern around having been able to make those decisions properly and fairly because you were working with a new time frame and trying to rush through those decisions?

**Mr Illingworth**—No. I think the time frame actually provides a useful discipline to focus on how best to research, analyse and evaluate the merits of requests and it provides quite an adequate time frame for people in the department to prepare the relevant submissions. By way of comparison, we picked the 90 days as a starting point target because it is the same time frame that we use to determine refugee applications through the protection visa process, which is similarly a complex decision-making process requiring research, country information and evaluation of international obligations. So we looked at that and said that we had a yardstick, at least on an interim basis. Certainly if there are cases that merit greater and longer attention—and there could be instances where, for example, there might be some complex medical or psychological specialist reports that might go to the merits of a case for intervention—if there are time frames around those sorts of things which extend beyond the 90 days, then we will adopt a flexible approach to make sure that the case is properly prepared and presented for the minister.

**Senator NETTLE**—How many staff currently work on ministerial interventions?

**Mr Illingworth**—I do not have that information with me, but we can get that for you on notice. There have been some changes; there were quite high staffing levels through last year and now those staffing levels are somewhat reduced.

**Senator NETTLE**—Also, in the Sydney office in particular, how many staff are involved in the process of ministerial interventions? Can you also provide figures about how many ministerial interventions were dealt with in the last six months of last year?

**Mr Illingworth**—Yes.

**Senator NETTLE**—I was asking for the staffing figures as well—perhaps it would be useful if you could provide how many staff were working on ministerial interventions in the last six months of last year, because you indicated there had been a change.

**Mr Illingworth**—Yes.

**Senator NETTLE**—You talked about there having been more staff working on ministerial interventions and now there being fewer. Did that changeover happen around the end of the year? I am just trying to see whether I have captured that issue.

**Mr Illingworth**—Yes. The end of the year for us was a target we had set in consultation with Senator Vanstone's office to clear the decks of the department of the case load and establish ourselves on a stable footing for the future. At that point we had essentially done that by the end of the year. We had some additional resources across the agency that were working on this target. Then they were disbursed back to, in many cases, the areas from which they had been deployed. That end of year point is a significant one.

**Senator NETTLE**—Thank you. You can take those questions on notice. I wanted to ask some questions about the case of Robert Jovicic. Is there anyone who is able to provide me with an update on where things are up to in that case at the moment?

**CHAIR**—Senator Nettle, you do not necessarily have to ask that here. You could ask that in output 1.3. It is not necessarily in the general questions category. I assume there may be other senators who would also be interested. Mr Metcalfe, output 1.3 would be correct, wouldn't it?

**Mr Metcalfe**—Yes.

**CHAIR**—Thank you. Anything in general, Senator Nettle?

**Senator NETTLE**—That was the thing I was going to do in general.

**CHAIR**—It is a matter of enforcement of immigration law, which is output 1.3.

**Senator NETTLE**—Perhaps I could ask some other general questions. I have asked before about the Senate inquiry report. I wanted to ask whether the department has been formulating any response to the Senate inquiry report.

**Mr Hughes**—Work has been done on that. I think it has ended up becoming tangled into the broader response to the broader Senate inquiry into the decision making under the Migration Act. So, as yet, my understanding is that no response has been provided.

**Senator NETTLE**—Were you talking about two different Senate inquiries there?

**Mr Hughes**—I was talking about the linkages between the two.

**Senator NETTLE**—Between which two?

**Mr Hughes**—I thought you were referring to earlier work on intervention in the earlier Senate report.

**Senator NETTLE**—I was actually referring to the Senate inquiry into the Migration Act, but I am happy to hear your answer in response to the Senate inquiry into ministerial intervention.

**Mr Hughes**—I think the two have become somewhat tangled up. I do not think that a response has been provided to either as yet.

**Senator NETTLE**—Is there a time frame for a response to either of those two?

**Mr Hughes**—I am not aware of the time frame.

**Mr Metcalfe**—It is a matter that has been receiving considerable attention. It is an issue that we will need to brief the incoming minister on. Clearly, he is only getting briefed on the very significant range of issues that are encompassed in that report and, I am sure, will want to consider the recommendations and any government response carefully.

**Senator NETTLE**—Another issue I want to ask about is the review into bridging visas. My recollection at the end of last year was that there was an indication by the minister who was dealing with this issue at the time that it would be out that we would see that very shortly—I think ‘within the month’ was what we were hearing at the end of last year. So I wanted to ask where that was up to.

**Mr Metcalfe**—That falls into a similar category, in that it was a matter where the department had provided a report to the previous minister. She was considering that report. It is a matter that we will need to brief the new minister on. I am sure he will want to look through the issues very carefully and thoughtfully.

**Senator NETTLE**—You indicated that you had provided that report to the previous minister. Has that report now been provided to the new minister?

**Mr Metcalfe**—I will have to check as to whether a submission on that has yet gone to him or whether it is yet to go. He has only been in the portfolio for less than two weeks and clearly we have had a whole range of issues that we have brought to his attention that he has wished to address. Whether that is one of them, I am not sure.

**Senator NETTLE**—I want to ask as well about the case of Cornelia Rau and where that was up to.

**Ms Bicket**—Is this in terms of any possible compensation issues?

**Senator NETTLE**—Yes. I think it has now been over two years, so I want to get an update on that.

**Ms Bicket**—In relation to the Rau matter, we are obviously keen to resolve it as expeditiously as we can. The matter is still one that is under discussion between Ms Rau’s representatives and the department as to the best way to move forward. On the latest indications from Ms Rau’s representatives, we expect a statement of claim, which will allow us to progress the matter. They are close to finalising that statement of claim and we hope to have that very soon.

**Senator NETTLE**—Has the department been able to provide to Ms Rau’s legal team all of the documents that they have requested at this stage?

**Ms Bicket**—I do not have the most recent information as to today’s situation, but my understanding is that we provided the bulk of that material last week some time. There have been a number of issues that we have been working through, particularly because the documents range across a vast area. There is a large amount of documentation and it involves

a number of different parties—for example, Centrelink, the various detention providers, the department and so forth. But my understanding is that the bulk of that documentation has now been provided.

**Senator NETTLE**—Was that request in the form of an FOI or was there a separate request?

**Ms Bicket**—Yes, it was.

**Senator NETTLE**—Is the issue of arbitration being considered?

**Ms Bicket**—Possibly. That is one of the things that we will need to look at and explore with the other parties that are involved in the matter—as I said, the detention providers and so forth. It is not something that we have ruled out at this point. It is something that we might enter into. We are waiting on the statement of claim to be able to make an assessment of that.

**Senator NETTLE**—We have talked before in estimates about whether there is videotape recording of Ms Rau when she was at Baxter. Do we know if such videotapes exist?

**Ms Bicket**—I do not. I would have to take that on notice and find out. I am not aware of that particular issue.

**Senator NETTLE**—Perhaps you could also take on notice whether or not, if such videotapes do exist, they have been provided to her legal team.

**Ms Bicket**—I would need to check.

**Senator NETTLE**—Okay. You can probably keep me up to date on the Niyonsaba case as well. Can you give me an update on that one?

**Mr Metcalfe**—That is really an issue that would come into output 2, I would have thought.

**CHAIR**—Usually that would be the case.

**Senator NETTLE**—I can do it there. That is fine.

**Mr Metcalfe**—I am happy to talk about it later, but it is really—

**CHAIR**—I understand that. Are there any further questions which, broadly speaking, relate to the general area? If there are not, thank you very much, Mr Metcalfe, and your officers, for that. We will move to outcome 1, beginning with output 1.1, Migration and temporary entry.

**Senator NETTLE**—Chair, just to check, should questions in relation to citizenship tests be done in the general section or in citizenship later on?

**CHAIR**—Outcome 2.

**Senator NETTLE**—Sure.

[10.53 am]

**CHAIR**—Are there any comments on output 1.1, Migration and temporary entry?

**Senator BARTLETT**—I want to ask firstly about the situation with parent visas, the aged parent category. I have asked about it a few times in recent years. I just want to get a sense of whether the waiting periods are reducing at all in both the contributory and non-contributory categories.

**Mr Mills**—In the non-contributory parent category the current queue is about 17,123 persons, which is broadly similar to the figure we gave you at the last estimates. In addition to those, there are around about 4,000 people in the active pipeline still being considered but not yet queued.

**Senator BARTLETT**—And is the cap still 1,500 a year?

**Mr Mills**—It is 1,000.

**Senator BARTLETT**—Sorry, 1,000. That was a bit of wishful thinking. And the contributory one is—

**Mr Mills**—In the contributory there are 3,500 places this program year. There is no queue at this point.

**Senator BARTLETT**—I have been receiving feedback from some migration agents that, whilst there is no queue, there is still a fair delay between when people lodge an application and when it gets considered, assigned a case officer and determined. Do you have any information you could give me on how long it takes from date of application to determination, on average?

**Mr Mills**—I believe it is roughly in the order of about 12 months but I would need to take that on notice and give you accurate figures, which I can quickly do.

**Senator BARTLETT**—Okay. I will get to waiting periods and determination periods et cetera more broadly in a moment, but is that seen as an adequate time? I am particularly conscious of it, given that it is very expensive for contributory as well. I think it is \$70,000 or so for a couple. Is the 12-month wait seen as satisfactory?

**Mr Mills**—We are aiming to improve on that figure. To that end, we have taken some measures to readjust the resources in the processing centre in Perth. But it will take some time before those processing time improvements flow through.

**Senator BARTLETT**—I also want to ask about the changes regarding the domestic violence provisions that have now been in place for a little while. My understanding—and correct me if I am wrong—is that cases, if need be, can now be referred to a Centrelink social worker to assess domestic violence claims relating to these sorts of visas. My understanding is that that is not automatic and that the department can do it itself if it is satisfied, but not if it thinks it needs further verification. Can you give me any data on how many cases are referred to Centrelink social workers?

**Mr Mills**—Yes, we can. Overall about 10 per cent of the total number of cases which seek to utilise the domestic violence provisions have been referred. We can give you some more specific figures. For the first year of its operation there were 44 referrals sent by DIAC officers to Centrelink. That was a referral rate of around 10 per cent. Of those 35 referrals finalised, there were 17 findings of domestic violence and 18 findings of no domestic violence. The instruction to processing officers is that they only refer cases where there are grounds to have concerns about the bona fides of the claim.

**Senator BARTLETT**—I suspect you might need to take this on notice, but I remember in some of the talk about whether or not these changes which subsequently came into place needed to be made there were concerns raised about males being subjected to violence from

female partners. Are you able to give any data about how many cases involved that type of claim?

**Mr Mills**—There were a substantial number, but I would have to take that on notice to give you more accurate figures.

**Senator BARTLETT**—Thank you. I also want to check what the arrangement now is when children are involved in those circumstances—particularly, say, if the non-Australian partner has a child from a previous relationship et cetera. Is the child automatically attached to that person if they are able to say, on domestic violence grounds, that the child automatically stays attached to that visa?

**Mr Mills**—Provided that they were accepted as a dependant of that person, that would be the case.

**Senator BARTLETT**—I want to ask some general questions. I have asked a few times about the overturn rates or remittal rates—whatever you call them. I think the technical term at the MRT is ‘set-aside’ rates. In the most recent annual report of the MRT, whilst the total number was in decline—which I think should be noted as a positive—the percentage of set-asides had increased, particularly in the partner area. There are issues there with more data becoming available over time et cetera, but the percentage rate is now continuing to climb, up to 68 per cent, which seems very high, given the issues with it being easier to make a decision a year or so down the track. I have raised this issue a couple of times before, and I know that you have always been looking at ways to reduce the rate. I just want to query whether those latest figures are causing you to redouble your efforts or do anything extra in that regard to try to reduce, in particular, that set-aside rate. I think the percentage rate for most of the other areas is going down, except for students.

**Mr Parsons**—The department meets with the Migration Review Tribunal at least annually, in the department, and those statistics that you spoke about certainly are discussed in that forum, but I have nothing more definitive to report today.

**Senator BARTLETT**—So there is no particular focus on trying to reduce the set-aside rate in the family area or the spouse and student areas, given those are the ones where the percentage seems to be rising the most?

**Mr Mills**—Probably not. We believe that policy settings at the primary level are broadly correct and consistent with government objectives. As you correctly point out, there is often a substantial period between the primary decision and a decision by the MRT. Of course, they take into account subsequent circumstances and changes in circumstances. So, while we are always interested in those figures, we do not consider them to be of any particular concern.

**Senator BARTLETT**—The 457 visas have been the subject of discussion with state governments. I wonder whether you could give me an indication of where that is up to. It is also a matter under consideration by the Joint Standing Committee on Migration. I appreciate there would be aspects that you would not be able to be definitive about, but I just wonder whether you could elaborate on just where the process is up to and the anticipated time line.

**Mr Rizvi**—To date we have had four meetings of the Commonwealth-state working party looking into the 457 visa. The last meeting was held around mid-December. A draft report has

been prepared. It will be considered by a meeting of COAG senior officials later this month, and from there we will be able to work out how things might be taken forward. Against that background, we are also continuing discussions with the state governments on how some of those recommendations would be implemented if they were accepted by COAG. Those discussions are also proceeding and of course we have, with the arrival of the new minister, a further briefing that we are submitting to him with regard to 457 matters. With regard to that, I think the minister made some announcements last week about some areas on which he intends to focus.

**Senator BARTLETT**—I appreciate you could not go into all the fine detail on the views of various parties, but would it be fair to say that the approach from the state governments is one of trying to ensure the program runs as smoothly as possible rather than one of antagonism to the program?

**Mr Rizvi**—I think it is fair to say that the dialogue with the states has been very constructive. They do recognise the value of the visa and the question of how we can make sure that it continues to be one that can be utilised effectively across the board.

**Senator BARTLETT**—What are the anticipated numbers at the moment? Are they around the same level as they were a year ago?

**Mr Rizvi**—Comparing the first half of this year with the first half of 2005-06, we are looking at an increase of about 17 per cent.

**Senator BARTLETT**—I might ask one question on another matter and then—

**CHAIR**—Then I suggest we pursue 457s for a while.

**Senator BARTLETT**—I should have asked this other one first because I thought that might happen. Turning to the working holiday visas and the work and holiday visas—I always get these two mixed up—what is the one that Iran is on? Is it the work and holiday visa?

**Mr Rizvi**—Work and holiday.

**Senator BARTLETT**—There have been a couple of other countries added to that one in the last little while, is that right?

**Mr Farrell**—Yes. We have signed arrangements in the last year or so with Bangladesh and Turkey. The one with Turkey is about to enter into force at the end of February subject to the exchange of diplomatic notes. There are ongoing discussions about when the one with Bangladesh will come into force.

**Senator BARTLETT**—How many countries do we have under that?

**Mr Farrell**—Five at the moment.

**Senator BARTLETT**—Do they all have unique criteria? My understanding with the working holiday visas is that it is basically a standard format for all of those countries. Do the work and holiday visas have different criteria depending on the country?

**Mr Farrell**—The main distinction between the working holiday maker and the work and holiday maker is that for the work and holiday maker they must be government sponsored and they must either have tertiary qualifications or be studying a tertiary degree, whereas for working holiday makers those requirements do not need to be met.

**Senator BARTLETT**—So there is no particular difference between the criteria with the work and holiday—

**Mr Farrell**—The work and study provisions are consistent between the two. They can study for up to four months and work with one employer for up to six months.

**Senator BARTLETT**—Does the ability to extend for two years with the working holiday visa apply to all of the countries or just some?

**Mr Farrell**—No, to all 19 arrangement countries, provided of course they work in one of the designated postcodes.

**Senator BARTLETT**—Are you able to give us, probably on notice, the country breakdown of all of them?

**Mr Farrell**—Yes, I can give you the 19 and the five.

**Senator BARTLETT**—That would be good. Thank you.

**CHAIR**—We will now move to discussing the long stay business visa 457.

**Senator CROSSIN**—I want to take you to an answer to a question you provided to Senator Evans. It was question on notice No. 166. It asked you for a list of the top 150 occupations filled by principal 457 holders. Implicit in his question—or perhaps not so implicit—was that he wanted the numbers by occupation. My request is: could you provide that for us?

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

**Senator CROSSIN**—You have given us the list of the 150 nominated occupations. You say it is rounded to the nearest 10. We would actually like the numbers per occupation, please.

**Mr Rizvi**—Okay.

**Senator CROSSIN**—Just another column there would be useful. Thanks for that. I had some questions that I wanted to ask about the trades skills training visas. I will just keep going through my pack, if that is all-right. Or do you want me to go to 457s and come back to the trades skills training visas?

**CHAIR**—That was the whole point of moving to 457s.

**Senator CROSSIN**—I am happy to do 457s and come back to other visa categories; that is fine. Can I ask the department: are you involved in any other discussions across departments—particularly, say, with DEWR—on tracking or analysing skills shortages in Australia?

**Mr Rizvi**—We certainly work very closely with the Department of Employment and Workplace Relations on the issue of skills shortages. Essentially, we take their advice on the broad nature of skills shortages in Australia and projected skills shortages. DEWR does considerable analysis in this area, and we are guided by them in that regard.

With regard to labour agreements which use subclass 457, we rely extensively on the discussions that we have with the Department of Employment and Workplace Relations before we enter into labour agreements for specific areas in terms of their analysis of the labour market relevant to that particular agreement.

**Senator CROSSIN**—Do you come to a point of view that there is a particular skills shortage in Australia occupation by occupation or in a generic sense?

**Mr Rizvi**—The Department of Employment and Workplace Relations advises us in both respects—in terms of specific occupations as well as broad industry areas.

**Senator CROSSIN**—DEWR advises you of that?

**Mr Rizvi**—Yes.

**Senator CROSSIN**—So you act on their advice rather than doing your own analysis.

**Mr Rizvi**—Yes. We do not do our own labour market analysis; we rely on the Department of Employment and Workplace Relations work.

**Senator CROSSIN**—My understanding of the number of 457s is that the current estimates are around 39,500. In 2005-06 there was an increase of 42 per cent on the 2004-05 year. Would that be a figure that you might concur with?

**Mr Rizvi**—That was the outcome for 2005-06.

**Senator CROSSIN**—39,500.

**Mr Rizvi**—Yes, it is just below 40,000, Senator.

**Senator CROSSIN**—I think I am working on what were the current estimates, but you have an actual figure now.

**Mr Rizvi**—Yes, we do.

**Senator CROSSIN**—What is that?

**Mr Rizvi**—The number of primary applicants granted a subclass 457 visa, excluding independent executives, in 2005-06 was 39,527.

**Senator CROSSIN**—And the number of 457s granted for the first quarter of 2006-07?

**Mr Rizvi**—I can give you the figure for the first half of 2006-07.

**Senator CROSSIN**—Okay.

**Mr Rizvi**—The figure to 31 December 2006 for primary applicants granted a visa, excluding independent executives, was 21,464.

**Senator CROSSIN**—So do you know what percentage increase that would be from a previous six-month period?

**Mr Rizvi**—That was the earlier question that Senator Bartlett asked. If we were to compare the first six months of 2005-06 with the first six months of 2006-07, that was an increase of 17 per cent.

**Senator CROSSIN**—So the 21,464 figure is the total number of visas issued to date?

**Mr Rizvi**—That is the total number of visas issued to 31 December 2006 to primary applicants under subclass 457, excluding independent executives.

**Senator CROSSIN**—I suppose you do not have the figures for the last couple of weeks. That would be too short an amount of time.

**Mr Rizvi**—No, I do not have the figure for the last couple of weeks, sorry.

**Senator CROSSIN**—Okay. How long does it take, generally, for an application to be processed?

**Mr Rizvi**—These are median processing times, and we have broken them down between ASCO 1 to 3 occupations and lower occupations—that is ASCO 4 and below—because it takes longer to process ASCO 4 and below occupations compared with ASCO 1 to 3 occupations.

**Senator CROSSIN**—Why is that?

**Mr Rizvi**—Because in the higher skilled groups there tends to be better evidence available in terms of skill levels, hence we are able to deal with those more quickly.

**Senator CROSSIN**—Or skill shortages even?

**Mr Rizvi**—Not necessarily skill shortages. ASCO 1 to 3 occupations relate to managers, professionals and associate professionals. The qualifications that those people have and our ability to check those qualifications is easier than for occupations below that level.

**Mr Parsons**—Can I add that it is also the case that in those higher ASCO groups applicants tend to furnish more-complete applications whereas in the lower groups typically the immigration officer has to go back to the applicant and ask for material that was missing.

**Mr Rizvi**—The median processing time for the ASCO 1 to 3 group, for the first six months of 2006-07, was 26 days. For ASCO groups 4 and below, the median processing time for the first six months of 2006-07 was 46 days.

**Senator CROSSIN**—You would be aware of an article in the *Australian* only last week about the delays in granting 457 visas. There is no mention in this article about the differences in the skill levels so what do you think this article is based on?

**CHAIR**—That is not a question Mr Rizvi can answer.

**Senator CROSSIN**—I am trying to give him a chance to defend the department here.

**Mr Metcalfe**—Am I correct in thinking it was an article on Friday and that it was based upon a submission from the Migration Institute of Australia to the joint standing committee's inquiry?

**Senator CROSSIN**—Yes, it is.

**CHAIR**—If Mr Rizvi could read the mind of the journalist, I would be very impressed.

**Mr Metcalfe**—I do not know whether Mr Rizvi has, but we probably have not seen that submission; it is probably with the committee and not yet published. Therefore it would be difficult for us to comment on it.

**CHAIR**—It would potentially be a breach of privilege.

**Mr Metcalfe**—From what I read in the paper it was simply a view from the migration industry that processing times had slowed and that they would like them to be quicker.

**Senator CROSSIN**—There are a few issues here. The article says that the length of time for the processing of 457 visa applications ranged from one month to six weeks. You have confirmed that, but I am assuming that you are saying that it is because there are some levels of occupation which take longer than others to process.

**Mr Rizvi**—It is certainly true that some occupations take longer to process than other applications. Processing times in terms of subclass 457 visas have increased marginally, but they are still pretty close to the service standards that we set. We are certainly keen to continue to reduce processing times if we possibly can, but it is also true that over the last two years the volume of 457 applications has increased quite considerably and that the percentage of applications in lower ASCO groups has increased faster.

Those two factors have led to some increases in processing times. I have to say, though, that the median increase in processing times is not all that significant. For example, in 2005-06 the median processing time for ASCO 1 to 3 occupations was 21 days and in the first six months of 2006-07 it has increased to 26 days.

**Senator CROSSIN**—Do you have the comparison for ASCO 4 and below?

**Mr Rizvi**—Yes, it increased from 29 days to 46 days.

**Senator CROSSIN**—And you would say that that increase is due to the increase in numbers applying?

**Mr Rizvi**—It is a function of both the volume and the risk levels of the applications that have been made. As Mr Parsons mentioned earlier, it also relates to the percentage of applications where all of the relevant document is provided at the time the application is lodged or whether there is a need to go back and ask for other documentation that should have been lodged of the time of the application.

**Senator CROSSIN**—So has there been any change in the way in which the department processes the applications?

**Mr Rizvi**—Fundamentally, no. The broad policy settings have remained much the same. What has happened is that the percentage of applications in ASCO 4 occupations and below has increased, and those occupations, as I said, tend to take longer to process.

**Senator CROSSIN**—So you put it down purely to the increase in the numbers rather than—

**Mr Rizvi**—Both an increase in the numbers and a change in the profile.

**Senator CROSSIN**—Not to a shortage of staff or internal problems?

**Mr Rizvi**—Certainly, as Mr Metcalfe mentioned earlier, we are facing a tight budgetary situation and that has some implications. However, as I said, the increase in processing times has not been particularly significant.

**Senator CROSSIN**—Are additional or more diligent criteria being applied, or are they the same criteria across—

**Mr Rizvi**—Where an application is made and it fits a higher risk profile, then certainly it takes longer to check and it is more likely to be referred to an overseas post for further integrity checking, and that does lead to further delays, yes.

**Senator CROSSIN**—Have employers started to sponsor people on a 456 visa to avoid this delay? Has there been a comparable shift in the use of the 456 visa?

**Mr Rizvi**—A 456 visa really is not comparable to a 457 visa. A 456 visa is essentially a business visitor visa—that is, for people coming to Australia for very short periods of time, usually 20 days or less, to transact business. They will conduct negotiations and deal with contractual matters—those sorts of things. The ability of a person to work on a 456 visa is very limited and it really is not comparable to the situation of a 457 visa. There has been, in the past, a percentage of people who enter Australia on a 456 visa and then apply for a 457 visa very soon afterwards, and that can happen. But there has been no discernible increase in the trend of that happening.

**Senator CROSSIN**—What percentage is that?

**Mr Rizvi**—I would have to take that on notice and get you the figures.

**Senator CROSSIN**—Similarly, have you an idea of the numbers of people who might move to a 456 visa rather than a 457 visa?

**Mr Rizvi**—I am not clear—from a 457 visa to a 456?

**Senator CROSSIN**—Yes.

**Mr Rizvi**—Onshore, that is not possible.

**Senator CROSSIN**—Before they get here are they doing that? Do they apply for a 457 visa, note the delay in getting it processed and so go for a 456 visa instead? Or is that not something you would know about?

**Mr Rizvi**—We would probably not know about that before it took place. As I said, there may be a percentage of people who particularly apply for the electronic travel authority, enter Australia on that electronic travel authority and then apply onshore for a 457 visa.

**Mr Parsons**—Can I answer your previous question, Senator, on the relative change in 456 visas for the first six months of this year versus last year? We have some statistics which show only an 11 per cent increase in that visa category.

**Senator CROSSIN**—Eleven per cent in the 456 category?

**Mr Parsons**—Yes.

**Senator CROSSIN**—Do you have any figures that show us that there might have been people who applied for a 457 visa but instead have opted for a 456 visa?

**Mr Parsons**—No, we do not always know that.

**Senator CROSSIN**—Have there been any 456 visa holders that the department has transferred to a 457 visa?

**Mr Rizvi**—Of persons who enter Australia on a business visitor visa—and there is a range of business visitor visas, not just the 456—a percentage do convert to 457s, annually. I will have to take on notice the question of the precise numbers of those, but a reasonable number would convert to a 457 visa after arriving in Australia.

**Senator CROSSIN**—Would you take it on notice. What would be some of the reasons they would need to give you to convert to a 457?

**Mr Rizvi**—It could be a change of circumstance. They may have entered Australia, for example, with a view to undertaking discussions with a particular company on some matter.

That may have led to an offer from that company for the job in Australia. Hence, those people converted from a 456 to a 457 to enable them to work.

**Senator CROSSIN**—But you do not have the figures with you to give us an indication of that. There is an 11 per cent increase in 456s, but you do not have the figure for the 456 to 457 conversion.

**Mr Rizvi**—I do not have the figures on that conversion here with me. I would once again stress that the percentage who convert would be very small. As I said, the vast majority of people on 456 visas, on business visitor visas, actually stay in Australia for fewer than 20 days. Around 90 per cent would come to Australia on a business visitor visa and leave within 20 days.

**Senator CROSSIN**—Mr Parsons, you said you had an 11 per cent increase. What are the numbers, then?

**Mr Parsons**—In 2005-06, to this point in time, 1,469 was the first half year total. The equivalent figure for this program year is 1,636.

**Mr Metcalfe**—There must be some zeros missing.

**Mr Rizvi**—I think the number of business visitors is in the hundreds of thousands.

**Mr Metcalfe**—We will just check that figure.

**CHAIR**—Thanks, Mr Metcalfe. That would be held helpful.

**Senator CROSSIN**—I am talking about 456.

**Mr Rizvi**—If I might explain: a 456 visa is a paper version of a business visitor visa. There are also electronic versions of the same visa. We tend to treat them all as one group.

**Senator CROSSIN**—Is the electronic version known as the 456?

**Mr Rizvi**—No; it is known as a 977 or 956. I will have to correct that if I am wrong on that, but I think it is those two.

**CHAIR**—Thanks, Mr Rizvi.

**Senator CROSSIN**—It does not matter; that sounds impressive anyway.

**Mr Rizvi**—I have been provided with some figures here on the number of 456 visa holders. That does not include the electronic business visitor visas. In 2005-06, 620 people on 456s converted to a 457.

**Mr Parsons**—Senator Crossin, can I clarify my figures.

**Senator CROSSIN**—Yes, sure.

**Mr Parsons**—The figures that I gave you before were the onshore grants for 456. The comparable figures for offshore in fact show only a 3.3 per cent variation between last program year and this program year to date. As for the gross figures to this point in time, for the first half of the 2005-06 program year, 96,637 visas were lodged offshore and granted. The comparable figure for the first six months of this program year, offshore, is 99,814. As I said, that is a 3.3 per cent variation for the first half of each of those years.

**Senator CROSSIN**—Thank you. My understanding is that 457 visa holders contribute some component to their salary—figures of up to \$20,000 for a \$40,000 job. Does the department look at or investigate those sorts of requirements at all?

**Mr Rizvi**—I think you might be referring to the fees that agents operating out of China tend to charge people—and this applies across a range of visas—for the services they provide in China, leading up to a visa grant. They provide a range of services. They are agents who are registered in China. They operate within the laws of China. The fees they charge are largely determined by the market in China, so in some instances they charge a relatively small fee. We have heard of fees as small as \$500 to \$1,000 charged by some agents in China and we have heard of fees as large as \$20,000 charged by some agents in China. As I said, that applies to people seeking a whole range of visas—student visas, permanent residence visas. These agents charge these fees to people from China going to all parts of the world, not just to Australia.

We are concerned where some of the fees being charged by some of these agents appear exorbitant. We have raised the matter with our counterparts in the Chinese government. The former minister wrote to the ambassador in China and we are continuing to discuss with them what measures might be able to be taken to prevent the charging of what appear, in some instances, to be quite exorbitant fees by Chinese agents operating out of China.

**Senator CROSSIN**—You have raised China as one example. Are there other countries that would charge such fees?

**Mr Rizvi**—There would be other countries where agents charge fees. We are not aware of other countries where the level of fees being charged appear as high as out of China.

**Senator CROSSIN**—These are migration agents based in those countries, as opposed to our migration agents—is that correct?

**Mr Rizvi**—They are agents; whether they are exactly migration agents is another matter. They get involved in a whole range of activities ranging from securing employment for people, helping with the processing of visas to a range of other services.

**Senator CROSSIN**—Has there been any consideration of refusing visa applications that might have such a large component of fees attached to them, in order to try to drive the market down?

**Mr Rizvi**—We have certainly been talking to employers in Australia—for example, through the negotiations we have had on the labour agreement for the entry of skilled workers to Australia. We have included in that agreement a requirement for employers in Australia recruiting people from those countries to make all reasonable inquiries about the level of fees paid and, where the fees paid have been exorbitant, to not nominate those particular applicants. That is certainly something we can pursue. The risk is that over time we will simply not get told whether this has happened; it will happen underground. That is the difficulty there. So I do not think it can be reduced simply by refusing the individuals, because there will be a tendency for the activities to go underground. We have to look at other ways of dealing with it as well.

**Senator CROSSIN**—What about other industries? You specified one industry, but are your discussions happening across the board with other industries?

**Mr Rizvi**—As I said, agents in China charge all sorts of fees in all sorts of circumstances. Our concerns arise when the fees are at an exorbitant level, quite unreasonable to the service being provided. That is something that we are pursuing in terms of the negotiation of labour agreements on a range of fronts.

**Senator CROSSIN**—I understand that at the end of November last year there were 67 labour agreements, with six being renegotiated and a further 11 new agreements being negotiated. Can you just give me an updated number?

**Mr Rizvi**—The most recent advice I have is that 61 agreements are current; 27 of those 61 are due to expire in 2007. The total number of agreements that are being renegotiated or negotiated afresh at the moment is 30.

**Senator CROSSIN**—How many of those are being renegotiated?

**Mr Rizvi**—Rather than being negotiated afresh? I would have to take that on notice; I do not have that breakdown.

**Senator CROSSIN**—Do any of the 61 current agreements or the 30 being negotiated allow for a salary level below the MSL?

**Mr Rizvi**—You will recall that in July last year a minimum summary level for regional Australia was introduced. That meant that there was a floor other than the industrial instrument for 457 visas in regional Australia. Since that time all agreements that we have been negotiating have an MSL either related to the standard MSL or to the regional MSL, where that is supported by the relevant state government.

**Senator CROSSIN**—So the answer to that would probably be no, then?

**Mr Rizvi**—All the agreements that we are negotiating or renegotiating at the moment seek to apply either the standard MSL or, where they are supported by the relevant state government, the regional MSL.

**Senator LUDWIG**—You say ‘seek to’. Can you qualify that? Do you mean that you are trying to or they will or they are? Which ones are below the MSL?

**Mr Rizvi**—In all of the negotiations we are currently undergoing, that is the proposition that we have put to the relevant industry body. That is not to say they will necessarily agree to that, and that may lead to a situation where the labour agreement is not agreed to. But that is the condition that we have put into each one of the discussions that are currently proceeding.

**Senator CROSSIN**—The regional MSLs are those salary levels determined by state and territory governments, aren't they?

**Mr Rizvi**—The regional MSL is set at 90 per cent of the standard. In a labour agreement, in all of the discussions that we have had to date, since the regional MSL was introduced we have only allowed the regional MSL to be accessed where the relevant state government approves and supports it to be accessed.

**Senator CROSSIN**—Can you tell me how many agreements specify that any position must be advertised in Australia before a 457 visa can be sponsored?

**Mr Rizvi**—I would have to take that on notice. We would have to analyse each of the agreements to identify the specific clauses in relation to those that might exist. Of course, in any labour agreement that is negotiated, we go through a process of examining the labour market for that particular skill in that particular region. Before we would sign up to a labour agreement, we would consult closely with the Department of Employment and Workplace Relations.

**Senator CROSSIN**—If you could take it on notice, that would be good. With regard to the occupation and skill levels, is the government considering allowing semiskilled or non-skilled workers within the 457 visa scheme?

**Mr Rizvi**—Under the standard subclass 457 visa, only ASCO 1 to 4 occupations are allowable. Where the regional concessions are accessed, currently ASCO 5 to 7 occupations are available. Of course, those matters are being reviewed in the context of the COAG inquiry, and I am limited as to what more I can say about that at this stage because those matters are COAG-in-confidence.

**Senator CROSSIN**—When is that COAG inquiry due to report or finalise its work?

**Mr Rizvi**—As I mentioned to Senator Bartlett, the next stage of that process is for the report to go to the meeting of senior officials of COAG later this month. They will determine what happens after that stage.

**Senator CROSSIN**—I want to go to the issue of labour market testing. At the last estimates hearing, Senator Conroy asked whether there was a requirement for employers seeking to sponsor a 457 visa applicant to first advertise the role to Australian residents. The question was No. 88. Your answer was that this requirement was abolished in favour of skill and salary thresholds.

**Mr Rizvi**—It was abolished in respect of skill and salary thresholds for the standard subclass 457 visa. The labour market testing, or an assessment of the labour market, in respect of where the regional concessions apply is still in operation. So, for an application which is not seeking to utilise the regional concessions and is in ASCO group 1 to 4, labour market testing is not required. That has been replaced with minimum skill and salary thresholds.

**Senator CROSSIN**—When did that occur?

**Mr Rizvi**—That has occurred progressively. The first step in that regard was in 1996, following the 1994-95 report known as the Roach report, which recommended the abolition of labour market testing for all 'key activities'. We found the concept of key activities was a difficult concept to administer; hence, it was replaced in, I think, either 2000 or 2001, with skill and salary thresholds based on the ASCO dictionary, which were more objective and therefore more clear-cut to administer.

**Senator CROSSIN**—In the context of a number of answers that were provided, Tony Burke, the shadow minister for immigration, apparently received a letter on 26 May 2006 from Mr Bob Fulton, the CEO of the Golden West Group Training Scheme in Queensland. His letter says:

You may well suggest we attract and “migrate” labour from areas of higher unemployment both on the coast and interstate, however this group training organisation, under the current funding regime, does not have the resources to advertise and recruit outside its own area.

He goes on to say:

Golden West recently exhibited at the DIMA sponsored “Australia Needs Skills” Expos in Kolkata, Shanghai, Hong Kong and Manila in an attempt to attract further overseas qualified and experienced people to rural Queensland.

Does that satisfy the requirement to put an ad in a newspaper?

**Mr Rizvi**—As I said, it really does depend on the letter from Mr Fulton and which visa he was referring to. I understand his main interest is in—

**Senator CROSSIN**—He is referring to 457s.

**Mr Rizvi**—He is referring to 457s. For him to access the 457 visa for ASCO 1 to 4 and at a salary level above the minimum salary level, he is not required to demonstrate that he has advertised locally. More often than not the employers involved have advertised locally, but that is not a legal requirement, as I have described earlier. If he was recruiting to a regional area of Australia and he was seeking to utilise the regional concessions, he would need to obtain the support of the relevant regional certifying body, which would consider issues about the local labour market and look at a range of factors, including the extent to which he had advertised locally.

**Senator CROSSIN**—So, if he is looking for an ASCO salary level 1 to 4 and he intends to pay, or the people he is working on behalf of intend to pay, well above the MSL, he can simply advertise overseas rather than in Australia.

**Mr Rizvi**—For high skill levels and high salary levels that is essentially the process that now operates. The objective is to enable employers, given the current level of skill shortages in Australia, to be able to access the skills they need as quickly as we can get them for them.

**Senator CROSSIN**—So there is no requirement to test the market anyway in Australia? There is an automatic exemption and an assumption that there is no-one around that would fit that category—is that right?

**Mr Rizvi**—I am sorry?

**Senator CROSSIN**—Is there an automatic assumption that there would be nobody in Australia that—

**Mr Rizvi**—No, there is not an automatic assumption to that effect. What there is is an understanding of the current nature of the Australian labour market and the fact that unemployment levels for skilled occupations in Australia are now well below two per cent and getting down to one per cent. In that particular environment a requirement for someone to go through the traditional forms of labour market testing would effectively lead to additional cost and delay for the employer without any real benefit in terms of accessing those skills rapidly. The assumptions on which the labour market testing were abolished were that accessing high-skill, high-salary labour from overseas is generally significantly more expensive than accessing it locally. If the local labour was readily available at those high skill

levels then most Australian employers, as they as they have demonstrated to us repeatedly, would prefer to access it locally.

**Mr Parsons**—Could I chime in again just to fill the picture out a little more and share with the committee another dimension of testing of the labour market which occurs in the employment and workplace relations portfolio?

**Senator CROSSIN**—Yes.

**Mr Parsons**—Last year the Australian Job Search facility, which is a government provided facility for anybody to advertise freely for vacant positions and labour, was enhanced such that Australian employers are able to advertise for a skill set and, provided they do not attract any applicants within I think 28 days, overseas applications are able to be looked at. That gives the employers the opportunity to, at no charge, canvass the Australian workforce in concert with the Job Network and the Welfare to Work reforms that they work within and also to attract interest from overseas applicants. The job only becomes visible to overseas applicants if there have been no applications received within 28 days.

**Senator CROSSIN**—How do you check that?

**Mr Parsons**—Quite simply, DEWR's computer system is such that if they advertise a job and they flag it that they will accept overseas applicants, the job is not visible from overseas until 28 days have elapsed and no applications have been received.

**Senator CROSSIN**—That is assuming an employer uses the DEWR system, though.

**Mr Parsons**—Yes. That is one dimension of how there is some labour market testing done. I accept that it is not the only means, but the facility is being made available from that portfolio to try and marry up the employer's requirements with, first, the local labour market and, second, the overseas market.

**Senator LUDWIG**—In that area of advertising you do skilled expos. I think in an answer to a question on notice from Senator Crossin you went through a range of skills expos that you do internationally. When you answered that question—it was No. 66—you provided those costings for each individual expo by the current year, it looks like. Is that the same spending you have had every year for the last couple of years? Has that been consistent? Do you use the data that you gained in those skills expos to map out a strategy about where you will be in the following year? Or is it just a round of expos that you do every year and you spend about the same amount of money? I am trying to gain an appreciation of whether you then use it to target or whether you are passive in the sense that you do not target using the expo data but just front up, so to speak.

**Mr Rizvi**—If I might explain a bit of the history, that might put the question of the expos into context. The primary purpose of the government's announcement in respect of expos—and it was part of a budget announcement of, I think, a couple of years ago—was not necessarily to generate more skilled workers but, rather, to increase the level of targeting to specific skill needs. We have, for the last couple of years, had sufficient applications to fill the program. That has not been the issue. The issue has been to get the specific skill needs of employers better targeted. Our primary objective has been, as a percentage of the whole skilled migration program, to increase the percentage of visas granted through the employer-

sponsored arrangements relative to the non-employer-sponsored arrangements—to shift that balance.

In order to achieve that, where and when we run the expos is really very much driven by two important factors. The first is the views of employers and industry groups as to where the skill shortages are and where in the world they might best be sourced. The second is the views of individual state governments regarding the same matter. So the consultations with state governments and with employers as to when and where we should run the expos are an important dimension of that decision making. Whenever we plan the expos, we go through that discussion process and run the expos accordingly. As I said, the primary purpose is to increase the percentage or the extent of targeting in the migration program.

**Senator LUDWIG**—In answer to that question on notice you used two examples: the United Kingdom and Ireland. That seems to bear significant cost, including cost recovery. The total is \$576,000, and for India it is \$172,000. For China, it is \$237,000. How would you go about deciding that, in this instance, the United Kingdom seems to be the target? Is there a skill set that you are seeking there? I am trying to find out why you have targeted there as distinct from China, India, the Philippines or wherever else.

**Mr Rizvi**—As I said, the key driver is the views and needs of the relevant employer and industry bodies and the state governments. The consistent view we have received from employer bodies and the state governments is that they like to target the United Kingdom because of the range of skill sets available, language issues and those sorts of factors. We have also gone to a number of other places around the world where a number of employers and state governments have come with us or where they have encouraged us to go. But the clear feedback we have received is that the number of state governments and employer bodies willing to participate in the expos in a number of those other countries has not been nearly as great—for example, we surveyed employers about going to the United States of America and the responses we received were not necessarily as strong as for the United Kingdom.

**Senator LUDWIG**—So is it driven by those responses and not the result? It would be interesting to see how your effort then correlates to the number that are recruited from that area. Do you go back and look at that as well?

**Mr Rizvi**—Yes. Certainly, the feedback we get from employers and state governments as to where they felt the expos were most successful is critical to determining where we might go again. We have got feedback about a number of them—for example, the one in Calcutta we received very good feedback on whereas the one in Shanghai we did not receive as good feedback on.

**Senator LUDWIG**—Do you go back and look at the correlative data to see how successful in fact they have been? If they are driven by employer choice of location, has that resulted in client satisfaction? Have they been satisfied in that they have then recruited out of those areas significantly or, alternatively, is it a wish list by them to recruit out of a particular area but it is not producing and therefore—

**Mr Rizvi**—It has to be a combination of both. It might initially have been a place where employers had a view that it would be a good place to target but, subsequently, they found the

experience was not that good. If the feedback afterwards was that the experience was poor, that would be a place that we would be reluctant to have another skills expo in.

**Senator LUDWIG**—I will put it this way: have you done any correlative work to see whether or not their wish list has materialised?

**Mr Rizvi**—We seek feedback from them as to how successful they were—

**Senator LUDWIG**—Perhaps you misunderstand the question: it would be in your data—in other words, the number of visas that have been approved to meet their skills needs.

**Mr Rizvi**—Linking it right through to the question of specific visa grants, we have been unable to set up a system that enables us to track it right through to that point. What we are able to get is the feedback from the employers and the states as to how many people, for example, they ended up interviewing as a result of the skills expos for recruitment or the number of people the states advise us they intend to sponsor as a result of the skills expos. We have not been able to track it right through to the point of visa grant.

**Senator LUDWIG**—Do you have surveys or responses from industry to demonstrate that?

**Mr Rizvi**—We seek feedback from them, and that is one of ways we go about that.

**Senator LUDWIG**—Why don't you take it on notice and have a look at the last couple of expos? You have provided data in question on notice No. 66 for the last three. Have you made projections for where you are going in 2007 or 2008, as the case may be in that financial year, and have you got responses from employers—depending on the amount of effort it takes; come back to the committee if it is a significant task—and industries that generate those responses that you are talking about; that is, that they are satisfied or recruiting? If you cannot correlate it right through to the actual granting of visas then the committee would be pleased to see what you are using to base these expenditures on.

**Mr Rizvi**—Sure.

**Mr Parsons**—The topic of the expos has come up in each of the public consultations that I have attended to date. It has come up unsolicited from the department. It has come up from the employers and the industry groups that have been present. The overwhelming feedback from them is that they see them as being instrumental if they are located in the right locations—and they are certainly not backward in coming forward in telling us where they think the needs are in terms of skills sets. They even go so far as to venture what countries we should look at. We then overlay that with our own analysis from local knowledge overseas. Take the UK, for example: if there was a requirement for metal workers or whatever, then we would ask our UK office where best to position an expo where we would attract maximum attendance from people with the right skills set. That very much influences our choice of venue and country for the expos.

**Senator CROSSIN**—In certain situations, particularly with ASCO skill levels 1 to 4, there is no requirement, given the salary level employers want to pay for them, to advertise in Australia—is that correct?

**Mr Rizvi**—I think that has been more or less the situation since the 1994-95 report by Neville Roach.

**Senator CROSSIN**—Are they required to advertise for anything below that in Australia?

**Mr Rizvi**—If they wish to. There are two circumstances where strict labour market testing requirements apply: one is where the regional concessions are used, where they must go through a regional certifying body that would look at local labour market issues; the other is if there is a labour agreement involved. For the standard subclass 457, for ASCO groups 1 to 4 where the skill level is clearly high and where the salary level is above the MSL, there is no regulatory requirement for labour market testing. Having said that, all of our surveys indicate that employers do undertake advertising of those jobs onshore before they go overseas. Certainly all of our surveys of employers have revealed that they would far prefer to recruit locally rather than go overseas because it is far cheaper to recruit locally than to go overseas.

**Senator CROSSIN**—I want to go to compliance now. The latest figure for employers under investigation is 190. Is that correct?

**Mr Rizvi**—As at the end of January, we were investigating allegations against some 300 subclass 457 visa sponsors, out of a total of around 10,000 subclass 457 visa sponsors.

**Senator CROSSIN**—Since the estimates in October that is an increase of 110.

**Mr Rizvi**—Yes.

**Senator CROSSIN**—How many breaches have been found against employers in the last 12 months?

**Mr Rizvi**—In the period 1 July 2006 through to 31 January 2007, 20 employers have been sanctioned by the department of immigration for breaches of their undertakings under subclass 457.

**Senator CROSSIN**—How many have been referred to other agencies for investigation?

**Mr Rizvi**—Are you referring to the ones who were sanctioned or the ones who are under investigation?

**Senator CROSSIN**—Both, I suppose.

**Mr Rizvi**—Of the 20 who have been sanctioned, 10 are also under investigation by the Office of Workplace Services, three by the Australian Taxation Office and one by a state government agency. In relation to the 300, I would have to take that one on notice.

**Senator CROSSIN**—How many of those have been referred to other agencies for investigation?

**Mr Rizvi**—I would have to take that question on notice.

**Senator CROSSIN**—I wonder if we could get that answer before the end of the day.

**Mr Rizvi**—I am not sure. It would be a substantial task to go through those 300 cases and check which ones had or had not been referred and to which agencies. That would be a manual exercise. It would take us some time.

**Senator CROSSIN**—Don't you have a database showing each case as it comes up for a compliance investigation?

**Mr Rizvi**—We essentially have an access database which would not generate that automatically. We would have to go through it manually. I am not sure whether it is an access database or some database of that sort.

**Senator CROSSIN**—Question on notice No. 84, which I asked, was:

How many 457 sponsors were not audited for compliance with the scheme in 2005-2006?

In your answer you said:

Around 240 employers are currently under more intensive investigation.

Are these in addition to the 190 you have referred to? Do these 240 make up the 300 you have now given me?

**Mr Rizvi**—Those are point in time figures. It would have been 190 at the time of the last estimates hearing. It would have been 240 at the time we finalised this particular question. The figure right now is around 300.

**Senator LUDWIG**—Are they all under current investigation?

**Mr Rizvi**—The 300 are all under current investigation.

**Senator LUDWIG**—Perhaps we could get a better sense of some of these figures, then. Could you indicate, on a monthly basis, how many new investigations are started, how many are ongoing, how many are finalised and how many are current and still on the books?

**Mr Rizvi**—We would have to take that one on notice.

**Senator LUDWIG**—I understand that. Are you able to say what industry it relates to as well?

**Mr Rizvi**—Yes, we could do that.

**Senator LUDWIG**—And what other information can you provide without going into details?

**Mr Rizvi**—We could give an indication of the nature of the allegation being investigated.

**Senator LUDWIG**—That would be helpful. What about the number of people involved? Is there one investigation for each person or could there be multiple investigations?

**Mr Rizvi**—It would vary from case to case whether there was one or more involved.

**Senator LUDWIG**—Do you keep the data?

**Mr Rizvi**—To the extent that we can provide that, we will seek to do so.

**Senator LUDWIG**—Thank you.

**Senator CROSSIN**—Mr Rizvi, in the previous hearing in October you said:

... the bulk of the allegations that are made in respect of this visa—

that is, the 457—

relate to the legislation of other agencies; they do not predominantly relate to breaches of the Migration Act. So the key for us is to leverage the agencies that have direct responsibility for the legislation that might have been breached.

I understand that, if it is OWS or DEWR. Has the department considered introducing financial penalties for breaching the Migration Act?

**Mr Rizvi**—The minister made some announcements to that effect earlier this week, and those matters are being considered by the COAG process.

**Mr Parsons**—It was last week.

**Senator CROSSIN**—Was that as a definitive policy change or as matters to be considered by COAG?

**Mr Rizvi**—The minister has definitely announced an intention to go down that route.

**Senator CROSSIN**—So financial penalties for breaching the Migration Act?

**Mr Rizvi**—He talked about much stronger penalties. I would have to check this, but I am not sure whether he mentioned specifically financial penalties. He certainly talked about much more significant penalties.

**Senator CROSSIN**—There might be a big difference there in terms of whether you can apply again for a 457 or whether you are going to be financially penalised. Can you clarify that for us.

**Mr Rizvi**—Yes. The penalty in respect of whether you can apply again already exists. I think the minister was referring to stronger penalties of other sorts. Financial penalties, I assume, would be one of those.

**Senator CROSSIN**—Or making the time in which you can apply longer.

**Mr Rizvi**—That would be another factor that could be considered.

**Senator CROSSIN**—So when will we get details of exactly what he meant?

**Mr Rizvi**—That will be either in further announcements by the minister, once the policy consideration has been completed, or in the context of the COAG inquiry.

**Senator CROSSIN**—You do not have any details; you cannot shed any light on it for us at the moment?

**Mr Rizvi**—I could not at this stage.

**Senator LUDWIG**—You would not like to tell us what you are currently working on?

**Mr Metcalfe**—The minister has made some very clear indications that he believes that there should be penalties, including prosecution, for failure to abide by sponsorship obligations in the Migration Act, above and beyond any sanctions that might apply under other legislation, such as workplace services legislation. The detail of that is now being worked through.

**Senator CROSSIN**—In further answers to questions on notice last year, DEWR indicated to me that they have no enforcement powers in relation to 457s. So who actually enforces the minimum salary levels for 457 temporary work visas?

**Mr Rizvi**—Legally, the responsibility in respect of the enforcement of the MSL, as opposed to the enforcement of the industrial instrument, rests with the department of immigration. Having said that, there have been a number of instances where the Office of

Workplace Services has conducted investigations into allegations of underpayment, and, of course, when an allegation such as that is made and an investigation is undertaken, it is never clear at the start of the investigation whether the underpayment may be in relation to the industrial instrument or in relation to the MSL or both. Once the OWS has completed that investigation it will find whether the underpayment was in relation to the MSL. There have been instances of that, and in some of those instances the employers concerned have made good that underpayment after it was detected.

**Senator CROSSIN**—So if the MSL is actually breached then it is your responsibility to enforce some penalties—is that correct?

**Mr Rizvi**—That is correct.

**Senator CROSSIN**—But if an industrial award is breached then you are saying that that is DEWR's responsibility?

**Mr Rizvi**—In the first instance it is DEWR's responsibility. We will, through our ongoing consultation processes with the OWS, then look at the actions that the OWS has taken and consider what further action we might take.

**Senator CROSSIN**—So the Office of Workplace Services have no enforcement powers in relation to 457 visas—is that correct?

**Mr Rizvi**—They have no enforcement powers in respect of the MSL. Of course, when a person comes to Australia for work purposes, they do come under the range of workplace relations legislation that applies to Australians.

**Senator LUDWIG**—If the employer meets the relevant workplace relations laws but does not meet the MSL, and therefore it falls within your jurisdiction, what is the penalty for that?

**Mr Rizvi**—The penalty for that—a breach of the MSL but not a breach of the relevant industrial instrument—at the moment would be a sanction against the employer: either cancelling their sponsorship or barring their ability to recruit in the future.

**Senator LUDWIG**—Yes. I think we have dealt with this before, if I recollect rightly but I was not aware of this position now. So if the person had been working for the last 12 months for an employer who had not met the MSL—for instance, through the employee being on an AWA which might have been below the MSL—but had met the relevant workplace relations laws, do you then seek recovery of the MSL for the employee concerned?

**Mr Rizvi**—We would certainly discuss that issue with the employer and, if the employer refused to recompense the worker for any shortfall in terms of the MSL, that would be taken into account in any sanction action that we subsequently took.

**Senator LUDWIG**—But you cannot enforce the recovery of the MSL on behalf of the worker?

**Mr Rizvi**—At present the legislation does not give us the power to explicitly enforce that. As I have said, in every instance that I can recall where that issue has arisen, the employer has made good the underpayment.

**Senator LUDWIG**—That was going to be my next question. So there have been no instances where, once it had been discovered that the MSL had not been met, the MSL had subsequently been met by the employer?

**Mr Rizvi**—I cannot recall one. I will have to take on notice whether there has been an instance where an employer has refused to make good.

**Senator LUDWIG**—If you would not mind, do have a look at that.

**Mr Metcalfe**—I think what Mr Rizvi said is that either the employer realises that they have made a mistake and readily fixes the mistake, or—as I would regard it—they succumb to moral persuasion by the department that they should abide by their obligations. But the minister has made it quite clear that he believes that there should be legal backing for that situation as you have just described it.

**Senator LUDWIG**—There does seem to be a hole there. If there has been a non-compliance with the MSL, then you cannot institute recoveries to ensure that the affected worker can legally obtain what they are entitled to be paid under the regulation which brought them out here.

**Mr Metcalfe**—Yes. Hence the minister's announcements last week.

**Senator CROSSIN**—Mr Metcalfe, in October last year the government announced an additional \$17.6 million for the mobile strike teams. I think at the time you were unable to give us any detail about how that money would be spent because it was only two or three weeks after that announcement. Can you now tell us how that additional funding is being spent?

**Mr Metcalfe**—Yes. If you refer to page 19 of the additional estimates statements you will see that, under outcome 1, about halfway down the page, there are a number of amounts in this financial year under the out years that reflect that particular initiative.

**Senator CROSSIN**—Sorry, could you point out exactly where?

**Mr Metcalfe**—On page 19, if you run down table 1.2 you will see, about halfway down, departmental estimates, increase/decrease, bill 3, outcome 1, and you will see 'visas—

**Senator CROSSIN**—It says:

.. improvements to the management of temporary skilled ...

**Mr Metcalfe**—That is correct.

**Senator CROSSIN**—Is that the mobile strike team?

**Mr Metcalfe**—That is improvements to the management of temporary skilled migration—in other words, better monitoring.

**Senator CROSSIN**—No wonder I could not find it. How many 'strikes' have been carried out, if that is the right terminology?

**Mr Rizvi**—I might go through in broad terms what we are doing and then go down to the specifics of the numbers there. Twenty-seven additional ASL have been allocated around our state and territory network to increase our ability to monitor and ensure compliance with the

subclass 457 visa. That has included five additional investigator positions and 22 additional monitoring and compliance positions.

**Senator CROSSIN**—Can you tell us where they are?

**Mr Rizvi**—Yes, the five additional investigation positions are being provided in our offices in Melbourne, Sydney, Perth and Brisbane. The remaining 22 ASL are spread across all of our other state offices, including the ones I have just mentioned, to supplement the monitoring teams that are already in place.

There are a range of functions that those 27 ASL will undertake. Firstly, they will help to increase our ability to investigate the 300 cases that we have just discussed. Secondly, they will improve our ability to profile and target sponsors that may not be complying and to include that in our safeguard alert system to help the processing officers and monitoring staff to target monitoring and site visit activity.

The additional resources of the 22 ASL that are distributed across our state office network have been conducting more intensive risk based audits of sponsors. We are concentrating our activities around high-risk areas of the program, with particular emphasis on sponsors operating in the construction, manufacturing, hospitality and agriculture industries.

We are trying to make our site visits more focused and more intensive, including better preparation and planning, and follow-up of identified issues. The outcomes of these site visits are starting to show results. As I have mentioned, some 20 subclass 457 sponsors have been sanctioned in the last seven months. We estimated that, overall, we will conduct something in the order of 2,000 site visits this financial year. That would represent an increase of 16 per cent on the number that were conducted last financial year. Finally, in addition, we are also working much more closely, as a result of the resources available, with relevant agencies in Commonwealth, state and territory governments. That, as I mentioned earlier, is crucial to being effective in this area, because in many instances the breaches we are talking about are breaches of the legislation of other agencies.

**Senator CROSSIN**—There have been 20 employers sanctioned in the last seven months, but your strike teams have only been in place since about October or November, haven't they?

**Mr Rizvi**—Yes, around October. That is correct. But they would have helped to finalise or speed up the finalisation of many of those investigations.

**Senator CROSSIN**—So what percentage have resulted in employers not being able to utilise the 457s?

**Mr Rizvi**—Twenty sponsors have been sanctioned in the last seven months. In addition, I should mention that any employer that is subject to an allegation and investigation is unable to use the subclass 457 visa until the investigation is finalised.

**Senator CROSSIN**—So does this mean that these people will now enter a worksite unannounced?

**Mr Rizvi**—They can enter unannounced, but usually it involves an announced site visit.

**Senator CROSSIN**—And they will do that not just for people who are under investigation but as a general compliance regime—is that correct?

**Mr Rizvi**—That is correct. We seek to profile the caseload, and we identify that portion of the caseload or those employers that should be targeted for those site visits. As I mentioned, we expect to site visit something in the order of 2,000 employers in 2006-07. Those visits will particularly be targeted at those risk industries that I mentioned.

**Senator CROSSIN**—I am just having a look here. I do not think I have any more on 457.

**CHAIR**—Are there any other questions on subclass 457 visas?

**Senator LUDWIG**—I have a couple more generally on the visa categories themselves. Could I ask them here?

**CHAIR**—Yes. We had tried to focus on 457s and get those out of the way.

**Senator LUDWIG**—Yes, I am sorry—I was not here during that.

**CHAIR**—That is fine. We are still in output 1.1, so you can ask further questions in relation to the relevant visas.

**Senator LUDWIG**—I will take your lead and see if there were any further. I think that is a negative, as I understand it.

**CHAIR**—I think it is a negative, yes.

**Senator LUDWIG**—I have a couple of general questions on the visa categories themselves. There was a question I think put on notice—question No. 3476 in the House by Mr Burke—relating to visa subclasses. They went to visa subclasses 160, 163, 411, 416, 417, 418, 419, 420, 421, 422, 423, 426, 442, 457 and 462. The type of information that was being sought related to the approximate number of visas issued each year from 1996 to the present and the number in each subclass who were granted permanent residency. Do you hold that type of information in your database? I am wondering how easy it is to obtain it.

**Mr Rizvi**—It is in the database but it does take time to extract. It is not a simple reporting mechanism to extract that range of data. I do recall that particular question, and it did involve a fair amount of work digging that data out.

**Senator LUDWIG**—Has that question been finalised? That information would be helpful for the committee to understand the—

**Mr Metcalfe**—We can check. It sounds like some work may have been done on it. As to whether it has actually been through a clearance process and approved, we will have to check. Presumably, it has not been tabled yet.

**Senator LUDWIG**—I might re-ask it in the context of this committee. It is certainly information that I have been following, so as to get it put down into a neat package of all of those that relate to employment, where people would be seeking employment either on a permanent or on a temporary basis and how many of those have then translated. I do not know whether any have been missed out, but they seem to encompass nearly all of those ones that would be employment related in Australia, either on a long-stay, temporary or ad hoc visit. By group and by whether or not they had gained permanent residency—that would be helpful.

**Mr Metcalfe**—We can analyse this, Senator. From the numbers you have read out, it does not sound as though you read out any with a ‘9’ in front. I note, as Mr Rizvi said before, there are electronic applications for a 456 visa, for example, which is a ‘9’ series visa.

**Senator LUDWIG**—That is right, yes.

**Mr Metcalfe**—We can check where the response to that answer is and let you know. We can also perhaps advise you—which I think was your second question—as to whether it was comprehensive in terms of going to visa subcategories that contain work rights. It sounds from the numbers that you read out that—

**Senator LUDWIG**—It does not contain the electronic, by the look of it—you are right.

**Mr Metcalfe**—No. It sounded like it did include working holiday makers and students—occupational trainees—but it may not have included some electronic categories.

**Senator LUDWIG**—It would be helpful for that to be additionally provided to the committee. Thank you.

**Senator CROSSIN**—Can I just jump onto the back of that question. I think for Senator Ludwig you are actually going to provide a list of the number of visas that are issued each year in that visa category.

**Mr Metcalfe**—What I think I have just done is undertaken to Senator Ludwig that we would check on our status of response to Mr Burke's question in the House and separately advise whether that was comprehensive in terms of listing all the subclasses of visas that contain work rights. From what I gather the question went to the numbers of visas over the last 10 years containing work rights and the numbers of those persons who transitioned to permanent residents.

**Senator LUDWIG**—And, additionally, I want to then own the question in the sense that the committee would like—

**Mr Metcalfe**—It is your question in estimates, is it?

**Senator LUDWIG**—Yes. When we do these things, I look over what other people are also asking, and that was a good question. I might borrow it as well. I would not mind having that information available to the committee.

**Mr Metcalfe**—Obviously, as Mr Rizvi said, I would not underestimate that there is a significant amount of work associated with that.

**Senator LUDWIG**—I am always concerned about that.

**Mr Metcalfe**—Hundreds of thousands—or millions, I suspect—of visas were issued in that 10-year period.

**Senator CROSSIN**—Mr Metcalfe, can I just ask you to add two other columns to that. I was wanting to get from you an estimation of how many visas you are expecting to issue in the forward years and how much revenue you are expecting to generate from that. Should I just narrow that down to the 442s and the 457s? You have given me an answer, with respect to 442s, to a question I previously asked.

**Mr Metcalfe**—You are asking me to sort of crystal ball gaze into the future with that, and that is why I am just raising the question in my own mind. As we have seen, many of these are in fact demand-driven categories. There are no caps in place on many of them. It will reflect economic activity associated with the needs of employers and the availability of workers in

Australia vis-a-vis foreign workers. So I think to speculate on future numbers and future revenue would be beyond even our best statisticians, I suspect. I do not think we can do that.

**CHAIR**—Anything else on output 1.1?

**Senator NETTLE**—I want to ask a question about student visas. I asked a question on notice in the previous estimates, which was No. 204. It was about the enforcement of student visas. The question resulted from some comments which were made by the Federal Court, in terms of the enforcement of student visas and, in particular, people's working hours in student visas, which the Senate committee heard about. I asked a question on notice, which was about whether any changes had been made in response to those criticisms or comments. The answer I received stated that no legislative changes had been made. As a senator, I am aware of that. I want to follow up on that and ask whether there had been any other administrative or procedural changes in the way in which student visas were enforced as a result of those criticisms made by the Federal Court and also criticisms that we heard in the Senate inquiry into the Migration Act on this issue.

**Mr Metcalfe**—There are many perplexed faces at the table here. Could we come back to you shortly in relation to that particular question? We could just check with the officers here as to whether there is anything we can do to assist you.

**Senator NETTLE**—Is the question clear?

**Mr Metcalfe**—I think so. You basically said that we have taken a question on notice and responded on notice and given a particular response, which stated there had been no legal changes. You are saying, 'Below that, had there been any administrative changes or other changes?'

**Senator NETTLE**—Yes.

**Mr Metcalfe**—We will come back to you during the hearing and let you know.

**CHAIR**—Anything further on output 1.1?

**Senator CROSSIN**—I want to look at the trade skills training visa. I want to refer to questions 12, 13 and 14 that I asked last time. I take it that there are still no apprentices in Australia under the trade skills training visa?

**Mr Farrell**—No visas have been granted.

**Senator CROSSIN**—The answer I received for the revenue projection for 2006-07 is still at \$238,750, even though not one visa has been approved?

**Mr Farrell**—That is correct.

**Senator CROSSIN**—So there is no revision of that projected revenue, even though we are now seven months into the financial year?

**Mr Farrell**—Not at this stage. Just to recap what we have at the moment: in terms of the two financial years, we have 34 sponsorships and 30 visa applications at this time. Our Brisbane office is working with regional certifying bodies and visa applicants to make sure that they are aware of the safeguards that are built into the systems and are working with them. As was mentioned before, we are making sure they are advertising on JobSearch and employers are aware they can work with local chambers of commerce and local government

to see if they can find apprentices. We are hopeful that those mechanisms are working, but it is hard to say. There still could be genuine vacancies that these mechanisms will not be able to address, so at this time we have not sought the need to revise those revenue projections.

**Senator CROSSIN**—You said you had 34 visa applications.

**Mr Farrell**—Thirty-four sponsorship and 30 visa applications.

**Senator CROSSIN**—When you came up with this revenue projection of \$238,750, how many visa applications was that based on?

**Mr Farrell**—That was based on an assumption of 40 sponsorship applications, 60 visa applications for the first VAC and 50 for the second VAC, which is the visa application charge they pay just prior to the grant of the visa. There was also an assumption that some applicants might need to change their sponsors if the sponsor's application was rejected, and that was estimated to be around 10.

**Senator CROSSIN**—If we get to 30 June and we still have not advanced any more on the 30 visa applications, does that projected revenue roll over or are you going to offset it against your \$60 million debt?

**Mr Farrell**—We would need to look at it at the time, obviously, and see what the lie of the land was. As you would see from the answer we gave you, we are assuming that that projection would be consistent in the forward years.

**Senator CROSSIN**—So you would anticipate that there would still be around the 40 and 60 for the other forward years—is that correct?

**Mr Farrell**—Correct.

**Senator CROSSIN**—So you are not anticipating that by 2008-09 there would be more than that?

**Mr Farrell**—Not at this stage. As I mentioned, we are continuing to monitor this visa. It was only introduced on 1 November 2005, so, as things progress, we will certainly keep an eye on matters.

**Senator CROSSIN**—In questions 12 and 13 I asked you to specify what industries those applications are in—this is the list of the 30 visa applications; six have been refused. Can you tell me why six were refused?

**Mr Farrell**—I am advised the majority of refusals were due to the businesses having an insufficient history of training apprentices or not being able to demonstrate that they would be able to get sufficient resources to train apprentices.

**Senator CROSSIN**—Three were withdrawn—do you know the reasons?

**Mr Farrell**—Because they had vacancies which were not in regional areas.

**Senator CROSSIN**—When you say they did not have sufficient training provisions, who makes that assessment?

**Mr Farrell**—We look into that. As part of the certification process, we require sponsors to have a good record of already training apprentices or show us that they have the capacity to train apprentices. In our Brisbane office, if there is a brand new employer and they have no

record of this, then they undertake some consultations with that employer to gauge their ability to train apprentices.

**Senator CROSSIN**—So you would be assuming that, given your revenue projection, this list would be realised?

**Mr Farrell**—All things being equal that may be the outcome, but, as I say, we work with each company to ensure that they are aware of all the tools at their disposal to see if there is an opportunity to get an Australian. If there is not, then we work with them to see if there is a genuine overseas apprentice they can get.

**Senator KIRK**—Firstly, I would like some figures. Could you advise me how many of these visas were issued in the period 2005-06 and 2006 to date.

**Mr Metcalfe**—In which subclass?

**Senator KIRK**—Subclass 442.

**Mr Rizvi**—I have the figures here for 2005-06. In 2005-06 there were a total of 6,890 subclass 442 visas issued. In the first half of 2006-07 there were 1,572 nominations lodged. That is not visas granted; that is simply nominations for positions to be filled.

**Senator KIRK**—So that is for the first half of this financial year, from June 2006.

**Mr Rizvi**—Yes. In terms of visas granted for the first half of the year, if I may, I would like to take that on notice so we can provide you with a specific number.

**Mr Farrell**—I am advised that for the first six months of this financial year the figure for total visa grants of the 442 visa is 2,963.

**Senator KIRK**—That is visas granted.

**Mr Farrell**—Yes.

**Senator KIRK**—I am wondering why there were fewer nominations than visas granted, or was that a different period?

**Mr Rizvi**—Nominations are positions to be filled. Of course, you can have nominations which may not be filled in the year in which the nomination takes place. The nomination may be filled the following year.

**Senator KIRK**—I see. Since the year 2000—that is going back quite a few years; you may need to take this on notice—how many of these subclass 442 visas have been granted?

**Mr Parsons**—I can give you the figures from 2001 right now, right the way through, if that helps.

**Senator KIRK**—That would be helpful. Thanks.

**Mr Parsons**—For 2001-02 the figure is 6,201. For the following year, 2002-03, the figure is 6,904. The 2003-04 year saw 7,021. The 2004-05 year saw 7,146. Last year there were 6,890.

**Senator KIRK**—Remarkably consistent, aren't they, from year to year?

**Mr Parsons**—Yes, for each year.

**Senator KIRK**—If you could get figures for the 2000-01 year that would be helpful. You can take that on notice. Tell me, how are these visas monitored? What sort of level of compliance or what kinds of mechanisms do you have in place to ensure that the conditions of the visa are complied with?

**Mr Rizvi**—As you are aware, we issue a wide range of temporary entry work visas that provide work rights. In any particular year or at any point in time there are likely to be somewhere between 300,000 and up to half a million people on temporary entry visas in Australia with work rights. Clearly, monitoring each one of those as intensively as we monitor subclass 457 would involve a very significant increase in resources. I would also say that the risk levels involved with different temporary entry visas vary from visa to visa quite considerably. Our view is that the 457 visa potentially involves, based on experience, the highest level of risk and, as a result, the level of monitoring and investigation that takes place with subclass 457 is the highest.

In terms of occupational trainee visas—that is, subclass 442—we have found historically that the organisations that become involved in this visa are well-known Australian training organisations: usually universities, medical colleges et cetera. For that reason, we have not found it necessary to monitor it at the same level of intensity as we monitor subclass 457. We would monitor occupational trainee visas in the same way as we monitor student visas—that is, not to the same level of intensity as subclass 457 visas.

However, as over time the labour market tightens and there may be an inclination by employers for a wider range of registered training organisations and other training organisations to use this visa, that may well change. There is some evidence that we have found in the last six months or so of a trend towards a wider range of registered training organisations utilising this visa. It is against that background that we have initiated discussions with state and territory government education authorities which register these registered training organisations and are responsible for ensuring quality control. The key, I believe, to ensuring high levels of integrity with this visa is to ensure that registered training organisations indeed do the right thing.

Against that background, from 1 July this year the government has announced that the Australian Quality Training Framework will be revised, and from 1 July 2007 RTOs will benefit from a much more rigorous level of registration and auditing. We believe that is the key to increasing compliance and integrity in this particular visa. However, in addition to that we are continuing to look at the visa in terms of what might be done to minimise the possibilities of noncompliance, and we will be advising the minister on options in that regard in the near future.

**Senator KIRK**—In the last 12 months, how many investigations would there have been in relation to this visa? I understand that you are saying that there are not as many as under the 457 subclass. We have just canvassed 457 visas. I want to do some sort of comparison between the two.

**Mr Rizvi**—Could I take that on notice, Senator? It would be a very small percentage of the 300 investigations that I was referring to earlier.

**Senator KIRK**—So are we talking about what—three investigations?

**Mr Rizvi**—We are possibly talking about a handful.

**Senator KIRK**—There has been a well publicised case, which you would be aware of, of what might be described as—

**Mr Rizvi**—We are very aware of that case and a small number of other cases involving the training of nurses.

**Senator KIRK**—Was it as a consequence of those breaches of integrity, I suppose you would say, in relation to the nurses that you instigated the discussions in relation to the Australian Quality Training Framework registration?

**Mr Rizvi**—The Australian Quality Training Framework was developed by ministers of education, both Commonwealth and state. That process has been ongoing for some time and has essentially been happening in parallel with what we have been doing. What we have seen is an increasing percentage of registered training organisations becoming involved with people from overseas. That is where our interest in this matter has arisen, and it is against that background that we have been consulting with the Department of Education, Science and Training regarding quality assurance for RTOs.

**Senator LUDWIG**—In the earlier response you gave you indicated that you would notify the employer before commencing an investigation or a compliance audit. Does that hold the same here as well?

**Mr Rizvi**—The investigations and compliance audit side I was referring to were the site visits we undertake. The bulk of those site visits we would undertake following having advised the employer that we wished to do that. That is essentially because we want to ensure that the employer has all the paperwork ready. Turning up unannounced often creates a situation in which the employer says, 'I do not have the paperwork here; I have it somewhere else,' and those sorts of difficulties. We are increasing the percentage of site visits we undertake unannounced, but we do that on a targeted basis where there is a good reason to do so. An unannounced site visit may well take place for an employer or a training organisation involved with the 442 visas, because they are also included in that range of investigations that I was referring to earlier.

**Senator LUDWIG**—You could imagine that the training organisation would have the relevant paperwork there, though. That is a strange response that the—

**Mr Rizvi**—Registered training organisations vary quite considerably in type and size. Some of them are quite small.

**Senator KIRK**—My question went to the number of investigations that there has been. You said you would take that on notice, which is good—thank you. We have gone through this, and, over the last six or seven years, an awful lot of these visas have been issued. How many previous breaches of the visa class have been identified?

**Mr Rizvi**—In respect of subclass 442?

**Senator KIRK**—Subclass 442.

**Mr Rizvi**—I would have to take that on notice. Given that the number that we are investigating, or have been investigating, is relatively small, I think the number of breaches

would also be quite small. I think if you were to look at the kinds of organisations that have traditionally become involved in this particular visa, you would understand why there have been relatively few breaches.

**Senator KIRK**—What is the penalty for a breach? I understand that, in the case of the one that we were speaking of, the company has been banned from sponsoring anymore of these types of visas. Is that the only penalty that is imposed or are there financial penalties?

**Mr Rizvi**—There are no financial penalties associated with the occupational trainee visas.

**Senator KIRK**—So the only penalty for a breach is that you are not granted authorisation—

**Mr Rizvi**—You cannot use the visa anymore, at least for a period of time, until appropriate rectification has taken place.

**Senator KIRK**—In an answer to question No. 137 from the hearings in October, the department provided a table of the arrival of a subclass of onshore primary applicants granted a subclass 457 visa. The figures that were provided show the number of 442 visa holders who transferred to a 457 visa from the period 2001-02 to 2005-06.

**Mr Rizvi**—Yes.

**Senator KIRK**—What I am interested in is that, in the first four financial years, from 2001-02 to 2004-05, the transfer from 442 to 457 was a relatively small number—a little less than 70, on average. Yet in the last financial year, 2005-06, the number increased to 290. I was a little puzzled as to why there has been this significant increase in transfers in the last financial year between these two subclasses.

**Mr Rizvi**—I do not have access to any specific analysis in that regard. But my immediate, intuitive response would be that it is probably a reflection of the tightening of the labour market and the increasing needs of Australian employers for skilled labour. If a person does complete an occupational trainee course in Australia that will usually mean that, at the completion of that period of training, they are then regarded as being up to the Australian standard. For example, if a nurse was to come to Australia from China—a fully qualified nurse in China—that person would not be automatically registrable in Australia until they had completed an appropriate bridging course. So, for example, a percentage of those may well be nurses who are completing an appropriate bridging course. Given the shortage of nurses in Australia, I could imagine Australian employers would be keen to recruit people who then met the Australian standard.

**Senator KIRK**—So it would not be, say, because there had been some recognition or acknowledgement that the individual concerned was not really training but working and therefore should more appropriately be on a 457 visa rather than a 442?

**Mr Rizvi**—There could have been instances of that. I cannot recall a particular instance, but that is quite possible.

**Senator KIRK**—So are the reasons for the shifts from 442 to 457 detailed in any kind of transfer documentation that is available?

**Mr Rizvi**—We would need to go into our systems and dig that out at the highest level. Then you would need to look at the specific files in order to find the specific reasons for people converting.

**Senator KIRK**—I was going to ask you to take that on notice, but I would have thought it would be quite a task to go through each of the individual reasons. Is that what you are saying?

**Mr Rizvi**—It would be. We could perhaps go through half a dozen just to give you a feel for it.

**Senator KIRK**—That would be good.

**Mr Rizvi**—We could randomly select half a dozen and have a look.

**Senator KIRK**—If you could do a sample, I think that would be helpful.

**CHAIR**—Thank you. Anything else from output 1.1? Senator Ludwig.

**Senator LUDWIG**—We have been following this compliance audit and the way you go about it for a while. This relates also to the questions I asked about how you enforce the minimum salary level.

This might be a bad shorthand way of describing it but in terms of issuing visas you do audits announced so that employers know when you are going to come and visit them. If they then get it wrong, you ask them to comply—you encourage them to comply perhaps—and the only sanction you have is to say, ‘ultimately, you can’t get a visa at some point’ in respect of the class. It does not seem to extend to others for a very long time because in a short while, if they can convince you that they have amended their ways, then they can go about the business again. It does not seem to be a very adequate scheme, an adequate way of dealing with it, an adequate compliance program or an adequate sanction regime—and this has been going on for a few years, and I think we have been raising these questions for a while as well. It is only lately that the minister has indicated some propensity to alter the scheme. But in the way you manage the scheme, the question really relates to: have you changed the way you manage the scheme; are there more employers that you are knocking back; and is there an increase in employers that you put on a list that you will not provide visas to? What are you doing about it as a department?

**Mr Rizvi**—I might start with the question of sanctions. I think it has to be remembered that the sanctions that apply in respect to subclass 457—and the minister has announced the intention to go down the path of a strengthened set of sanctions—are in addition to any sanctions that might be applied by a range of other agencies whose legislation may have been breached. In the vast majority of the 20 sanctions that we have applied, most have involved some degree of sanction or breach of another agency’s legislation. So two sets of sanctions are being applied, and the minister has announced that our set of sanctions is to be strengthened.

In terms of the way we go about dealing with these applications, you asked if there is a list of employers who we watch out for in terms of future applications and that sort of thing. That is certainly the case. At the moment we hold not only a list of employers of concern that we have identified through the various processes but also a list of employers of concern that OWS have identified which we maintain on our database. If any of those two sets of

employers apply for a subclass 457 visa that history will automatically come up and need to be considered.

We are talking to state governments and other agencies about whether they would be prepared to enter into a similar arrangement with us as we have with the Office of Workplace Services so that, for example, employers who have a bad occupational health and safety record could be included on such a list. They could also be taken into account. Those are some of the measures we are taking in terms of improving the visa. The government has provided us with additional resources in terms of monitoring and enforcement, and that is also starting to show results. Finally, the inquiry that COAG has announced is specifically about increasing the integrity of the visa. We are keen to move down that path but it is important that we do not move down it in an overly heavy-handed way, given that the vast majority of employers who use this visa still comply. Three hundred investigations within a program of 10,000 still only amount to three per cent of employers who have had allegations made against them.

**Senator LUDWIG**—In terms of repeat offenders of your own legislation, do you keep figures of those—the relevant visa subclass; not only 457 but 442s and the other employment related ones?

**Mr Rizvi**—The warning list that we have of employers, as I said, includes employers in a range of different circumstances: firstly, for example, they may be an employer who has been identified to us by OWS; secondly, they may be an employer who has been sanctioned by us; thirdly, they may be an employer where allegations have been made; and fourthly, they may be an employer where we have concerns because of past monitoring activity but that monitoring activity did not lead to a sanction. There was insufficient evidence to justify a sanction, but they are of concern, remain on that list and their renewal of sponsorship would of course be closely considered when that time arose.

**Senator LUDWIG**—Do you have figures for how many repeat offenders there are against your legislation and where you have sanctioned them? In other words, they have been sanctioned once and have done it again or have committed a similar offence and have been sanctioned again, and then they have done it again.

**Mr Rizvi**—I would have to take that on notice and see if we can dig out examples of that or statistics on that. I would not imagine that there would be many employers who would breach that often whom we would not have moved to bar from the program if they were three-time offenders.

**Senator LUDWIG**—I understand that, but it gives me an indication of how quickly you move in that sense and how many people have repeat offended without any follow-up, for argument's sake.

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

**Mr Metcalfe**—An important point to make here is that, as we have previously advised in estimates, one of the actions taken immediately an allegation is made that there are concerns about an employer's use of the visa is to suspend the ability of that employer to make any further sponsorships until that issue is resolved. We will provide the answer to you, but my

expectation is that you would see very few repeat offenders because the potential to reoffend is in fact very limited.

**Senator BARTLETT**—I want to clarify something regarding student visas. There was some coverage a few weeks back of a study released by Professor Birrell of the English competency of students. I imagine you are aware of that one. It found that 34 per cent of overseas students within his survey who attained permanent residence under the general skilled migration program were unable to demonstrate competent English. It was as high as 43 per cent among those from China. I know that different levels of English are required for different visas, but I think these sorts of surveys have the potential to undermine public confidence, as the saying goes, in the student visa area by suggesting that whole swathes of people are getting in who cannot speak English adequately. Do you have any initial responses to that? Would you like to correct or clarify any of the data that he has come up with?

**Mr Parsons**—The department's response to the Birrell report is encapsulated in some changes that are being made to the general skilled migration program. One of those in the area that you are talking about is in fact an increase in the English language proficiency requirement for the applicant to be granted a visa. My understanding is that the IELTS English score will be increased by approximately one over where it is at present. There are different grades, depending on the skill set that the migrant is applying for. In response to that Birrell finding, the GSM reforms will see an increase in English language proficiency.

**Senator BARTLETT**—So the department is fairly confident that those new changes will address that concern.

**Mr Parsons**—Indeed. Again, this has featured in the public consultations that I have attended, where the department has made its intentions known to increase English language proficiency. In all the sessions I have been to, which have been in the east coast capitals and Adelaide, that has been met with resounding endorsement from the employers and the industry groups that have been present.

**Senator BARTLETT**—What about with regard to education institutions?

**Mr Parsons**—They too are feeling bruised by some of the findings of students graduating with less than acceptable levels of English. They welcome the change as well.

**Senator BARTLETT**—There is meant to be an English language requirement or English language component for the initial student visa application as well, isn't there?

**Mr Rizvi**—I might be able to help with that. There is an English language requirement associated with the student visa application process. If a person applies for a student visa directly to a university course in Australia, we will assess that application against the English language requirements for entry to university—the two equate—and we will look at an IELTS test at that point. Those persons who enter directly into a university in that way will have the requisite English language ability prior to getting the student visa. However, it is also possible for overseas students to obtain what is known as a package visa, which enables them to apply, in conjunction, for a visa that enables them to study English in Australia, obtain the requisite level of English and then go on to do a university course. Between the period in which they do their English language training and the period of transferring then to the university course we do not apply a visa test because they are already on a student visa. The assumption we

make is that the relevant education provider will do the appropriate tests to ensure that the person has an adequate level of English to go on to university at that point.

**Senator BARTLETT**—One other question, which I thought would be in output 1.1, but it is actually mentioned in your annual report under 1.2. I am happy to wait. It deals with a memorandum of understanding with the Vatican about visa arrangements for World Youth Day.

**CHAIR**—Which section is that in?

**Mr Metcalfe**—It should be in the annual report, but it might have been reported as an international development or something. We are happy to answer questions.

**Senator BARTLETT**—I presume, as with all these MOUs, they are not things you go waving around publicly, but I wonder what that MOU covers. I assume that with respect to the World Youth Day people will be coming here from most countries. Is it to do with people coming from at-risk countries?

**Mr Metcalfe**—We are expecting that, I think, in excess of 100,000 pilgrims will attend World Youth Day in the middle of next year, and it is hoped that His Holiness the Pope will attend. This follows on similar world youth days in Germany, Canada and possibly elsewhere in recent times. I would anticipate that pilgrims who are coming from electronic travel authority eligible countries would simply come under those sorts of arrangements. But the MOU would be designed to cover the overall immigration aspects of World Youth Day, including appropriate sponsorship or recognition of support from the local church in those countries to ensure that people attending on the basis of coming to World Youth Day were in fact coming for that purpose and not for other purposes. It is not dissimilar to the arrangements we have in place for any major international events, such as the Commonwealth Games last year in Melbourne, where we work closely with the organising authorities to ensure that all the right people are able to come and to minimise any immigration issues that could possibly arise.

**Senator BARTLETT**—How do you address issues of people who trigger your—I have forgotten the proper title—alert list, or whatever; people from potential refugee-claiming countries?

**Mr Metcalfe**—There is no alert list as such, but there is essentially a bona fide requirement generally applicable to visitor visas. So an assessment has to be made by an officer from non-electronic travel authority eligible countries as to whether the person genuinely intends a visit and genuinely intends to only remain for the period of their visa and then return home. Having an MOU in place with the organising body—in this case, the Catholic Church—is a way of providing information advice to us as to whether people have the support of that organisation and is a way of working cooperatively to, as I have said, maximise the benefits and minimise any problems that could possibly arise.

**Senator BARTLETT**—Do you know whether the MOU is with the Vatican as a state or is it with church bodies?

**Mr Metcalfe**—The discussions are still underway. Certainly, most of our dealings are with the Australian Catholic Church, but the initial approach did come from Rome, so we are working with them just to finalise who will actually sign.

**Senator BARTLETT**—You think there will be about 100,000 people? How long does the event go for?

**Mr Metcalfe**—I think the estimates we have seen possibly exceed 100,000 people—135,000 is the figure we have seen, so it is a very big international event by any standard.

**CHAIR**—It is one o'clock. Senator Crossin, I encourage you to pursue that further issue in output 1.1 by way of notice so that we can open at two o'clock with output 1.2.

**Senator CROSSIN**—You could encourage me to do that.

**Senator NETTLE**—The department is still coming back to me about a question in output 1.1.

**CHAIR**—They will come back if they have an answer, as they always do.

**Senator NETTLE**—There may be some follow-on questions on that.

**CHAIR**—There may be, and we will deal with that if the case arises.

#### **Proceedings suspended from 1.00 pm to 2.00 pm**

**CHAIR**—Senator Crossin, I understand you had about 10 minutes of questions in relation to the rest of output 1.1.

**Senator CROSSIN**—Yes. Mr Metcalfe, I wanted to go back to the issue of the 442 visa and ask you some questions about what the department is doing regarding the Chinese nurse agency, Nurse Bank Australia. How many Chinese nurses are there now that have visas associated with that company?

**Mr Rizvi**—I will be with you in one second, Senator.

**Mr Parsons**—Whilst Mr Rizvi finds his papers, I can answer that question. There are currently 30 nurses from the People's Republic of China who are in Australia on those visas. They expire on 15 March.

**Senator CROSSIN**—They are all with Nurse Bank Australia; is that correct?

**Mr Parsons**—That is my understanding.

**Senator CROSSIN**—I understand they have been paid a flat weekly rate of \$300. Who is now investigating this rate of pay?

**Mr Rizvi**—If I could fill you in on that one. The allegations regarding underpayment of salaries and unlawful deductions that have been made in this context are currently being investigated by the Office of Workplace Services as they are an alleged breach of workplace relations law.

**Senator CROSSIN**—When did Workplace Services start that investigation?

**Mr Rizvi**—We held discussions with the Office of Workplace Services on the matter on 20 July 2006, and it was formally referred to OWS for investigation on 7 August 2006.

**Senator CROSSIN**—And they are still investigating it?

**Mr Rizvi**—On the latest information that I have available that would appear to be the case. But I would prefer to take that on notice just to double check with OWS precisely where their investigations on this one are up to.

**Senator LUDWIG**—If you would not mind, because what I am very concerned about is what happens on 15 March—do they then get returned to the PRC? In which case, if the matter is being investigated and evidence is being acquired, maybe an alleged underpayment or maybe an alleged prosecution, their evidence has apparently flown home, and it would be very difficult to mount a case without those persons. But I would have thought you would have monitored those sorts of things a bit more closely.

**Mr Rizvi**—We are certainly monitoring it very closely. I am simply saying that, on the basis of what I have before me right now, I am not precisely sure where the OWS investigation is up to. What I can say is that, in respect of the nurses, they are all being provided time to find new trainers or new employers. If there is a need for them to remain in Australia because there is legal action proceeding, we would find arrangements to enable them to remain, to provide any assistance to legal authorities that were appropriate.

**Senator CROSSIN**—Mr Rizvi, are you seriously suggesting it has taken, under your watch, OWS seven months to look at a breach of pay and conditions for only 30 Chinese nurses?

**Mr Rizvi**—I am not saying that. That is the information my brief here provides. What I am saying is, in order to be able to provide you with full information as to where this matter is up to, we would need to refer that to OWS and check where they are up to in their investigation.

**Mr Metcalfe**—Or, Senator, you could ask OWS that when they appear before estimates this week.

**Senator CROSSIN**—That is right, but I did ask you questions before about who exactly is responsible for these outrageous breaches when they occur with people who are not Australian citizens and who are here in good faith to undertake either work or training. If you first raised it with OWS on 20 July last year and this is now nearly February, what intervention have you made in the meantime with OWS to ensure that their investigations are much faster than this? When was the last time you contacted OWS? What did they tell you? What have you done about their response?

**Mr Rizvi**—We are in contact with OWS on a range of matters on an ongoing basis. In respect of this specific case, as I have said, I would need to check with OWS where this particular investigation is up to.

**Senator CROSSIN**—We would like that information today. We would like you to contact OWS and tell us today, because seven months is quite a long period of time. What was the last date you spoke to OWS about this specific matter?

**Mr Rizvi**—I will need to take that on notice. I will need to check when we last spoke—

**Senator Ian Campbell**—The Labor Party senators could easily go to the relevant estimates committee which is sitting this week and ask that question.

**Senator CROSSIN**—That is not until Thursday and we will do that, but this is actually a possible breach of the Migration Act. You have told me before that you have overall

jurisdiction and care for these people, so we would like some answers about what you are actually doing about this. Earning \$300 a week for working, including Christmas Day, is something I would have thought you would get on to as quickly as possible.

**Mr Metcalfe**—Senator, you have just made a number of comments that I think need a response. Firstly, there is no suggestion that we do not take this seriously. It was referred in a timely fashion to the responsible authority. While as a matter of courtesy to the committee we will undertake inquiries of that other Commonwealth agency and see whether they can provide us with information that we can relay to you, I would not want that to be regarded as us assuming responsibility for the operations of another departmental agency. It is not appropriate for me or my officers to seek to answer questions in relation to areas outside our departmental activity. We have told you that the matter has been referred to the responsible authority. From everything I have seen, OWS takes its responsibilities very seriously. If we are able to provide you with advice we will, but otherwise I am sure you can pursue that with them.

**Senator CROSSIN**—Mr Metcalfe, what I specifically want to know from you is what your department has done since July last year in terms of progressing this matter. We are probably only about a month away from their visas expiring, and we would like to know what the immigration department is doing about this matter.

**Mr Metcalfe**—We referred it to the responsible authority and, if we can provide further information and subsequent contact that is within our possession and our initiative, we will do that.

**CHAIR**—Thanks, Mr Metcalfe. Mr Rizvi had something to add.

**Mr Rizvi**—I do have information here on the further contacts we have had with OWS on this matter. They have been quite consistent and quite frequent. OWS have advised us that this is a complex matter. It is not straightforward and there are significant legal issues involved. OWS advises that their investigations are significantly progressed, but they do not wish us at this stage to reveal in public precisely where those matters are up to because of concerns about impacting on the legal processes that are going to be involved in this particular case.

In terms of our contact with OWS on this matter, we had contact with OWS on a number of instances since the first referral. For example, OWS attended an interview we conducted with the trainees involved at our Melbourne office on 31 July. We conducted further interviews on 7 July—sorry, on 7 August—but we did not include OWS at that time. OWS took certain actions on 7 August in respect of this organisation. On 9 August OWS visited the organisation and took further actions. Once again, as I have said, I am not in a position to go into the detail of the actions they took, because those actions and the matters that are being progressed will be the subject of legal action.

I have a range of dates here where we have had interaction with OWS as this matter has progressed: we talked to them on 3 October 2006; we contacted them again on 20 October 2006; we had discussions with the legal aid office in respect of this matter on 23 October 2006; we provided certain further information to OWS in respect of this case on 24 October 2006; we had a further meeting with OWS on 31 November 2006; and I know in the last few weeks we have had further discussions with OWS. I have spoken personally to senior officers

in OWS about this case, and they have asked that we keep the details of how this investigation is progressing confidential because, as I mentioned, it will have legal ramifications.

**Senator CROSSIN**—Is there an MSL involved here?

**Mr Rizvi**—No, the breach is in respect of the Workplace Relations Act.

**Senator CROSSIN**—Has Nurse Bank Australia applied for any more trainees since this matter was first referred to OWS?

**Mr Rizvi**—Nurse Bank have visa applications for further visas with us, but at this stage we are unable to finalise visas in respect of Nurse Bank pending the outcome of these investigations.

**Senator CROSSIN**—How many applications do they have before you?

**Mr Rizvi**—I do not have the details of that with me, if we could take that on notice.

**Mr Parsons**—I can answer that for you: 43.

**Senator CROSSIN**—So they have an application for another 43?

**Mr Parsons**—Yes.

**Senator CROSSIN**—What do you anticipate will be the action in relation to these visas come 15 March then?

**Mr Rizvi**—I am sorry, Senator, which particular visas—

**Senator CROSSIN**—You told me the visas for these trainees expire on 15 March.

**Mr Metcalfe**—I think you are asking what will be the circumstances of the individuals concerned whose visas expire on 15 March. Is that the question?

**Senator CROSSIN**—Yes. What does the department do in this situation where there is an outstanding investigation?

**Mr Metcalfe**—I thought we answered that question before.

**Senator CROSSIN**—You are telling me they will have their visa extended until the matter is resolved; is that correct?

**Mr Metcalfe**—What we said before is that, if there is a request in relation to the individuals to assist with legal processes, then we would assist in helping that occur.

**Senator CROSSIN**—Have any of these nurses started, completed—what stage are they at in your training? Does your department look into that?

**Mr Rizvi**—We would not have the details of where they are up to in terms of their training.

**Senator CROSSIN**—So it may well be that, come 15 March, they might not have completed the training they expected to get from Nurse Bank?

**Mr Metcalfe**—We just do not know the answer to that.

**Senator CROSSIN**—Is it something that the department makes its business to find out?

**Mr Rizvi**—We have referred the particular matter to the relevant state government organisation that accredits registered training organisations and ensures quality assurance in respect of the training that is provided. The responsibility rests with that particular

organisation to ensure the quality of the training that has been purchased is delivered. Based on the advice they provide to us on their assessment of what is happening, that would enable us to make further decisions in this regard.

**Senator CROSSIN**—The strike teams that we mentioned earlier this morning, will they also now be going to training organisations to look at compliance with 442 visas?

**Mr Rizvi**—In respect of matters that relate to the quality and appropriateness of training delivered, we believe that it would be far more appropriate for that to be done by the agency that is responsible for registered training organisations.

**Senator CROSSIN**—So the answer is no.

**Mr Rizvi**—No, in respect of those matters, the responsibility would be with the relevant agency and we would ask that agency to make the investigation. It would be inappropriate for DIMA officers to make judgments about the quality of the training being delivered.

**Senator CROSSIN**—Will any of your strike teams be going to any of the organisations or employers that may have 442 visas?

**Mr Rizvi**—We investigate agencies in respect of 442 visas, as is demonstrated by our investigations into these particular organisations, and we visit these organisations and undertake investigations in conjunction with relevant agencies.

**Mr Metcalfe**—Senator, what you have seen here is that there is what is described as a web of agencies that have responsibilities around aspects of this issue. We clearly have significant responsibilities relating to considering applications for sponsorship and granting visas. But we are heavily reliant, particularly when allegations are made of improper practice, on the competent authorities responsible for administering that legislation in doing their job. Hence, it is fair to say that we operate very much in partnership with those agencies, whether it is the Office of Workplace Services in relation to allegations that awards may have been breached or, in this particular case, with the registered training authority if there is an allegation that proper courses or proper administration of training was not being provided. From what Mr Rizvi has indicated I think we have good cooperative working relationships, but we are heavily dependent on other people doing their job.

**Senator CROSSIN**—Have any of those 30 Chinese nurses transferred to a 457?

**Mr Rizvi**—That may have occurred, but I have no evidence of that at this stage. We will check our systems and provide advice.

**Senator CROSSIN**—If you can take that on notice, thank you. And if you just remind me, what are the circumstances under which 442 visa holders are transferred to 457s? There has been quite a substantial increase there—in 2004-05 there were 70 but in 2005-06 there were 290.

**Mr Rizvi**—I think a similar question was asked earlier by Senator Kirk and I provided an answer in that context.

**Senator CROSSIN**—What are the circumstances under which that might occur?

**Mr Rizvi**—The circumstances would usually be where an occupational trainee who already has an occupation based on an overseas qualification comes to Australia to upgrade

that qualification. Once they have upgraded that qualification to Australian standards, then it is possible for them to apply, based on sponsorship by an employer, to transfer to a subclass 457 if they meet the requirements of that visa—one of the requirements of course being that they have skills, where it is a registrable occupation, to be registered in that occupation in Australia.

**Senator CROSSIN**—So you would be able to provide us with a table of the number of 442 visa holders who have transferred to a 457 by occupation and by number in each occupation?

**Mr Rizvi**—I took a similar question from Senator Kirk and I could answer it using the same approach as I provided for her. That is, we will identify a sample of cases and go through the files in some detail and identify the specific circumstances that led to those individuals transferring to a 457 visa but without obviously breaching their privacy.

**Senator CROSSIN**—I am not asking for the circumstances; I am just asking for raw data here. Of the 290 under 442 visas who moved to 457, I would like to know what occupations and how many. So I want to know if there were two chefs or 200 nurses or three doctors or—

**Mr Rizvi**—We will interrogate our systems to see if that can be obtained.

**CHAIR**—Thanks, Mr Rizvi. Senator Crossin, does that bring us to the end of 1.1?

**Senator CROSSIN**—Yes, thanks.

**Mr Parsons**—Excuse me, Chair, Senator Nettle asked about question 204 in the context of 1.1. I have had a chance to look over lunch and in fact question 204, rightly or wrongly, has been dealt with in outcome 1.3, if you can wait.

[2.19 pm]

**CHAIR**—I am sure Senator Nettle can. We will move to output 1.2, Refugee and humanitarian entry and stay. While my colleagues gather the information—Mr Metcalfe, there was some publicity towards the end of January about a group of Lao-Hmong refugees on the Thai border who were facing deportation by Thai authorities. It was reported that Australia in conjunction with I think the United States and Canada agreed to accept a proportion of those, although it is not clear to me what number and under which particular program. I wonder if the committee can be advised of the details surrounding that decision?

**Mr Metcalfe**—Yes, of course. Mr Hughes can provide some details on that.

**Mr Hughes**—Those reports were correct: the Thai authorities, in something that is fairly unusual in Thailand given their long record of allowing many hundreds of thousands of asylum seekers and refugees to remain in Thailand, made a decision to return a relatively small number of Lao-Hmong back to Laos without the people having had the opportunity to be screened by UNHCR. Australia, along with United States and Canada and I think one European country, has offered to take some of those people if the removal stopped and they were allowed to go through UNHCR processes. The number at this stage that we estimate that we would take is about 200.

I might add that we have in recent years been taking small numbers of Lao-Hmong refugees from Thailand in relation to previous camp clearances. The main focus of our

activity there is amongst the Burmese. But there has been from time to time some Lao, and in relation to this particular incident we have made the offer of taking about 200 people.

**CHAIR**—Over what period of time, Mr Hughes, will it take this process to be completed?

**Mr Hughes**—We expect it to be completed this program year.

**CHAIR**—So before June?

**Mr Hughes**—Before 30 June.

**CHAIR**—I understand UNHCR has other concerns about Thailand's processing particularly of Lao-Hmong. Is this a change in Thai attitude in relation to processing of potential refugees?

**Mr Hughes**—As far as I am aware this incident is unusual, because I had not heard of any previous incidents of any significant numbers coming to notice—

**CHAIR**—Except, Mr Hughes, they deported at the beginning of 2006 a number of Lao-Hmong children into Laos, who then 'disappeared' and who have been unable to be located since then. It seems there is a progressive increase in the number of Hmong being deported in this way.

**Mr Hughes**—I am aware of the report that you are talking about. There is quite a gap. I guess what I am saying is that generally speaking the Thai authorities have been willing to let people stay. There were a small number of Lao-Hmong children, as you say—I think it was nearly two years ago.

**CHAIR**—The beginning of 2006—January 2006.

**Mr Metcalfe**—I thought it was before that, Chair, because I know when I was in Thailand in October 2005 the issue was a live one.

**CHAIR**—I may have been confusing my Januarys.

**Mr Hughes**—It is late 2005. I guess what I am saying is that there were significant numbers though. There were 27 involved, and that was a serious incident. I am not sure that the circumstances of that were ever fully satisfactorily explained.

**CHAIR**—The children have not been located.

**Mr Hughes**—That is what I meant. We do not seem to have had any examples of that until this recent incident.

**CHAIR**—Thank you very much. May I ask if the department would advise the committee on notice of the progress in that matter?

**Mr Metcalfe**—Yes, we will.

**CHAIR**—Thank you very much, Mr Metcalfe. We are dealing with output 1.2, Refugee and humanitarian entry and stay.

**Senator NETTLE**—I asked a question earlier that I think you indicated was in this output. It was about the Niyonsaba case.

**Mr Metcalfe**—No, I indicated it would come under outcome 2. That is essentially a humanitarian settlement issue, so outcome 2.

**Senator NETTLE**—Sure.

**Senator CROSSIN**—Mr Metcalfe, what is the current focus or priority in humanitarian entry?

**Mr Metcalfe**—Are we talking about the refugee and humanitarian program?

**Senator CROSSIN**—Yes, we are.

**Mr Metcalfe**—As I am sure you are aware, Australia has a very high intake of refugee and humanitarian entrants—in the top two or three per capita in the world along with the US and Canada. We will bring to Australia under the fully funded refugee program 6,000 people this year and under the humanitarian program, which provides for people having been proposed by family members or groups in Australia, we will bring in another 7,000 people.

The program in recent years has had a significant source of countries from Africa, particularly people displaced from the Sudan but more recently sub-Saharan Africa and central Africa. But in the last 12 months or so, the numbers coming from other parts of the world have come back a little bit. The program is responsive and has been responsive through its history to advice and requests from the United Nations High Commissioner for Refugees as to where the most pressing resettlement case load has been. We have seen significant changes over the years from refugees from Asia, from the Middle East, from eastern Europe and now from Africa. But I think I am correct, Mr Hughes, in saying that we would expect somewhere around half of our intake this year to come from Africa.

**Mr Hughes**—Yes, the current spread for the 2006-07 program year is 50 per cent from countries across Africa, 30 per cent from countries across South-East Asia and the Middle East, and 20 per cent from Asia.

**Senator CROSSIN**—How does that change from 2005-06?

**Mr Hughes**—In 2005-06, the proportions were 55 per cent from Africa, 35 per cent from the Middle East and 10 per cent from Asia. As Mr Metcalfe said, the proportions tend to follow both the advice from the UNHCR on world resettlement priorities and also views of community organisations in Australia. The shift in recent years has been towards Asia as more case loads become available for resettlement in Asia. Until recently, many of the refugees waiting in camps in Asian countries were not available to be processed for international resettlement. That has now become more possible in Thailand. For example, we have increased our intake of refugees from Thailand and also from Malaysia.

**Senator CROSSIN**—So there is an increasing composition to come from Asia then under those percentages you gave me?

**Mr Hughes**—That is correct.

**Senator CROSSIN**—And the decrease in the humanitarian settlement from the Horn of Africa—are you saying that you base your projections solely on the UNHCR or on alleged media reports in recent months about Sudanese refugees?

**Mr Hughes**—We do not base the program projections on media reports; we base them both on the advice of UNHCR—obviously it is ultimately a decision from government but it is based on the advice of UNHCR—on annual consultations on the humanitarian program

conducted by the minister, and on submissions from a whole range of community bodies but principally the Refugee Council of Australia, which presents us with a major submission.

**Mr Metcalfe**—The government will soon give consideration to the program for next year, for 2007-08 and, as Mr Hughes has indicated, that will be a government decision based upon advice from UNHCR and from a range of bodies such as the Refugee Council. I think Minister Andrews is expecting to meet with some of those bodies in the next few weeks to hear their views about these issues.

**Senator CROSSIN**—What is your response to a quote in the *Sunday Telegraph* of 4 February talking about the reduction of the total intake of refugees from the Horn of Africa, which goes on to say:

The proposal follows a federal review of the Sudanese refugee program as community concern grows in regard to the behaviour of the refugees on Australian soil.

**Mr Metcalfe**—I do not think I could comment on the quote. Is that attributed to a person or is that the newspaper story's conclusion?

**Senator CROSSIN**—It is attributed to the minister. Was there a federal review of the Sudanese refugee program?

**Mr Metcalfe**—As we have described, there is an annual government review in relation to the intake and, as Mr Hughes has already indicated, the numbers coming from Africa have reduced in the current program year as a result of government decisions made in relation to the overall composition of the program. That will continue to reflect further decisions into the future.

**Senator NETTLE**—You said there had been a government decision to reduce the African intake last year from the humanitarian program. What was that government decision?

**Mr Metcalfe**—The government makes a decision, announced around the time of the budget each year, on the size and composition of the humanitarian intake—that has been there for time immemorial—based upon advice from UNHCR and consultations with relevant bodies in Australia. In the last two or three years, the African component—which had grown very rapidly from the early part of this decade, where there was a very small component—grew rapidly in response to humanitarian needs in Africa, but is now coming back down and, at the same time, the resettlement of people, particularly from South-East Asia, is occurring. For example, until recently, Thailand has not made available for resettlement the population along the Thai-Burmese border of largely Karen people. A number of those people are now accessible for resettlement and will exceed the number of people of Burmese background coming from Thailand, which increased to around 1,500 this program year.

**Mr Hughes**—From Thailand.

**Mr Metcalfe**—That represents the sorts of dynamics that we see as a group of people, with a very longstanding humanitarian need, who have become available for resettlement. Given that Australia is a major resettlement country in the region, UNHCR and others have obviously supported an increase in the intake from Thailand.

**Senator NETTLE**—You are saying the government decided to decrease the African intake and increase the intake from South-East Asia on the recommendation of UNHCR, based on need?

**Mr Metcalfe**—Based upon advice from UNHCR of our global resettlement requirements, based upon consultations with peak bodies, such as the Refugee Council of Australia, the government takes decisions on the composition of the intake. I do note that the intake of refugees has increased in recent years and the fully funded group of 6,000 until probably two or three years ago, Peter, was about 4,000, I think.

**Mr Hughes**—Four thousand.

**Mr Metcalfe**—So we have, in fact, seen a substantial increase—50 per cent—in the number of refugees coming to Australia in the last two or three years.

**Mr Hughes**—I might add, just on the question of the shift from Africa to Asia, that the world situation is dynamic and UNHCR's priorities about which countries in which continents need resettlement do move—for example, one was Sudan and the Sudanese. Sudan was a major focus of resettlement for quite some years in Africa but, of course, in recent years we have had the Sudanese peace settlement, which offers the opportunity of many South Sudanese being able to return to that part of the country. I know the UNHCR has, progressively, wanted to reduce resettlement in order to increase the opportunities for repatriation.

**Senator NETTLE**—The report that Senator Crossin was referring to implied that the decisions about which countries people would come from were made on the basis of government views around how people existed in Australian society. I just want to check whether that is one of the criteria on which the government makes decisions about which countries they take refugees from?

**Mr Metcalfe**—We have, I think, outlined over the last 10 minutes or so the basis for the government's decisions. I think it is true to say that each cohort of people coming under the refugee program has unique issues and problems to deal with. By definition, we are talking about the world's most disadvantaged people. Effectively, they have no home, they have been driven from their home, frequently in circumstances of civil war, where grievous human rights abuses have occurred. We are talking of folks who are survivors of that situation, and quite often they have been in UNHCR camps or institutions for many years. So they have not only had terrible personal circumstances visited upon them but also been institutionalised to the extent of their care being provided in that sort of environment.

So in seeking to support refugees there are issues that have to be well and truly dealt with in adjusting to a modern Western democracy with a comprehensive social security system, significant opportunities in the labour market and educational opportunities—but also, quite often, different cultural norms. Of course, we may well talk more about that if we have questions under outcome 2, when we talk about settlement of refugees.

**Senator NETTLE**—Domestic considerations are part of that decision-making process?

**Mr Metcalfe**—The government makes decisions each year, but, as I have indicated, in reaching those decisions the government takes advice from the relevant UN agency, UNHCR,

and has consultations on a regular basis with peak bodies that have an interest in these matters and are experts on these matters in Australia.

**Senator NETTLE**—I perfectly understand taking advice from UNHCR and the Refugee Council about the need and where people come from; my questions are focused on what other domestic considerations come into making those kinds of decisions. Do you consult with people about the matters referred to in the article and how people are adjusting to Australian life in order to feed into the decision making about which countries you take people from?

**Mr Metcalfe**—No, I think we have outlined before this committee that we have had quite separate processes underway with other agencies to ensure that, collectively, Commonwealth and state agencies and the not-for-profit sector are cooperating as effectively as possible in providing good settlement outcomes in these quite challenging circumstances. I think the Commonwealth spends in excess of \$500 million per year directly on supporting refugees in settling in Australia, so I would say it is a very significant amount of money across several portfolios.

Ministers make decisions on a whole set of issues that might go with them into the cabinet room, and it is not appropriate for me to speculate about what might be in a minister's mind or the cabinet's mind when they make a decision. What I do know is that they take advice on those issues from the relevant expert UN and Australian bodies and that, if you analyse the advice from those bodies, the increase in the program and the composition of the program, you will find that there is a very close correlation between those things.

**Senator NETTLE**—Thanks.

**Senator CROSSIN**—Minister, has there been a change in policy by the federal government in respect of its refugee humanitarian visa intake?

**Senator Ian Campbell**—I think any change is reflected in the numbers that have been put before the committee, based on the advice that Mr Metcalfe has very succinctly put before you.

**Senator CROSSIN**—Does that reflect a change in the government's policy?

**Senator Ian Campbell**—We look at the policy each year and we make an announcement about the same time every year, and it is there for people to debate, discuss and argue about.

**Mr Metcalfe**—I do not have that article in front of me but I know that the minister is very aware that we have briefed him. I am sure he will not mind this confidence being revealed: we have briefed him about the composition of the intake, and all the sorts of materials that we put on the record here are issues that we brief the minister about upon coming to the portfolio. This is a major and important part of his work. He is aware that there has been a move away from Africa and towards Asia in the program, and the initial indications we have as to advice for the next program year indicates a similar sort of outcome, as populations in Asia which were not previously accessible become accessible.

**Senator CROSSIN**—Can you tell me how many TPVs there are currently?

**Mr Hughes**—Yes. Perhaps I can run through the global picture of people who have received temporary protection visas since 1999. Broadly speaking, about 10,800 people since 1999 have been granted temporary protection visas or other kinds of temporary humanitarian

visas. To date, about 8,900 have received a permanent visa. There are some 660 awaiting a decision on a further protection visa from the department or the Refugee Review Tribunal. At this stage there are about 650 people who have not yet lodged an application for further protection, and the balance that adds up to the 10,800 has a variety of other statuses. Some have applied for and obtained mainstream visas, some of them have departed Australia and some of them are on return pending visas. I can possibly give you on notice a detailed breakdown that reconciles to the total.

**Senator CROSSIN**—So the actual number, as of this week, is around 10,800, is that right?

**Mr Hughes**—No, that is the total of who were ever granted since 1999. Now, since 8,800 of those now have permanent visas, clearly they are not on temporary visas any more.

**Senator CROSSIN**—Are you telling me that we have only got 1,200 on TPVs out there?

**Mr Hughes**—No. I think the figures would be slightly different from that because I said there were 660 awaiting a decision, so they would be from either the department or the Refugee Review Tribunal.

**Senator CROSSIN**—But they would still be on a TPV though, wouldn't they?

**Mr Hughes**—Yes, so they would be on a temporary protection visa, and 650 have not lodged an application for further protection. I am not absolutely sure that all of those are in the country, so if they have left they are not on a temporary protection visa. The balance have a variety of statuses. As I said, we can give you on notice a more detailed reconciliation.

**Senator CROSSIN**—I really just wanted the figure as of this week. How many TPVs have been issued as of this week, or last week?

**Mr Hughes**—Do you mean people currently in Australia on valid temporary protection visas?

**Senator CROSSIN**—How many TPVs are out there?

**CHAIR**—The detail Mr Hughes seeks is, I think, relevant to providing the answer, Senator Crossin.

**Senator CROSSIN**—You said there may be some people on TPVs that have left Australia.

**Mr Hughes**—They are not on temporary protection visas.

**CHAIR**—But they were temporary protection visas that were issued?

**Senator CROSSIN**—That is right, how many?

**Mr Metcalfe**—Senator, just to be absolutely precise. Would you like to know the figure, as of 12 February, of how many people in Australia currently hold a temporary protection visa?

**Senator CROSSIN**—Yes.

**Mr Metcalfe**—Good.

**CHAIR**—Thank you, Mr Metcalfe.

**Senator CROSSIN**—And you do not have that with you?

**CHAIR**—Was the question, 'Do you have that with you?' Senator Crossin?

**Mr Metcalfe**—I do not think we have a date as of 12 February. Whether we have got a detailed—

**Senator CROSSIN**—It might be last Friday, or last Wednesday, or whenever you prepared the brief for estimates.

**Mr Hughes**—As of 5 January, I think there were about 1,300 people currently holding temporary protection visas in Australia.

**Mr Metcalfe**—The figure is not going to vary much from that.

**Senator CROSSIN**—I had worked out 1,200, so I am not too far away then. They will all expire, I assume, at varying dates into the future?

**Mr Hughes**—That is right.

**Senator CROSSIN**—And you do not have a projection for how many TPVs will be issued in the future?

**Mr Hughes**—That depends on how many people arrive in Australia as unauthorised arrivals, claim asylum and are found to require it, because that is the cohort of people who get temporary protection visas. At the moment, those would be largely unauthorised arrivals by air, who are seeking temporary protection visas.

**Mr Metcalfe**—The short answer is we do not know because it depends upon things outside our control in the future.

**Senator CROSSIN**—Thank you.

**CHAIR**—If there is nothing further on output 1.2, we will move on to output 1.3: Enforcement of immigration law. I already have interest in this area flagged from Senator Crossin in relation to Port Hedland, and Senator Nettle in relation to Robert Jovicic.

**Senator NETTLE**—Is someone able to provide an update on the case of Robert Jovicic?

**Mr Metcalfe**—Yes, I will get Mr Correll to provide an update. Do you have any particular questions, because there has been a fair bit reported in the public domain already?

**Senator NETTLE**—Yes, I do. But I thought I would just start with hearing what the department's view is, and where it is up to.

**Mr Metcalfe**—Mr Jovicic has, as I think is well known, been granted a short further special purpose visa.

**Senator NETTLE**—Perhaps I could start by asking you to clarify his status. Is he a permanent resident?

**Mr Metcalfe**—No. He is the holder of a special purpose visa. So by definition he is not a permanent resident. He is here as a holder of a temporary visa, limited as to time, which is a visa under a category established in the legislation known as a 'special purpose visa'.

**Senator NETTLE**—At what point has the department ended their consideration of him as a permanent resident?

**Mr Metcalfe**—Mr Jovicic ceased to be a permanent resident upon the cancellation of his visa and his departure from Australia following that, and upon returning to Australia he has at all times held a special purpose visa.

**Senator NETTLE**—I am trying to understand the intersection of that with the Nystrom case. Did he fall under the category of those with decisions similar to the Nystrom case decisions?

**Mr Metcalfe**—No, he did not.

**Senator NETTLE**—So he only had one visa, and that was the one that was cancelled?

**Mr Metcalfe**—That is correct.

**Senator NETTLE**—I understand that at the time the decision was made to grant him a special purpose visa for return to Australia, it was indicated that he may be issued with a resident return visa. I am wondering whether the department or the minister has considered giving him a resident return visa.

**Mr Correll**—The minister has considered various options and on 5 February provided Mr Jovicic with a special purpose visa again for a two-week period, and invited him to apply for Serbian citizenship—and that is the current status.

**Senator NETTLE**—Has the minister or the department considered giving him a resident return visa?

**Mr Correll**—That may have been a consideration, but that is not the position on the case that has been taken by the government.

**Senator NETTLE**—Why has the government taken the course of action of requesting that he apply for Serbian citizenship?

**Mr Correll**—It is seen to be an act of good faith. The government has consistently had the view that Mr Jovicic is a Serbian citizen. He was originally granted Serbian citizenship on his return to Serbia. It has been sought as an expression of good faith from him, on the grounds that should he repeat any of the previous activities—and any of the previous reasons for his removal from Australia—it would give an option for his removal at that point.

**Senator NETTLE**—I am just trying to understand what you mean by the term ‘good faith’, and you can state to me whether this is correct or not. Do you mean that him taking out Serbian citizenship would be considered by the government as an indication that he had reformed?

**Mr Correll**—The indication of good faith is not necessarily him taking it out, but at least applying for Serbian citizenship.

**Senator NETTLE**—I am trying to understand this concept of good faith. You indicated that the government wanted him to apply for that because then if he reoffended he could be deported. I am trying to understand whether the government is trying to determine whether or not he will reoffend. It seems strange to test whether somebody will reoffend, by asking them to apply for citizenship of another country, rather than looking at their record.

**Mr Metcalfe**—I can understand your perception, but I can assure you it is wrong. There is no link between those two things. The rationale for asking Mr Jovicic to apply for Serbian

citizenship is on the basis that he previously had been a Serbian citizen. I gather he obtained that after an application made by his father. When it became apparent to the Serbian authorities that the application was not made by him personally but by his father, they sought to rescind his Serbian citizenship, but I understand that have made it apparent that were he to apply in his own right, then it is very likely that that application would be approved. It goes to an issue of his own willingness to acquire a nationality which he is capable of acquiring.

As Mr Correll said, the issue here is good faith in his making that application. The consideration of any further visas does not rest on the outcome of that application but merely on the fact that it has been made. The basis for that is that Mr Jovicic has a very, very significant criminal history—he committed over 100 offences in Australia—and should he re-offend there would again be pathways open to considering whether he should remain in the Australian community and a threat to the Australian community. So that is the basis of the request that he make a further application.

**Senator NETTLE**—You talked about the government wishing that he access citizenship that he is capable of acquiring. I may well be capable of acquiring a whole lot of different types of citizenship—I don't know, I have not looked into it—but I am not sure his application would clarify for the government the status of his current citizenship. I have a recollection that I have seen comments from the government that the issue of his citizenship cannot be resolved until the issue of his Serbian citizenship is resolved. Are you aware of similar comments?

**Mr Metcalfe**—Certainly, the current position and the communication with Mr Jovicic and his representatives has been simply that an application for Serbian citizenship would be very much appreciated. There is distinction, of course, between him and you, Senator. I would hope and expect that you are, in fact, already an Australian citizen. If you are not I will claim the bounty. But the issue, of course, is that Mr Jovicic—

**Senator Ian Campbell**—I think the Greens in New South Wales are very careful about these things these days.

**Mr Metcalfe**—Mr Jovicic, of course, is not, and never has been, an Australian citizen.

**Senator NETTLE**—You indicated that if Mr Jovicic were to take up Serbian citizenship and re-offend—presumably such that section 501 of the act would apply—that he could be deported. Is it the government's intention to deport Mr Jovicic if he applies for Serbian citizenship?

**Mr Metcalfe**—I am being quite careful in what I am saying here for obvious reasons. The indications has been not that he reacquire Serbian citizenship, but that he take steps to reacquire it—that he make an application under his own hand. I sincerely hope for his own sake and for others that he does not re-offend and that he is what he claims to be: a reformed man. However any person who is not an Australian citizen and commits a serious criminal offence is capable, pursuant to the sections 501 of the Migration Act, of having a decision made as to whether or not their visa is cancelled. So I would not make a specific comment about Mr Jovicic; I simply state a fact that exists in the legislation.

**Senator NETTLE**—Can the government provide any guarantee that they do not intend to deport him if he were to take out Serbian citizenship?

**Mr Metcalfe**—I would not purport to speak for the government on this matter—it is a matter for the minister as to what he is prepared to say—but all of the statements that have been made have indicated that the Mr Jovicic would be able to remain in Australia providing he applied for Serbian citizenship and providing he does not re-offend.

**Senator NETTLE**—I think at last estimates you indicated that he had been offered the Reconnecting People Assistance Package, is that correct?

**Mr Metcalfe**—We might check on that. That is not the recollection of anyone here. That is a package, as you know, for people who may have been improperly detained or removed from Australia, such as Ms Alvarez, and there is no suggestion that Mr Jovicic was improperly removed from Australia. That was quite a valid action.

**Mr Correll**—Nor has he been offered the reconnect package since his return.

**Senator NETTLE**—Has he been offered the Reconnection People Assistance Package whilst he was still in Serbia?

**Mr Correll**—Not to my knowledge.

**Senator NETTLE**—I understand that there were Australian officials dealing with him whilst he was in Australia. I thought that was as a part of the Reconnecting People Assistance Package, but perhaps that was another process by which the department—

**Mr Metcalfe**—We will check because we obviously want to be crystal clear on this. Certainly, as you would know, some local arrangements were made while he was in Serbia to provide for his wellbeing, given that effectively he was destitute, and so at the initiative of the embassy and supported by the department he was provided with some accommodation and other support. Precisely the circumstances that he was advised he might expect upon return home, and whether that constituted the reconnecting package, is something that we would have to check.

**Senator NETTLE**—In terms of an indication to him that he may be considered for a resident return visa, I am just trying to understand how you might make a decision. Clearly, the minister made a decision to grant a special purpose visa rather than a resident return visa. What would be the factors involved in making a determination about whether to offer a special purpose visa or a resident return visa?

**Mr Metcalfe**—Ultimately that is a decision as to the legal status that he would have upon return to Australia.

**Senator NETTLE**—You mean that it is a matter of the status of somebody, like whether they are a permanent resident or not?

**Mr Metcalfe**—That is correct.

**Senator NETTLE**—That is the distinction between the two?

**Mr Metcalfe**—Yes. Clearly, I think that it is best to describe it as an iterative process that was underway. There was consideration as to possible options for Mr Jovicic when a decision was taken that he should be allowed to return to Australia, but the visa that he was granted at the end of that process was a special purpose visa, as I have described. His presence here

subsequent to his initial period of stay have all been on the basis of further special purpose visas.

**Senator NETTLE**—Sorry, I just missed a word that you said. You said there was a something-or-other process underway?

**Mr Metcalfe**—Iterative.

**Senator NETTLE**—What does that mean?

**Mr Metcalfe**—There was a process of consideration as to the visa status that he should have, but the final decision communicated to him before he returned to Australia was that his return would be on the basis of a special purpose visa.

**Senator NETTLE**—Subsequent to that, was there any consideration of granting him a resident return visa?

**Mr Metcalfe**—I do not think there has been any subsequent.

**Mr Correll**—No, each consideration since that time has been on the basis of a special purpose visa, giving him time to apply for Serbian citizenship.

**Senator NETTLE**—I was asking before about how this was affected by Nystrom, because I thought his case was similar to those Nystrom cases. Were there others under Nystrom who had gone through a similar process? I am just trying to understand the circumstances whereby the government is saying, ‘You need to take out citizenship of another country.’ I thought that in some of those cases that were being looked at under Nystrom, there were examples of people who may have been in a similar situation of taking out citizenship of another country. Maybe I wrong.

**Mr Metcalfe**—I will get Ms Bicket to expand. Nystrom, of course, was a five-nil decision last year in the High Court. It turned on the issue of whether Mr Stefan Nystrom had had his visa cancelled properly and whether or not the minister, in reaching that cancellation decision, considered and had knowledge of all possible visas that he had held. It was a particularly complex case and the High Court referred to ‘the torturous legal history’ around this because of issues such as whether Mr Nystrom held what was known as an absorbed person visa, which is an operation-of-law visa. It is not a visa that you apply for; it is simply created in the atmosphere around you by operation of the Migration Act for people who have been resident in Australia at certain periods of time. It derives, ultimately, from quite old constitutional principles about the migration power.

It was a very, very complex set of issues but, as you be aware, the High Court found in the government’s favour five-nil in relation to that. There are a number of other cases which were ‘Nystrom affected’, where the full court decision in Nystrom had similar effects on a number of other cases, but, of course, the High Court has now clarified the law in relation to it.

**Senator NETTLE**—I will be more specific in the question. My understanding, and I could be wrong about the numbers, was that there were 14 Nystrom affected cases. I wanted to know the outcome in relation to those cases—whether those people remained in Australia or were subsequently deported. If they were deported, I wanted to know the process by which they were deported—whether it was because they had another former citizenship or they took it out and were subsequently deported.

**Ms Bicket**—I think that is a question we will have to take on notice. I do not know the detail or breakdown of the 14 that you are referring to. In relation to Mr Jovicic's case, his was not a Nystrom affected case, because he did not hold an absorbed person visa.

**Senator NETTLE**—Were there any Nystrom cases where people were subsequently deported because they had taken out another citizenship?

**Ms Bicket**—I do not know. I would have to look at each of the cases to be able to give you a definitive answer around that, so we will have to take that on notice.

**Senator NETTLE**—If you could do that, thank you. I have asked questions before about what monitoring the department does of the welfare of people when they are deported. I wanted to ask you whether there has been any change in that, because clearly in the case of Robert Jovicic at some point, presumably when he slept on the embassy steps, all of a sudden his welfare as somebody who had been deported by Australia was taken into consideration. Has there been a change in policy or was that a unique circumstance?

**Mr Metcalfe**—I would not describe it as there having been a change of policy, but we are concerned. I think, and this is something that I have stressed very clearly with departmental staff in this area, that we need to make sure that, if a person is being removed from Australia, there are arrangements in place to secure their proper arrival back home or to where they are going to. Mr Jovicic obviously highlighted issues that he had great trouble accessing services and employment and issues for reasons which are well understood in Serbia, and as a humanitarian gesture provision was made for his wellbeing—notwithstanding the presence of family members and others in Serbia at the time, I would hasten to add. There is no policy change. The essential policy is that once a person is properly and lawfully removed from Australia the department has no further role in relation to them—we are *functus officio*, we have undertaken our obligations in relation to that person. But that is not to say that we would want to check in every circumstance that a person was in fact properly arriving in the country, had information as to how to access services or were to be put in touch with support services or others when they arrived.

**Senator NETTLE**—You indicated there has been no policy change. What changes have there been?

**Mr Metcalfe**—What I am saying is that, at a practical level, we have reminded departmental staff as part of operational planning for removals that there are some reception arrangements and other arrangements in place to mean that a person is not simply left at an airport not knowing what to do next.

**Senator NETTLE**—Is there a checklist of the things you need to make sure they know? I was just thinking of the case of Vivian Solon. There was a checklist when you deport them to make sure of certain things. Is there any kind of checklist to make sure that they know how to get to authorities?

**Dr Southern**—Very careful planning goes into each of the removals of the kind that we are talking about, and we would deal with each of them on a case-by-case basis. As to whether or not there is a checklist, I would have to take that on notice and confirm it with you. But there are certainly issues, as Mr Metcalfe indicated, that we would ensure had been ticked off, if

you like, to make sure that there were adequate arrangements for the arrival of a person or a group of people who were being removed from Australia.

**Senator NETTLE**—What kinds of things could somebody who was being deported expect to be put in place for their arrival?

**Dr Southern**—It would depend on the individual circumstances. But, for example, if an individual was receiving medication in Australia for a particular medical condition, we would ensure that he or she had adequate supplies of the medication and make arrangements for them to be met upon arrival by suitable people. We would look at ensuring family members or alternatives were there to meet them on arrival, but it would depend very much on what the individual circumstances were of a particular removal.

**Mr Metcalfe**—Many people—in fact, the majority of people who would be removed from Australia—will have been the subject of specialised case management in Australia. We received funds in the last federal budget as a result of the initiatives coming out of the Palmer report to establish a network of case managers. That is now in place. Every person in immigration detention is now the subject of a specialised case management plan. This is very much around ensuring that a senior and specialised departmental officer is entirely focusing on a person's case rather than a person simply having their case sitting between different parts of the department or whatever. It is our clear intention to ensure that these most difficult of cases that we deal with—detention and removal cases—receive our most professional care. Consistent with that is that, in those circumstances where a person does not choose to voluntarily leave Australia and is removed, there would be a proper care plan associated with them. So, as I have said, there is no change in policy—although there have been developments in the last year or so, such as the establishment of the case management network—but there is at an individual level an emphasis on ensuring that individual circumstances are properly catered for and that we treat our clients with humanity in dealing with what is quite often a difficult task.

**Senator NETTLE**—Are you saying that people are deported with a care plan?

**Mr Metcalfe**—What I am saying is that there are case management arrangements in place and that quite often, where it is necessary, if a person is being removed from Australia there is a plan associated with their removal which goes to the issues that Dr Southern has just referred to, about ensuring that upon returning home they have an appropriate set of arrangements for their reception.

**Senator NETTLE**—You were talking before about a case manager being responsible for that. Would that be the same person responsible for doing the care plan?

**Dr Southern**—The case manager would work closely with our removals staff on any planning for a particular removal, and, given the close involvement that the case manager would have had with the particular case, they would be in a position to talk through the kinds of things that would need to be made available on arrival.

**Senator NETTLE**—If you are able to provide any more information about how that operates and any examples of the instances where you have been able to assure medical care for people when they arrive, that would be appreciated.

**Mr Metcalfe**—We will take that on notice and, if there are one or two examples suitably depersonalised, we will provide those on notice to you.

**Senator NETTLE**—Thank you. Regarding section 501, which was Mr Jovicic's case, the Ombudsman of course did an own motion and a report on this. I am just wondering about the government response to that report from the Ombudsman and where things are up to with that.

**Mr Metcalfe**—Dr Southern will answer that. My recollection is that the Ombudsman made a number of recommendations, many of which were responded to by the department, which I, in fact, responded to. But there was one which went to the basis of the exercise of the power under section 501, which was a matter for government.

**Senator NETTLE**—Has there been any government response to that?

**Mr Metcalfe**—From what I understand, there has been no formal response at this stage. I think there may have been some discussions between the former minister and the Ombudsman. I would imagine the Ombudsman was probably aware of the former minister's thinking on that issue, but I do not think there has been a formal or final government response at this stage.

**Senator NETTLE**—Is it a matter that the new minister has had the opportunity to look at?

**Mr Metcalfe**—I think the new minister has the opportunity to look at everything.

**Senator NETTLE**—That was a recommendation by the Ombudsman in relation to returning to a system that used to be used by the department: using section 200, rather than section 501. It is also a recommendation that the Senate Standing Committee on Legal and Constitutional Affairs into the Migration Act has also proposed. So it is not an isolated incident of that particular recommendation to return to former practice being made.

**Mr Metcalfe**—If we can add anything further on notice, we will. We will check on that and correct the record if we are wrong, but if there has not been a government response then that obviously will be a matter that Minister Andrews will look at in due course.

**Senator NETTLE**—Is the minister able to add anything to that?

**Senator Ian Campbell**—No.

**CHAIR**—Any more questions on output 1.3?

**Senator CROSSIN**—I have questions on detention centres, so it will change the mood, unless Senator Bartlett has questions.

**CHAIR**—I do not really care about the mood, Senator Crossin. The lighting is hardly ambient, the Coke Zero leaves a lot to be desired.

**Senator CROSSIN**—I raised earlier this morning the Port Hedland immigration detention centre. My understanding is that it is currently mothballed. What is the current annual cost of maintaining the Port Hedland facility?

**Mr Correll**—It is \$60,000 per month.

**Senator CROSSIN**—It is still \$60,000 per month?

**Mr Correll**—Yes.

**Senator CROSSIN**—What is the breakdown of that expenditure?

**Mr Correll**—We will have to get the breakdown of that to you on notice.

**Senator CROSSIN**—You do not have that with you?

**Senator LUDWIG**—When you say ‘\$60,000’, do you pay \$60,000 to someone, or is that internal costs?

**Ms O’Connell**—There are a range of costs associated in keeping a contingency facility available for ready use, including security arrangements for ensuring that the assets remain there. There are a variety of different costs associated with it, and I can either give you a breakdown of those costs later this afternoon or take them on notice.

**Senator CROSSIN**—We will have a breakdown of those costs, please. Is the facility in a state that is ready for use?

**Mr Correll**—Not instantly ready for use. It would require some limited refurbishment before it would be able to come on-stream again.

**Senator CROSSIN**—What do you mean?

**Mr Correll**—Some works would need to be undertaken. We would actually have to do a rapid assessment if there was a need to bring, say, Port Hedland on-stream quickly. We would need to do a rapid assessment of the minor works that would be needed. We are not talking large amounts here. It might be several hundred thousand dollars worth of work to get it up and running.

**Senator CROSSIN**—How long has it been mothballed?

**Mr Correll**—Since July 2004, I understand.

**Senator CROSSIN**—How many people would it hold if it was needed to house people?

**Mr Correll**—It can hold approximately 800. That is its maximum capacity.

**Senator CROSSIN**—Have you given any consideration to leasing out the facility on a short-term basis for commercial use, rather than just letting it sit there?

**Mr Correll**—Yes.

**Senator CROSSIN**—What sort of thoughts have you had?

**Mr Correll**—There has been some interest shown in that area, and we have provided information and advice to the government in that area.

**Senator CROSSIN**—What sort of interest have you had? From which groups?

**Mr Correll**—I think mining interests and also the local shire council.

**Senator CROSSIN**—Is that in relation to perhaps an influx or an increase in the resources boom in the Pilbara area?

**Mr Correll**—I think there is a strong demand for accommodation in the Port Hedland region, which is associated with growth in the mining industry there.

**Senator CROSSIN**—How far progressed are those discussions?

**Mr Correll**—There has been some communication on it with the government, and we have provided some advice to the government. There has been nothing beyond that at this point.

**Senator CROSSIN**—You are talking about the federal government, as opposed to the Western Australian government? Is that correct?

**Mr Correll**—Correct.

**Senator CROSSIN**—There have been no discussions with the mining companies or the shire? No firm proposals have been put forward by them?

**Mr Correll**—There have been no such discussions with the department. However, there may have been such discussions with the government.

**Senator CROSSIN**—Are you talking about, in particular, with the minister's office there? Is that correct?

**Mr Correll**—Yes.

**Senator CROSSIN**—Minister Campbell, have there been any discussions with mining companies or the shire about the Port Hedland detention centre?

**Senator Ian Campbell**—Not that I am aware of.

**Senator CROSSIN**—Perhaps not with you, but with the minister you are representing?

**Senator Ian Campbell**—I would be happy to ask him.

**Senator CROSSIN**—If you could take that on notice, that would be very useful.

**Senator Ian Campbell**—I did not say that. I said I would ask him.

**Senator CROSSIN**—We are trying to get some information here.

**Senator Ian Campbell**—If I have anything to add, I will.

**Senator CROSSIN**—Mr Correll, do you know when was the last approach made by either of these parties?

**Mr Correll**—I think contacts were made in the latter part of last year, to my knowledge. They are the only contacts that I am aware of.

**Senator CROSSIN**—I look forward to an update on that. Are there any other mothballed detention centres at this point in time?

**Mr Correll**—The only facility at the present stage that is in a mothballed state is Port Hedland. There have been previous announcements concerning the return of the Woomera and Singleton centres. They are in the process of being returned to the Department of Defence.

**Senator CROSSIN**—Woomera and?

**Mr Correll**—Singleton, near Newcastle.

**Senator LUDWIG**—Are all the current detention centres that you have ongoing concerns? Has there been any consideration or will there be future consideration as to what might become of them? Is there any intention to mothball any future or current detention centres?

**Mr Correll**—In the 2006 budget the government announced, following a review of the future directions for detention centres, that there would be changes at that point. That is when

the Woomera and Singleton changes were announced. Also, it was flagged at that stage, subject to ongoing review, that the Baxter facility would become a contingency centre. This is continually reviewed, based on the overall number of people in detention, and we have ongoing review processes each year to look at the future of the detention centre network.

**Senator LUDWIG**—That is why it prompted me to ask because I know these things tend to move. Where are the contingency arrangements for the Baxter detention centre at? Have they been advanced or are they currently in abeyance?

**Mr Correll**—The numbers at Baxter continue to reduce and the latest count is about 18 detainees. Assuming that continued direction, then you would say that the plan for Baxter to go into contingency mode is on track.

**Senator LUDWIG**—What does ‘contingency mode’ mean?

**Mr Correll**—It is a little like Port Hedland now. It means that the facility goes into, perhaps, limited care and maintenance mode. There are no detainees there, and it is put into a position where it can be brought up and running within a short lead time. In terms of the overall strategy, that is the direction that was announced in the previous budget.

**Senator LUDWIG**—But has any decision been made to date to bring that forward and make it a contingency centre or, effectively, mothball it?

**Mr Correll**—I think the key timing consideration for that goes hand in hand with the Christmas Island facility coming on-stream, which is later this year. So the timing for contingency considerations for Baxter was really looking at later in 2007 or 2008. At this stage, given the numbers, and barring any significant shift in those numbers, then we would be continuing to look at moving it to contingency mode, as and when the Christmas Island facility comes on.

**Mr Metcalfe**—The development of the northern facility in Darwin, of course, has meant that the illegal Indonesian fishermen, or largely the Indonesian fishermen, are now able to be detained for that short period there in our care in Darwin, rather than previously having to be moved down to Port Augusta or elsewhere, for example, to Perth. So that has allowed the numbers in Port Augusta to come down quite significantly and has meant that, generally, there are swifter turnarounds with that population. I think over a third of our detention population are, in fact, illegal fishermen. They are probably our largest single group of clients. That is another reason that the numbers in Port Augusta have reduced and that we can continue with our planning to retain it as a contingency mothballed facility.

I would hasten to add—I know you have been working on these issues for many years—that the world is not a certain place, and I continue to urge people who deal with these issues to recall the fact that there can be quite swift and sudden changes in the dynamics of populations, as we saw in the latter part of the last decade and the beginning of this decade. I think it is a good thing for the department to at least have facilities available to it, which hopefully are never needed, if there is a requirement, rather than being in the situation that we faced 10 or 11 years ago where, essentially, we ran out of accommodation and we had to make some temporary arrangements, which were less than suitable.

**Senator LUDWIG**—Thank you.

**CHAIR**—Are there any other questions in this area?

**Senator BARTLETT**—You mentioned before about the different detention centres being online and offline et cetera and the Christmas Island one coming online. When is that now planned to come online?

**Mr Correll**—Around the middle of this year.

**Senator BARTLETT**—Is it still the case that there is no intent to transfer people from the mainland to there?

**Mr Correll**—There is no intent to do that. It is a facility to meet new requirements, whatever they may be.

**Senator BARTLETT**—So among the small number of people who are currently on Christmas Island—I think there are a few in community residence determination—are there any currently in the centre?

**Mr Correll**—There are three people in the centre at the present stage.

**Senator BARTLETT**—Do you know how long they have been there?

**Ms O'Connell**—The statistics I am using are as at 2 February, which are the last officially censused statistics. There are three people in the Christmas Island detention centre as at that date. I will have to get back to you on how long they have been in the detention centre on an individual basis.

**Senator BARTLETT**—Is it anticipated that, if their situation has not been resolved by mid-year when the main centre comes online, they will stay in the current one or will they rattle around in this somewhat larger one?

**Mr Correll**—I guess that will need to be considered. Those in the duplex accommodation are on residential determination arrangements on Christmas Island, so I would expect that that they would continue on the residential determination arrangements. On the other hand, I would expect that anyone who was actually in the detention facility at that stage would move across into the new detention facility. People on residential determinations would remain in the duplexes.

**Senator BARTLETT**—As you would be aware, I would imagine, there was some media coverage about the construction of the Christmas Island centre and various things that were meant to be part of the facilities. They include locator beacons to track people's location within the centre at all times; closed-circuit TV linked to remote control rooms here in Canberra; energised fences; movement detectors; and a range of high-security things, as well as management units similar to those that have been fairly controversial at Baxter. Are those reports broadly accurate?

**Mr Correll**—It is somewhat mixed. The original design layout for the Christmas Island facility was developed prior to some of the more recent developments occurring in detention services reform. Certainly, one aspect that we would be looking at very closely would be the overall security arrangements on Christmas Island. The facility has been developed with very good services and conditions involved. They are first-class facilities with excellent medical facilities built into the centre. Overall, it is capable of providing a good quality of detention

service. There are some aspects of it that we would want to review, simply for the fact that the original design is not quite up with the current thinking in detention reform.

**Senator BARTLETT**—Do you mean it is more high security than you feel is appropriate these days?

**Mr Correll**—There are aspects of the use of management unit practices that might not necessarily be appropriate today.

**Mr Metcalfe**—The fact that they might be there in a centre that has been under construction for some years does not mean that they will be used. If the centre is required to be used, obviously it would be managed in a way that would be consistent with the detention services directions that are now being put in place. The fact that there may be security facilities does not mean that they necessarily need to be used. I was a little amused at the references to closed-circuit TV being remotely monitored. We are on closed-circuit TV and you can watch us anywhere in the world right at the moment, as we speak. Technology means that cameras can be hooked up to the internet and footage can be monitored. There is nothing surprising in that. As for how arrangements may be put in place, how the facility would be operated, it would be our view that the sort of progress that we have been able to make, which resulted in the very positive comments from the Human Rights Commissioner at the end of last year, would affect the way, if we had to operate the facility, that we would operate the facility.

**Senator CROSSIN**—Have you actually looked at how you might facilitate closed-circuit TVs on Christmas Island being monitored from Canberra? Have you looked at how you might physically do that or the cost of it?

**Mr Metcalfe**—The cost would be minimal because—

**Senator CROSSIN**—You are assuming Christmas Island has an internet service, I guess. Is that right?

**Mr Metcalfe**—No, I am just assuming that the cost of getting a picture from one part of the world to another is minimal. I live out in the country and I rely upon the satellite for broadband, so any internet access I have is over a satellite located over Indonesia—probably close to Christmas Island.

**Senator CROSSIN**—So I could tell Christmas Island people they might expect broadband one day—is that right?

**Senator Ian Campbell**—They can get it now with a satellite.

**Senator CROSSIN**—Can they? I will let them know they should be expecting that.

**Senator Ian Campbell**—They were able to get it five years ago.

**Senator CROSSIN**—Dial-up, I think you will find, not broadband.

**Senator Ian Campbell**—No, always-on satellite.

**Senator CROSSIN**—I am afraid you are not right.

**Mr Metcalfe**—What I was saying is it is a colourful little story sort of remotely controlled from Canberra. For our facilities, we have a duty of care. We do have limited closed-circuit

television in places. All of those sorts of facilities do. Control centres would be established in the facility itself, but the fact that closed-circuit TV might be able to be remotely monitored is not of itself a particularly stunning development, I think, in the age of technology.

**Mr Correll**—Notwithstanding their technological capabilities, we do not have plans to be monitoring the day-to-day activities in the facility from Canberra.

**Senator CROSSIN**—That would be pretty ambitious, I would have thought.

**Senator BARTLETT**—In regard to the level of security involved, would it be fair to say it is a higher level of security than, say, Baxter, or just more modern?

**Mr Correll**—I think it would be more appropriately described as more modern. It is using more advanced technology. There is no indication of razor wire or any such thing for security facilities. Indeed, as I mentioned earlier, the facilities are of a very good quality. It will simply use technology to provide a level of security.

**Senator BARTLETT**—In regard to your comment about the facilities being of good quality, I know the construction is being managed by another department, but it is still a large cost. Are you aware of allegations that have been made of fairly significant problems with the construction and allegations against Boulderstone Hornibrook about breaching of building regulations and the like in the construction of the centre?

**Mr Correll**—No, we have no knowledge of such allegations. That would be a matter for the Department of Finance and Administration.

**Senator BARTLETT**—I may put questions on notice to them about that. You do take over control of the place—like a handover, I suppose—and you want to make sure you are getting something where the bricks are properly stuck together and that sort of thing.

**Mr Correll**—We would be expecting to have a proper due diligence process with the handover of the facility. Our comments on the nature of the facilities come from our knowledge of the plans and also periodic inspections of the facilities there, which are nearing completion now.

**Senator BARTLETT**—But you have not actually heard about major concerns with the masonry works and the construction?

**Mr Correll**—There may be hearsay knowledge within the department amongst our officers dealing with that. I had not heard of those, but at any rate they would be the responsibility of the Department of Finance and Administration.

**Senator BARTLETT**—Could I ask you also about the use of the Toowong Private Hospital in Brisbane for detainees. That seems to be continuing to be used for a small number of people. I think there are two there at the moment—you can correct me if I am wrong on that.

**Mr Correll**—I will ask my colleague Mr Casey to comment in detail, but, yes, we have been continuing to use that facility.

**Senator BARTLETT**—Could you tell me how many are there at the moment and what criteria you use to determine to send people there in each circumstance?

**Mr Casey**—At the moment there are two people in immigration detention who are in Toowong hospital.

**Senator BARTLETT**—What are the criteria you use to decide to shift people? I think in most cases they have been brought there from other states, particularly from Glenside in South Australia. Is it just when Glenside becomes full or are there particular clinical reasons for shifting people?

**Mr Casey**—The first thing is that there has to be a clinical reason for anyone going into hospital, so it would be at the recommendation of the psychiatrist. Perhaps the difference between why somebody might be offered a placement at Toowong—and I use those terms deliberately—and why a person in detention cannot be sent to Toowong is that they would have to agree with the treating clinician to accept a placement at Toowong because it is a voluntary placement. They are not detained under the Mental Health Act, whereas some people who go into hospital in South Australia, Baxter is within that jurisdiction, may be detained under the Mental Health Act, in which case a doctor has made a determination that they must go into hospital. The decision is a clinical decision, it is made by the clinician and the detainee and it is then subject to Toowong accepting an admission.

**Senator BARTLETT**—Is Toowong more expensive than Glenside or does it just depend?

**Mr Casey**—It is slightly more expensive. I do not have the exact bed day costs with me, but I would suggest that it is probably slightly more expensive than, say, the high-dependency unit that we would pay for at Glenside or one of the other South Australian hospitals. But of course we pay for all hospital admissions, regardless of whether they are public or private.

**Senator BARTLETT**—Could you on notice give us those costs?

**Mr Casey**—Yes, we could certainly get you the relative bed day costs.

**Senator CROSSIN**—I want to go back to Christmas Island. I understand that the original budget estimate was \$267.7 million, and the approved budget now is \$396 million, so there is a blow-out of nearly \$131 million. Is that as you see it?

**Mr Correll**—I understand that they are the figures, but this portfolio is not responsible for the management of the development of the Christmas Island facility. The questioning in that area would have to be put to the Department of Finance and Administration.

**Senator CROSSIN**—Are the funds budgeted in your PBS?

**Mr Correll**—No, they are in the Department of Finance and Administration PBS.

**Senator CROSSIN**—Who actually will be supervising detainees on Christmas Island? Is that your jurisdiction?

**Mr Correll**—Once the facility is completed and contractually handed over from the contractors to the Department of Finance and Administration, there will then be a process of handover to this department for ongoing operation and management of the operations. That would be the point at which DIAC would take responsibility for decisions and operations in relation to the Christmas Island detention.

**Senator CROSSIN**—What are you expecting the conclusion date to be?

**Mr Correll**—I would have to say the middle of 2007, from the latest meetings that I have attended, but it is not a locked down date at this stage.

**Senator CROSSIN**—What plans are you putting in place to take over management of the centre?

**Ms O'Connell**—Numerous. For example, we are looking at what our facility's management and maintenance planning would be and some of our early preparations for operational plans for the centre.

**Senator CROSSIN**—How many staff would you see as being employed in order to maintain the centre?

**Ms O'Connell**—We are looking at some of that operational planning aspect. Some of it will depend on the numbers at any one point in time, but we are looking at some of those arrangements in terms of staffing for the centre—as I said, some staff in terms of the facility's maintenance as well as staff employed to run the centre. We would also see that our current service provider would have a responsibility for staffing the centre and running it in the same way that they do the current centre.

**Senator CROSSIN**—You do not have a minimum, core number of people who are required if the centre has no-one in it or has less than 10 people in it?

**Ms O'Connell**—We are having a look at those numbers in preparation for operating the centre.

**Senator CROSSIN**—So how many people are stationed at Port Hedland, for example?

**Ms O'Connell**—There are a number of subcontractors arranged—one provides a security service and so on—but I think the contingent of service provider staff to make sure the place is maintained is only two staff.

**Senator CROSSIN**—So in July there could be as little as only two staff required for the detention centre on Christmas Island?

**Ms O'Connell**—No.

**Mr Metcalfe**—I think you are comparing apples with oranges in that Port Hedland is quite clearly a mothball contingent facility at the moment whereas Christmas Island upon commissioning may well have some clients to move in but would be kept in a state of high operational readiness. As Ms O'Connell said, we are currently developing plans as to what that actually means. A better comparison would probably be: what is our current staffing around the existing Christmas Island centre—

**Senator CROSSIN**—What is it then?

**Mr Metcalfe**—and will that translate across into the new centre? There will be factors of base operation and marginal use as the population, if it ever increases, does increase.

**Senator CROSSIN**—Given there are only three people on Christmas Island at the moment, what are the staffing numbers there?

**Mr Correll**—At the present time—we would have to check the precise numbers—I think the numbers would be in the vicinity of about three or four staff on Christmas Island. If there

were no people in the facility at all once the new Christmas Island facility is available, as Ms O'Connell has indicated, we are still looking at that depth, but you would be talking in a ballpark of 10 to a dozen being needed to maintain a facility like that—it would be in that sort of range.

**Senator CROSSIN**—Has any commitment been given to the Christmas Islanders that employment would come from within the island?

**Mr Correll**—The facility will undoubtedly generate significant employment opportunities on—

**Senator CROSSIN**—Let us just talk about the 10 or 12 first of all, not any other subcontractors that might be needed.

**Mr Correll**—To the greatest extent possible, we would be looking at engaging staff locally, and so too would the contracted service provider. In both circumstances, the first point would be to look at opportunities available through the workforce on the island and that will be linked to directions with the phosphate mining industry on the island.

**Senator CROSSIN**—Why would you say it is linked?

**Mr Correll**—Simply in terms of the availability of labour supply on the island.

**Senator CROSSIN**—Of the three or four that are currently on the island at the moment, how many of those are local?

**Mr Correll**—I would need to check that; I do not know offhand.

**Ms O'Connell**—There is significant employment in terms of local people—for example, the centre manager from GSL is locally employed. The person lives—

**Senator CROSSIN**—Locally employed or does he live there?

**Ms O'Connell**—No, he lives there on the island.

**Senator CROSSIN**—But he is not actually a Christmas Islander, is he? He lives there.

**Ms O'Connell**—By birth or by—

**Senator CROSSIN**—Yes. He has been imported from the mainland and lives on Christmas Island to do his job. How many Christmas Islanders will actually be employed or possibly employed in the future under this proposal?

**Mr Metcalfe**—I think the answer is that we are not giving any guarantees, because it will depend upon the range of skills and experience necessary. But, as Mr Correll has said, if there is a skill that is needed and it is available locally, then it would be our preference to employ that person, provided they are suitable. For obvious reasons of cost and local employment, I am sure that there will be a range of services purchased from the local community, and skills and expertise required on a contract and other basis that are drawn from the local community as well. There will be some staff who, I am sure, will not be Christmas Islanders and who would be effectively posted there for their employment because they have particular skills and experience.

**Senator CROSSIN**—What services are currently purchased from the local businesses on Christmas Island for your operations?

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

**Senator CROSSIN**—Have you made any preparations for future service purchases?

**Mr Metcalfe**—That is what we are doing at the moment.

**Senator CROSSIN**—Can you take on notice for me what services will be needed when the centre is handed over to you and where you might possibly source those services.

**Mr Metcalfe**—To the extent that we can at this stage, we will. I am sure it is an issue that you will want to return to down the track as we get into operating the centre.

**Senator CROSSIN**—I am sure you are right. Can I ask you now about the northern detention centre. Is that what it is called?

**Ms O'Connell**—The Northern Immigration Detention Centre.

**Senator CROSSIN**—What has been put in place, following the report from HREOC?

**Ms O'Connell**—The HREOC report is relatively recent. I think 19 January was the date of the HREOC report. It made a number of recommendations about the Northern Immigration Detention Centre, in particular in relation to things like illegal foreign fisher minors. We had a practice of them returning to the centre during the day to be with the rest of the crew and to partake of the activities there. HREOC's view was that that should not be the case, that the minors should remain separate unless they specifically request a visit. We have now put in place arrangements where minors do not as a matter of course return to the centre for the full day; it is only for short visit periods. That is an example of one of the changes that we have put in place. There have been a number of other changes that we either have put in place or are considering, consistent with the HREOC report.

One of the areas where we differ from the HREOC report's recommendations on illegal foreign fishers—and we have discussed this with the HREOC—is that it is certainly our view that the preferred arrangement is to reduce the period of time that people are here and to return fishers more quickly, as opposed to enhancing the sorts of services available to those people while they are here. We want to do that where it is possible, which is where fishers are not going to be charged, for example.

**Senator CROSSIN**—I take it that none of them are washing cars anymore as recreational activities.

**Ms O'Connell**—We had a thorough investigation of that. It was not sanctioned by DIMIA at the time, or DIAC, to have that as part of the recreational activities. We understand that there were three instances where a car was washed as part of an activity. They were not private cars; they were escort vehicles used by the service provider. Notwithstanding that, it should not have happened and it should not have been part of the activities available.

**Senator CROSSIN**—Are any further modifications being made to that centre in order to get it to a standard by which people can inhabit it? Are the works that were being done last year now complete or is there still more to be done?

**Ms O'Connell**—In the northern compound, which is inhabited at the moment, I am not aware that there are any major works to be finished. I might check with my colleagues. There

is major work being conducted in the southern compound at the moment to provide for the increased accommodation numbers for that centre.

**Senator CROSSIN**—In the northern compound, have the dining rooms, concrete walkways and covered walkways all been completed? Is it landscaped?

**Ms O'Connell**—Yes; that is my understanding.

**Mr Correll**—I visited it just before Christmas. It was certainly highly habitable, including the dining facilities. There were covered walkways and concrete paths. The feedback from detainees who are there is nothing but satisfaction with the standard of accommodation.

**Senator CROSSIN**—What are your plans for a detention or holding facility on Gove Peninsula for illegal fishers?

**Ms O'Connell**—We do not have any plans for any such centre. Any holding facilities for fishers are the responsibility of Customs and AFMA, so that is not part of Immigration.

**Senator CROSSIN**—And they have not spoken to you about plans to clear land on the Gove Peninsula in order to hold illegal fishermen in a facility there?

**Ms O'Connell**—They advise us of things that they are doing in terms of their own operations that have an impact on us, but it is not—

**Senator CROSSIN**—Is that one of them?

**Ms O'Connell**—It is not part of our operations of any of the holding centres run by AFMA and Customs.

**Senator CROSSIN**—Is that one of their operations about which they have had discussions with you?

**Ms O'Connell**—I would have to check about the Gove facility, whether there is one or what state it is in.

**Senator CROSSIN**—Can you take that on notice?

**Ms O'Connell**—Certainly, but I would suggest that certainly AFMA or Customs would be better placed to find their views.

**Senator CROSSIN**—I understand that. I just want to know whether you have had any involvement in discussions with them about it.

**CHAIR**—Customs will be here tomorrow.

**Senator CROSSIN**—I do not want to get to a situation where I do not ask any questions and they tell me tomorrow, 'It's your problem.'

**Ms O'Connell**—True.

**Mr Metcalfe**—It is certainly not part of our planning. It is something that we have moved forward with the facilities in Darwin, which are proving quite suitable. As I said before, it means that we are not having to transfer people back and forth and we can hold them for that short period before they return home.

**Senator LUDWIG**—We have gone through the detention facilities that are in a contingency mothball, those that are currently operating and those that intend to operate. I

asked some questions previously about the Queensland facility, but I was curious as to whether there is also land in other states which is reserved for future use by the department for detention centres and, if so, where is that?

**Ms O'Connell**—This links back to the budget 2006 announcements. The department held two major land sites for potential use for detention centres. They are the site in Brisbane that you mentioned and also a site in Broadmeadows in Melbourne. In the budget 2006 announcements the government said that we would not be building detention centres on either of those sites but instead a much smaller transit centre. We still have the landholdings in both of those locations but commitment to build only the much smaller immigration transit centre and only on a very significantly smaller portion of the land on both of those sites.

**Senator LUDWIG**—So the entire two blocks are still held by the Department of Immigration and Citizenship?

**Ms O'Connell**—Correct.

**Senator LUDWIG**—The transit centre in Queensland and the site in Melbourne—what do you call that? Is there a generic name? Is it a suburb name?

**Ms O'Connell**—It is in Broadmeadows.

**Senator LUDWIG**—Where are those two sites up to in terms of building the transit centres?

**Ms O'Connell**—Preliminary construction works are currently taking place on the transit centre in Brisbane, with a commitment that the centre will be in place by the end of this calendar year, 2007. In the case of the Melbourne transit centre, it will actually be accommodated within what is an existing building on the site that requires some significant refurbishment works. So the framework of the building, if you like, is in place and construction in terms of the changes that need to be made to it will also be completed by the end of this calendar year.

**Senator LUDWIG**—They will be operational by?

**Ms O'Connell**—At about that same time, so the expectation is by the end of this calendar year we will have transit centres in both Brisbane and Melbourne.

**Senator LUDWIG**—Thank you.

**CHAIR**—We are still dealing with output 1.3. Are there further questions?

**Senator NETTLE**—In your comments before in relation to Mr Jovicic, you were saying that he needed to apply for Serbian citizenship, and that was where you left it. Are you saying that it would be an act of good faith for him to apply for Serbian citizenship but not necessarily accept it?

**Mr Metcalfe**—That is what I have said.

**Senator NETTLE**—How is that an act of good faith?

**Mr Metcalfe**—It is a positive action on his part to indicate that he is prepared to make arrangements to reacquire his Serbian citizenship.

**Senator NETTLE**—Would you consider it to be an act of good faith for the Serbian government for him to apply for but not to intend to accept citizenship on the basis of a direction he had been given by another government?

**Mr Metcalfe**—No. I do not agree with what you have just said. Our interest is in his applying for that citizenship. I have not offered a view as to the result of that application and I cannot speak for what the views of the Serbian government may or may not be. I think I have been more than crystal clear on this point: that on several occasions the government has indicated that it would regard his application for a citizenship that he has previously held as an act of good faith.

**Senator NETTLE**—It is an interesting scenario to talk about the idea of the good faith of somebody else. Say, for example, someone applied for Australian citizenship with no intention of accepting it. It would be interesting to see how that would be seen by the Australian government.

**Mr Metcalfe**—That is right, but I have not said those words that you have said. I have not said the words ‘with no intention of accepting’. I have said that our interest is in him making an application.

**CHAIR**—Whilst it might be an interesting scenario, Senator Nettle, I am personally interested in the business of the estimates, if we could confine our questions to that.

**Senator NETTLE**—I am sure Mr Jovicic is very interested in his future life as well.

**CHAIR**—That is true, but this is not necessarily the place for a philosophical examination of those matters. Mr Metcalfe has answered to the best of his ability with the information that is available to him, and the minister has responded as well.

**Mr Metcalfe**—Chair, just for the record, nothing I have said today in responding to Senator Nettle’s questions would be a surprise to Mr Jovicic or his representatives.

**CHAIR**—Thank you, Mr Metcalfe.

**Senator Ian Campbell**—I am sure nothing that we have said or the facts that we have put before Senator Nettle will in any way alter what she writes in her press release—which she has already written.

**Senator NETTLE**—That is news to me. On the Christmas Island detention centre, you are always talking about the Department of Finance and Administration being responsible, but do you have a figure for cost?

**Mr Metcalfe**—No. Senator Crossin read out some figures which Mr Correll indicated sounded about right. But we quite properly have said that they are matters within the responsibility and competence of the department of finance. So we ask that you obtain any information about figures from them directly.

**Senator NETTLE**—So you cannot tell us how much it will cost.

**Mr Metcalfe**—I have said what I have said.

**Senator NETTLE**—I understand that around the time of the last estimates there was a delegation from the American government visiting Christmas Island. The media reports at the

time said that they were looking at facilities on Christmas Island that they might use. I was wondering whether they had visited the proposed new detention centre on Christmas Island.

**Ms O'Connell**—They did not.

**Senator NETTLE**—They did not?

**Ms O'Connell**—No.

**Senator NETTLE**—You gave some information about Baxter before. You said that there were 18 people currently in Baxter.

**Ms O'Connell**—That is correct.

**Senator NETTLE**—How much is it costing to operate Baxter?

**Ms O'Connell**—The full annual costs for Baxter are approximately \$30 million; the figure is \$29.6 million or \$29.4 million.

**Senator NETTLE**—You were talking about the closing down of that centre coming up—I think you described it as 'mothballing'. What is the time frame for that?

**Mr Correll**—The comment is 'putting it into contingency mode', which is a little different from mothballing as such. The point we were making is that there is not a hard, lockdown date for that, but we would be looking at continuing with the current trending down of the numbers there. It is possible that it will happen late this calendar year or into the next year, assuming circumstances continue in terms of the number of people requiring detention facilities as exists at the present stage.

**Senator NETTLE**—Is the idea that any detainees remaining at that site at that point would go to Christmas Island?

**Mr Correll**—No, that would not be the intention at that stage. The intention would be to look at Baxter effectively winding down to zero detainees. If there were a movement of any detainees from Baxter it would be more likely to be to a facility within Australia, such as Villawood, for example.

**Senator NETTLE**—When it is on contingency, what happens then? Does it remain with the department? Do you talk to other people?

**Mr Correll**—Essentially, as a contingency facility, it would be kept in a type of ready reserve mode so that it can be brought on stream should there be any significant change in detainee numbers requiring action or if there were changes in areas such as illegal foreign fishers that grew dramatically. We would potentially see it as a first contingency for the Northern Immigration Detention Facility should that become full.

**Senator NETTLE**—So does anyone get to use the new hockey fields or the new basketball courts?

**Mr Correll**—A large number of detainees have used those facilities as part of their activities to date.

**Senator NETTLE**—I mean when it is contingency.

**Mr Correll**—We would look at ensuring those sorts of facilities are made available for use by the local community, and that would be something that could be discussed with the local council.

**Senator NETTLE**—I want to ask about the reports of three Iraqi diplomats applying for asylum and whether there is any update or information you can provide about that.

**Mr Metcalfe**—This would fall back into 1.2. We have sort of gone past that, but all I can do is confirm what has already been put on the record. I am very conscious of—as you would be, I am sure—grounds that go to privacy of individuals. We have applications; they are being considered.

**Senator NETTLE**—In that kind of case—and I do not mean to talk specifically about theirs—would you do that in discussion with the Iraqi government?

**Mr Metcalfe**—No. It is a standard practice that we would consider the applications on the merits as presented to us.

**Senator NETTLE**—At what point are those claims at?

**Mr Metcalfe**—The applications have been made and they are currently receiving consideration within the department. As far as I am aware, and I checked last week, no decisions have been made in relation to them.

**Senator NETTLE**—And they are in the community rather than in detention.

**Mr Metcalfe**—That is correct.

**Senator NETTLE**—What is the current success rate for Iraqi asylum seekers?

**Mr Metcalfe**—I do not have that available. I could take that on notice. I would not seek to draw any particular connection between the general case load that we receive and people who may come from a particular background such as those individuals.

**Senator NETTLE**—Are you indicating their circumstances might be different to other Iraqi asylum seekers?

**Mr Metcalfe**—I am just saying that in providing response on notice I would not want you to extrapolate a likelihood of success or failure depending upon the standard. Each case is assessed on its merits.

**Senator NETTLE**—I have some questions about Villawood. The first one relates to material that is available for detainees to access in Villawood and it relates to a street publication in Sydney which is called *SX*—I think you are aware of this; it is a gay media publication in Sydney. I understand there was a circumstance of a detainee who was subscribing to *SX* for about a year. Subsequently, there was a ban of that publication entering. Could you explain that situation for us?

**Ms O'Connell**—Publications such as those readily available, as you say, are allowed in the detention centre. I think in that instance a visitor was coming in with that particular publication and, incorrectly, the service provider thought it was probably a banned publication and did not allow it to go into the centre. That was a mistake. The mistake has been corrected and an apology given.

**Senator NETTLE**—I also understand—and maybe you can clarify this; I have got some questions about internet access that people have in Villawood—that the same detainee sought to access the *SX* website where you can read the publication online and they were banned from being able to access that website. Are you aware of that or what the process is for banned websites for people in Villawood?

**Ms O'Connell**—In terms of internet access, we have the sort of standard filtering types of arrangements, so it would depend on the classification of a particular publication according to standard filter arrangements. If there is any issue about that filter setting not being appropriate, we are quite happy to have a look at it. I am certainly not aware of any complaint about access to that same publication through the internet. We were made aware of the complaint in terms of the visitor. We accepted it was an incorrect application of the guidelines, and an apology was given. I am happy if there is an issue in relation to internet access of that same publication to address it in the same way.

**Senator NETTLE**—If you could look at that in relation to that publication, that would be good.

**Ms O'Connell**—Yes.

**Senator NETTLE**—Is internet access now available in all detention centres?

**Ms O'Connell**—I did not mention it in that answer, but internet access at this stage is provided at the Maribyrnong facility where we are trying out some different methods in terms of that access. Generally the pilot is viewed as having been a success. The expectation is that we will be rolling out internet access to all centres but we have not done so as yet. On the question about Villawood and internet access, I will ask my people to check but I did not think we had made it available yet in Villawood. If we have it is a very recent development. But the plan is to have internet access available through our centres.

**Senator NETTLE**—I will ask you to take that on notice, unless you do now know the number of computers available for detainees?

**Ms O'Connell**—Sure.

**Senator NETTLE**—I might give you some questions on notice on that. You indicated before that there was an incorrect decision that *SX* was a banned publication. What are the publications that are banned from being taken into detention centres?

**Ms O'Connell**—It is not a list of magazines by name; it is simply saying that if it is material that is likely to offend people then it should not be allowed in.

**Senator NETTLE**—And is it the GSL guards at the visitors centre who make that determination?

**Ms O'Connell**—With assistance—and they can always contact us if they feel that there is a need for assistance to make an assessment—yes. There are some guidelines, which I can make available to you, in the form of an instruction, and in this instance we think they made the wrong call; from time to time, I expect, that happens. It would have been good possibly if it had been escalated; given that it was clearly something a visitor wanted to bring in, it would have been good if it had been escalated. We have a help desk to which phone calls can be

made to validate or confirm those things; that did not happen in this instance. But I am happy to provide you with the guidelines on that.

**Senator NETTLE**—How many detainees are currently at Villawood?

**Ms O'Connell**—As at 2 February, 224 people were at the Villawood detention centre.

**Senator NETTLE**—Is that all the stages together?

**Ms O'Connell**—Yes.

**Senator NETTLE**—Okay; do you have it separated?

**Ms O'Connell**—I do not, but roughly there are about 40 at stage 1.

**Senator NETTLE**—You were talking about the internet access at Maribyrnong: do they have wireless modems that they can use in there? Do you know how it works?

**Ms O'Connell**—We have trialled a number of different applications of internet access—some of the kiosk style, that you can go up to, others available with filtering on them in terms of the sites that you can access—but not wireless access. There are access points with a computer, if you like, hard-wired.

**Senator NETTLE**—I remember we have talked before about the food that is made available at Villawood, and I think the government's policy is about making it culturally appealing to the detainees. How many different types of dishes are provided at Villawood in the food to meet that guideline of making it culturally appealing to detainees?

**Ms O'Connell**—I can provide you with a range of menu plans if you like. In the dining room there is always a menu plan with the selections available on it, and there is a variety of selections available at any particular meal, including fresh fruit, salads—a range of choices. It is not always possible to cater for everybody's preferred or wished-for items, but certainly what we are striving to do is provide healthy meals that accommodate a range of choices and diet decisions. I am happy to provide you with a menu plan if you like for Villawood.

**Senator NETTLE**—In relation to taking legal material into the detention centre: because you have guards making a determination about whether material is appropriate to go in or not, do they look through legal material on its way in?

**Ms O'Connell**—No, not that I am aware of—in a normal instance.

**Senator NETTLE**—Can you take legal material in only in hard copy or can you take it in in soft copy as well?

**Ms O'Connell**—Legal representatives are allowed to take their laptops in. So in that sense they can take it in in soft copy.

**Senator NETTLE**—I understand that detainees have been FOI-ing some material in relation to medical records, immigration files and GSL files. Is the information that people are putting in FOI applications to receive information that they have not been able to obtain through the parliament?

**Ms O'Connell**—Any person in immigration detention is allowed to submit an FOI request if they wish to do so. I cannot answer as to why they do in particular instances, unless you want to give me the circumstances in which someone would FOI something.

**Senator NETTLE**—I do not have a specific one. I just have it from detainees talking about FOI. It seemed strange to me why they had to FOI their medical files or other files, but presumably that is because they were not able to access them any other way.

**Ms O'Connell**—I cannot comment on why they would particularly do it. If there are any examples you would like to share with me, I will happily get back to you.

**Senator NETTLE**—I do not have a specific example. It just seemed like an unusual practice for me. Maybe you could take on notice how many instances there are of clients who are FOI-ing their documents. That might give me a capacity to assess that.

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

**Senator NETTLE**—Thank you. We have spoken before in estimates about the visit to Villawood by Chinese government officials in relation to Chinese detainees. I was wondering about the outcome for those detainees who had been visited by Chinese government officials. Obviously, I do not want to know all the details.

**Mr Metcalfe**—We will ask the relevant officer to come to the table.

**Dr Southern**—Senator, if I understood your question correctly, you were asking what immigration outcomes had been achieved in relation to the people who had been interviewed by the PRC delegation.

**Senator NETTLE**—Yes.

**Dr Southern**—There were 68 immigration detainees who were thought to be PRC nationals who were interviewed by PRC officials. These are figures that were current at 2 February 2007: of those 68 people, 18 are still in detention, 28 are in the community on protection or refugee visas, three are in the community and are currently unlawful—presumably they are on bridging visas that have expired—10 are in the community on bridging visas and nine have departed Australia. Hopefully that will add up to 68.

**Senator NETTLE**—I will not add them up right now, but that is what I was looking for. I also had a question about how many stateless people there are currently in detention.

**Mr Metcalfe**—We might need to take that on notice. Whether we actually report against stateless or unknown is something that we might just carefully check. With some people we may not know their citizenship but they may not be stateless; we may simply not know what their citizenship is. They may be uncooperative, for example.

**Senator NETTLE**—How you record it is fine. For each of those, if you could give an indication of how long they have been here as well, that would be great.

**Mr Metcalfe**—Yes.

**Senator NETTLE**—There were reports about the moving of Villawood detention centre. I note that the minister commented that there was no plan to move Villawood. But I wanted to ask about that process: was there a consideration to shut down Villawood and move to somewhere else?

**Mr Correll**—Yes. A review was done of the feasibility of looking at other sites, but I think the minister has made it very clear that the directions with any development work are at Villawood, no other site.

**Senator NETTLE**—Did the decision to review other sites come about as a result of the costs associated with the asbestos clean-up at Villawood?

**Mr Correll**—No, it was really about doing things in a proper way—that is, looking at the feasibility of other locations, and the conclusion coming out of that feasibility was that Villawood was clearly the best site.

**Senator NETTLE**—Can you give an update about Mohammed Faisal, the detainee? Is he still in Toowong? We heard before that he was in Toowong. Or is he now in the community?

**Mr Metcalfe**—No, he has now been granted a visa and is a free person in the community.

**Senator NETTLE**—Great. Have there been any more boat arrivals since we were last at estimates?

**Mr Metcalfe**—We will just quickly check; we should be able to answer that. We last met in October, from memory.

**Senator NETTLE**—I think there had just been a boat arrival at that point, and I am assuming two of the three on Christmas Island are from that boat.

**Mr Metcalfe**—If you bear with us for five minutes, we will just double-check, because we get the occasional individual who arrives in that sort of way.

**Senator NETTLE**—On that note, have there been any more West Papuans as well?

**Mr Metcalfe**—Not by boat.

**Senator NETTLE**—But by plane?

**Mr Metcalfe**—Lots of people come to Australia every day by plane.

**Senator NETTLE**—I mean asylum seekers.

**Mr Metcalfe**—There have been no West Papuan asylum seekers arrive by boat; whether any Indonesians who come from that province have sought asylum in Australia is a different question.

**Senator NETTLE**—Is that a question which you are able to answer?

**Mr Metcalfe**—I would have to take that on notice.

**Senator NETTLE**—Sure.

**Mr Metcalfe**—I would just caveat at the beginning my response by saying that we do not normally record statistics that go below nationality, so we would have details of where there are any Indonesian nationals who may have sought asylum in Australia but we may not be able to disaggregate easily whether they come from a particular part of Indonesia.

**Senator NETTLE**—The only other question I had on 1.3 was the one you were getting back to me about, which was the enforcement of student visas, but I will leave that to you.

**CHAIR**—Did you wish to discuss that now, Dr Southern?

**Mr Metcalfe**—Dr Southern can do that now.

**Dr Southern**—Given the question was asked this morning, we were confused as to who was dealing with it. Would you mind repeating the question that you were interested in?

**Senator NETTLE**—The question that I asked last time came out of the comments that were made in the Federal Court about the enforcement of student visas. They were about heavy-handed practices and instances described as midnight raids of people's homes, where they did not have time to gather their belongings before they were put into detention. My question on notice was about whether things had changed, and the answer I got was: not legislatively, which I know about. My question now is: are there any other non-legislative changes that have been made?

**Dr Southern**—In our answer to that question on notice, we indicated to you that in developing national priorities for onshore compliance activity, medium priorities are afforded to reports of students having failed to meet academic or attendance requirements. You would know that if they fail on those grounds there is automatic cancellation of visas, although the students have the opportunity to come back to the department to seek revocation of the cancellation. We also noted that compliance managers do not specifically target student visa holders working in breach of their visa conditions, but we may come across such persons through doing other compliance work.

I would add that we have put an extraordinary amount of effort into training for compliance officers, through the immigration college. As part of that training we make very clear the kind of approach we expect compliance officers to take to compliance activity. We certainly would encourage compliance operations to be planned for during normal working hours rather than outside working hours, although we recognise that sometimes, if all we have is a residential address for a person, we might need to seek to visit them in the evening. But our advice to compliance officers is not to seek to contact people after 9 pm.

**Mr Metcalfe**—Chair, I can respond to Senator Nettle's question about boat arrivals.

**CHAIR**—Thank you, Mr Metcalfe.

**Mr Metcalfe**—Senator Nettle, in the earlier estimates we reported about two nationals who had arrived from Vietnam. I think you were aware of that. According to our records, the only arrivals we have had since that time have been a group of 40 citizens of Papua New Guinea, who arrived on Saibai Island in the Torres Strait on 25 January 2007. There was a little bit of media interest in the matter, I think in the *Cairns Post*. I do not know if you read that daily. The group subsequently returned to PNG voluntarily. They stayed on Saibai for a few days and then went home.

**Senator LUDWIG**—In terms of the illegal fishers issue more broadly, have the arrangements with Customs or other agencies changed in the last six months or are they still roughly the same as the last time we spoke about it? They have responsibility for the first part of the detention and then detainees are handed to Immigration.

**Mr Metcalfe**—That is correct. Nothing has changed from that point of view.

**Senator LUDWIG**—Do Customs or other agencies provide you with a forecast number that you work on—that is, how many you may have to house and be responsible for and the time lines?

**Mr Metcalfe**—I think there have been some estimates provided of likely levels of apprehensions and therefore estimates of likely numbers of illegal fishers. Planning therefore

continues on that basis as to what is expected in terms of their enforcement activity and the consequences that might flow as a result of that.

**Senator LUDWIG**—When was the most recent estimate provided to the department?

**Ms O'Connell**—In January some revised estimates were provided to the department for numbers of apprehensions of illegal foreign fishers.

**Senator LUDWIG**—And what were they?

**Ms O'Connell**—I might just ask a colleague exactly what the numbers are.

**Senator LUDWIG**—Is the colleague behind you?

**Ms O'Connell**—He is on his way.

**CHAIR**—We are very patient, though, Senator Ludwig.

**Ms O'Connell**—Perhaps I could take a moment to answer one of Senator Nettle's questions while my colleague comes to the table.

**Senator LUDWIG**—Yes, by all means.

**Ms O'Connell**—Senator Nettle, you asked about computers at Villawood. I said that we were trialling at Maribyrnong, that that was going well and that we expected rollout. I have been advised that we have gone with a bit of an early rollout at Villawood and there are some internet computers available there. There are limited numbers at this point. We would expect to increase beyond these numbers. There are six internet enabled computers at Villawood at present.

**Senator NETTLE**—How many are you intending to have available at Villawood?

**Ms O'Connell**—It will depend a bit on usage and demand, but I would foreshadow that certainly more than six would be the expectation.

**Senator NETTLE**—Are they available for people in any stage?

**Ms O'Connell**—There are two in stage 1 and four in the other stages, 2 and 3, for shared use.

**CHAIR**—Mr Metcalfe, it would be helpful, if officers have further answers to questions, if they direct them through the chair. I would rather have finished Senator Ludwig's questions and come back to those other matters.

**Mr Metcalfe**—Yes, I understand. We apologise, Chair.

**CHAIR**—Thank you. Senator Ludwig, you are waiting for an answer from Ms O'Connell.

**Ms O'Connell**—The original estimate of the number of illegal foreign fisher apprehensions for 2006-07 was 6,002. We have recently been advised that the estimated number of illegal foreign fisher apprehensions is now 2,960.

**Senator LUDWIG**—How does that work with your budget? Had you estimated that detention facilities would house in the order of 6,000 illegal foreign fishers? That estimate has now been reduced to 2,960. Does that create an underspend for the Department of Immigration and Citizenship in that area? If so, how much?

**Ms O'Connell**—Certainly in terms of forward allocations it would mean a reduction on the basis of a reduced number. In terms of capacity we had foreshadowed that we would be looking at using the Baxter facility for illegal foreign fishers when there were peak demand periods, and there a couple of those during a year. The likely impact of the reduced numbers is that we will not need to use the Baxter facility for an overflow of illegal foreign fishers unless there is a specific operation that takes place. Within forecasts like that, whilst it is a particular number for a full year it is difficult to ascertain when, during the year, you could have large numbers at one time and smaller numbers at other times.

**Senator LUDWIG**—How many illegal fishers can the detention centre in Darwin hold? What is your surge capacity?

**Ms O'Connell**—It will be able to hold 600 fishers at the end of this calendar year, when current works on the southern compound are finished.

**Senator LUDWIG**—What can it hold now?

**Ms O'Connell**—It can hold about 250 fishers at one time.

**Mr Correll**—You have to be careful with your mathematics, because illegal foreign fishers have a fairly high turnover through the immigration facility. They are there for potentially two or three weeks which means, over a year, for short periods of time you get many times the capacity of the immigration facility.

**Senator LUDWIG**—Thank you. I appreciate that. In terms of the monthly figures, is there an estimate from the Australian Customs Service as well? I understand they will be only held for two, three or four weeks and be accessed through the court system in Darwin or processed by you in that respect. But, at any one time, there might be an operation going on, so I am just trying to ascertain the surge capacity if a significant operation is undertaken. The figures have now been revised significantly downwards to 2,960. That also means the monthly figures, even your averages, are probably going to drop if the forecast was originally 6,000-odd, so there is still going to be a significant drop. That necessitated that you held Baxter, but clearly you have now revised that and are considering putting it on contingency. So we then go to the next part: does the Australian Customs Service provide you with a likely monthly average of what they would expect, to help you work out your figures?

**Ms O'Connell**—They do provide us with some expectations about what it will be. We all have to acknowledge that that revision is dependent on seasonal fishing habits and a range of different things, so it is only an estimate of what it will be at any one point.

**Senator LUDWIG**—What is that estimate?

**Ms O'Connell**—I would have to take it on notice and get back to you. There is a different estimate for each month, which acknowledges that there are higher numbers in fishing seasons than in other seasons.

**Senator LUDWIG**—That was what I was also seeking. There will be seasonal fluctuations in the potential number of illegal fishers, depending on the weather. Clearly there may be more fishing in calm weather than in the monsoonal season, in which sailing is unpalatable.

Does that reduction represent savings that get returned? Is there a pot of money given to the Department of Immigration and Citizenship for this output, illegal fishers, which, if it is

not consumed and there is an underspend in that area, is returned to consolidated revenue? Or is it carried over to the next year? What happens there? Clearly the amount of money you would have forecast for 6,000-odd you have now recast for 2,960, or effectively half. What happens to that? Do you use it to defray your expenses elsewhere?

**Mr Metcalfe**—The funding in that area is what is described as a quarantined item within our budget. Essentially, if we need to spend the money, we get provided with that money; if we do not need to spend the money, we do not get provided with the money. So it is effectively a special purpose set of funding. The fact that the numbers are lower than originally anticipated means that we spend less, which means that we get less. As to the precise accounting technicalities of whether it is returned to consolidated revenue or came from consolidated revenue in the first point, I can explain that on notice, but effectively we do not save anything as a result of a reduction in the levels of activity.

**Senator LUDWIG**—Perhaps you could, just briefly, so that I can understand it and, in terms of the quarantined amount, say what that amount was and how it is held in the accounts more generally.

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

**Senator LUDWIG**—I cannot recall seeing that quarantined amount before.

**Mr Metcalfe**—We will provide that to you on notice.

**Senator LUDWIG**—In terms of enforcement of immigration law, the department provided a table—I think it was in answer to question on notice no. 209—outlining six cases between 1 July 2005 and 1 November 2006 pertaining to settlements by way of compensation. They appear to have included \$10,000 for false imprisonment, \$25,000 for costs for false imprisonment, \$80,000 plus costs for personal injury, \$100,000 for costs for personal injury and \$400,000 and costs for personal injury. I will go through them one at a time. The \$10,000 for false imprisonment seems straightforward in that sense. Is there a breakdown of what those related to? For example, where it was alleged an individual should be detained, but the allegation was not sustained and it was then held that they had been falsely imprisoned and there was a settlement, is that the department agreeing that there was a false imprisonment?

**Mr Metcalfe**—I will ask our Chief Lawyer to assist us. I am not sure whether it involves an admission of liability or whether it is a settlement of claims brought without the admission, but Ms Bicket may be able to assist.

**Senator LUDWIG**—Or a statement of false imprisonment with it?

**Mr Metcalfe**—Yes. Clearly there is an acceptance that a monetary compensation was appropriate in the circumstances.

**Ms Bicket**—It might depend a little on the individual circumstances. Without having gone back to the individual cases that were reported here, it is the normal course of events in most settlement matters that there is a confidentiality agreement around the settlement. I do not have information about that specific matter and whether or not there is a confidentiality agreement in relation to it, so I might have to take that on notice. Certainly if we can link it back and there are no issues around release then we would certainly provide some information about that.

**Senator LUDWIG**—We will put those false imprisonments aside for the moment. You will provide what you can. I do understand that there are confidentiality agreements that will relate to them.

**Ms Bicket**—Often in these matters there may not be an admission of liability. It may just be that a settlement was agreed between the parties.

**Senator LUDWIG**—Yes, though ‘false imprisonment’ is not my description; it is your description.

**Ms Bicket**—Yes indeed, and I think that would pertain to the type of claim that was being made rather than a conclusion as to whether or not there was an admission of liability.

**Senator LUDWIG**—In any event, perhaps you could have a look at that and provide to the committee as much detail about that as you are able to.

**Ms Bicket**—Sure.

**Senator LUDWIG**—In relation to those two, in terms of the harm, or the settlement, is that broken down by how the payment might be constituted? Do you break it down into whether there is mental stress or trauma or under general heads?

**Ms Bicket**—It would generally speaking be an aggregate figure. There may in individual circumstances be some breaking down of that figure, but generally we would be agreeing to a quantum, if you like, rather than to individual elements of it.

**Senator LUDWIG**—The same type of question arises as to what the three personal injury claims relate to. I understand that there might be confidentiality agreements that relate to each of them, but if you could provide in broader terms the nature or the location.

**Ms Bicket**—Sure.

**Senator LUDWIG**—In addition, if the settlement figures, including legal costs, could be broken down in those three instances—particularly if there have been claims under different heads: if there has been a claim for the injury, the trauma or if there has been any economic loss. I am familiar with the general claims that might come under personal injury. I am not sure whether they would all be relevant in this circumstance, but some of them certainly would be. I would be surprised if they were not put under separate heads and then aggregated to a total. And then, because you have also included ‘plus legal costs’, I was wondering whether that figure could be broken down, to understand it better.

**Ms Bicket**—We will look into it to see what breakdown we can provide you.

**Senator LUDWIG**—And, in terms of those three, if possible, the nature of the personal injury—even if you can only say whether it relates to a physical injury or a mental injury.

**Ms Bicket**—Yes, we will look into that.

**Senator LUDWIG**—Question No. 184 was asked by Senator Crossin, about litigation brought against the department. During the 2005-06 financial year you indicated that there were 532 matters where the department had to pay applicants’ costs. You have provided the categories of matters in which costs were paid. Two of those were for deportation, not removal. Can you say what they related to? I have been corrected here often for using the word ‘deportation’. It did stand out a little bit. Were they deportations?

**Ms Bicket**—I would have to check. My presumption in this, though, is that it may be just a misdescription of them, that they may well have been removal matters and it is just the colloquial use of the term ‘deportation’ rather than the technical use. I cannot recall that we had any deportation matters in that year, so we will go back and check that particular statistic.

**Senator LUDWIG**—So, if we are right, all those people who have corrected me over time might want to acknowledge that!

**Mr Metcalfe**—Thank you for your assistance, Senator!

**Senator LUDWIG**—Are there details of what those two related to and how much the compensation was? They might also be subject to privacy considerations.

**Ms Bicket**—These are not compensation matters; these are legal costs.

**Senator LUDWIG**—Yes, but they might have also generated compensation.

**Ms Bicket**—They may well have, if they were matters where there was not an award involved. But my recollection is that none of these matters were in fact compensation matters.

**Senator LUDWIG**—So they were simply costs matters?

**Ms Bicket**—Yes.

**Senator LUDWIG**—Are you able to say why the costs were awarded in that instance?

**Ms Bicket**—Generally speaking it would be a situation where we had acknowledged that there was an issue, that we did not wish to proceed with the particular matters and therefore we were accepting that costs should be awarded against the minister. They may be matters where we have been unsuccessful in the litigation and costs have been awarded by the court.

**Senator LUDWIG**—I see: you may have been attempting to remove them and failed in that instance. That is hypothetical. We should find out. Perhaps you could take it on notice and get back to us.

**Ms Bicket**—These matters will be, generally speaking, in relation to a visa decision, for example. We may accept that there is a legal error in that particular decision and we will therefore agree to the matter being reconsidered. In those situations, generally speaking, costs would be awarded against the minister.

I might add that, with quite a number of these matters, there was a line of authority coming from the court in relation to procedural fairness matters. A number of these related to matters where we accepted that that particular line of authority had led to errors, and we would not be litigating those matters. In those matters, of course, the court would remit it back to the relevant tribunal and make an award of costs.

**Senator LUDWIG**—Yes—and, in the first instance, it may not have precluded further action being reinstated in any event.

**Ms Bicket**—That is right.

**Senator LUDWIG**—But costs would have followed the event in that respect?

**Ms Bicket**—Yes.

**Senator LUDWIG**—Perhaps, just for clarity, you could clear up the deportation issue for me.

**Ms Bicket**—Yes, we will.

**Senator LUDWIG**—I do not have anything further under output 1.3.

**CHAIR**—That will conclude output 1.3. In the absence of Senator Bartlett I do not know whether there will be questions for output 1.4. No, we will go to output 1.5: offshore asylum seeker management. Do we need to wait for the appropriate officers, Mr Metcalfe, or are they here?

**Mr Metcalfe**—While we are doing that, I have a response to a question Senator Crossin asked me this morning. She is not here. I am happy to provide it if she is going to be here later or provide it now.

**Senator LUDWIG**—She will be returning. She had a meeting she had to go to.

**CHAIR**—She is coming back. Thank you, Mr Metcalfe.

**Mr Metcalfe**—I will take another opportunity.

**Senator NETTLE**—I just wanted to ask about the Burmese Rohingyas on Nauru, and where their processing was up to.

**Mr Correll**—We will need a colleague at the table for that question.

**Mr Hughes**—Just to recollect, last time we spoke about this we mentioned that the eight Burmese of Rohingya origin were part of a group of at least 11,000 Burmese Rohingyas temporarily residing in Malaysia, most of whom are of interest to UNHCR, and that we had been looking into their history and discussing with UNHCR their background before coming to a view on the most appropriate solution for them. Since that time we have put some options to their legal representative, because they have been represented by the Refugee and Immigration Legal Centre in Melbourne. We have put some options to their legal representative. At this stage we do not have a definitive answer from their legal representative as to which option they would like to proceed with, so discussion is ongoing.

**Senator NETTLE**—Do you have any idea how much longer they are expected to be on Nauru?

**Mr Hughes**—At this stage, since we have not set any particular deadline for them or for their legal representative to respond to us on the proposals that we have put, I do not know how much longer they will be there. We will have a better idea once we have a response from their legal representative.

**Senator NETTLE**—We talked last time about whether you were trying to find other countries for them to go to. Is that still on the cards?

**Mr Hughes**—You put me in a slightly difficult position because their legal representative has specifically asked us not to discuss, at this stage, the options that we have put to them.

**Senator NETTLE**—That is all right.

**Mr Hughes**—If possible, I would like to respect that request.

**Senator NETTLE**—That is fine.

**CHAIR**—In which case, we will not be discussing it on the public record, Mr Hughes.

**Senator NETTLE**—It was only that you mentioned it last time I asked. I am very happy to go along with that. Can you give the costings for the centre in Nauru?

**Mr Correll**—Yes. The average cost of maintaining the facilities on Nauru is \$2 million per month.

**Senator NETTLE**—Does that include any flights that department officials have to take there or is that kind of cost separate?

**Mr Correll**—I believe—I will look for a little guidance—that would include all of our costs, including periodic flights to the island. It includes general routine flights, not special one-offs or special charter flights at all.

**Senator NETTLE**—Do you have—take it on notice if not—the costs for any flights you have chartered in the last year?

**Mr Correll**—There would be quite a few of those, I think. I will check if my colleague has that information available.

**Ms O’Connell**—Senator, specifically for Nauru?

**Senator NETTLE**—Yes, for Nauru.

**Mr Correll**—We do not have it broken up to the Nauru level, I am afraid. We would need to take that on notice.

**Senator NETTLE**—Give me a total cost if you like.

**Mr Correll**—For the 2006-07 financial year, the total cost of charter flights as at 2 February is \$2,069,585.

**Senator NETTLE**—Do you have it for 2005-06?

**Mr Correll**—For the full 2005-06 financial year it was \$4,922,807.

**Senator NETTLE**—Can I put on notice the breakdown of those costs for Nauru, Christmas Island and wherever they are?

**Mr Correll**—Yes. We would have to take the further break-up on notice.

**Senator NETTLE**—That is fine. Thanks.

**Ms O’Connell**—Those costs include charter flights for removals and things as well. We will give it by that breakdown.

**Senator NETTLE**—Okay, sure. I also wanted to ask for an update on the case of Mohammed Sagar. I do not know if he is still in Nauru.

**Mr Correll**—He would no longer be in Nauru. He left, I believe, on 6 February.

**Senator LUDWIG**—I just missed the answer you gave in respect of the total cost for the management and operation of the facilities on Nauru.

**Mr Correll**—It is \$2 million per month.

**Senator LUDWIG**—Do you have a running total?

**Mr Correll**—The annualised figure?

**Senator LUDWIG**—Yes.

**Mr Correll**—It is approximately \$27 million.

**Senator LUDWIG**—The current figure is \$2 million in terms of the year to date. Do I multiply that by the number of months from 1 July and—

**Mr Correll**—Bearing in mind that \$2 million is an average figure. That would not be a precise outcome, but it would be near to the mark.

**Senator LUDWIG**—In terms of the remaining, is that projected to go forward to the end of this financial year?

**Mr Correll**—Yes. Our overall projection is around \$24 million for Nauru. I might have mentioned a figure of \$27 million on a per year basis—that included maintenance costs for Manus. For Nauru alone it is around \$24 million.

**Senator LUDWIG**—So Manus Island is in what—care and maintenance?

**Mr Correll**—It is in a mothballed state. That is even more care and maintenance.

**Senator LUDWIG**—Yes—or less, as the case may be.

**Mr Correll**—Yes, depending on your point of view.

**Senator LUDWIG**—What does that mean—is there a security company looking after the facility? Perhaps you could explain its current state.

**Ms O’Connell**—For Manus, being in that mothballed status does mean that there is a security presence in terms of ensuring the facilities remain there but little else in terms of provision for ready occupancy.

**Senator LUDWIG**—How many left did you say there were in terms of Nauru?

**Ms O’Connell**—There are the eight that were being discussed before.

**Senator LUDWIG**—And that excludes the one who left on 6 February.

**Ms O’Connell**—Correct.

**Senator LUDWIG**—What is their status and how long have they been in the detention facility? I think this has been asked a range of times before. It is really a case of just trying to update the position so that we know what the status of those eight is now.

**Mr Metcalfe**—I will ask Mr Hughes or Mr Illingworth to come to the table to deal with those issues.

**Mr Illingworth**—The eight on Nauru and their legal representative are in discussions with the department at the moment on options available to them.

**Senator LUDWIG**—Is there a breakdown of how long they have been in detention on Nauru, for each of the eight?

**Mr Correll**—I can give you that information. Seven of the Rohingya group transferred from Christmas Island to Nauru on 17 September. The last of the eight transferred on 26 October. So they have been there since that time.

**Senator LUDWIG**—Have they applied for protection visas or any other type of visa?

**Mr Illingworth**—They have made applications for visas under the Offshore Humanitarian Program.

**Senator LUDWIG**—Are they currently being processed?

**Mr Illingworth**—Those visa applications are before the department. As Mr Hughes mentioned earlier, there are options before the group which are under consideration by them and their legal adviser.

**Senator LUDWIG**—And we cannot go into those. I am not sure whether these questions have been dealt with earlier. In terms of those two who had adverse security assessments which have now been altered, have questions about them been followed up at this estimates or previously? Remember there were two there for a very long time.

**Mr Metcalfe**—We remember very well.

**Senator LUDWIG**—I am sure we all remember that. My recollection is that they had adverse security assessments.

**Mr Metcalfe**—That is correct. We briefly discussed before the gentleman who was in Brisbane. He is now the holder of a visa on the basis that, in relation to an application he made in Australia, ASIO indicated that they no longer had concerns such as to refuse him a security clearance, as required under the relevant regulations. He has now been released into the community. The other gentleman, as I think Mr Correll just said, has departed Nauru for a third country.

**Mr Correll**—He departed Nauru on 6 February.

**Senator LUDWIG**—In terms of the security assessments by ASIO that were originally made, do I need to go back to ASIO and ask why they have changed? Do you liaise with ASIO and ask them for the reasons for a change?

**Mr Metcalfe**—No. We basically just require advice from ASIO as to whether or not there is a security clearance for the individual. ASIO provided the fresh assessment, indicating that they were not going to raise a security objection. Their reasons for that are issues for ASIO.

**Senator LUDWIG**—When was the last time that you checked with ASIO in respect of those two? From my perspective, it seemed that your answer to the more general issue was that you could not do anything to resettle them in Australia and you were looking for a third country to take them. I think that was probably quite futile in a broad sense, but you were doing the best you could with an adverse security assessment. After quite an amount of time, that suddenly changed, so I am just trying to understand the process.

**Mr Metcalfe**—That is really a matter for ASIO.

**Senator LUDWIG**—I am happy to ask them. I was just making sure that they did not send me back to you.

**Mr Metcalfe**—I do not know whether they would send you back to us, but whether or not they are prepared to discuss those matters in this forum is their issue. It is not my issue to discuss.

**Senator LUDWIG**—I accept that.

**Mr Metcalfe**—The gentleman who was in Brisbane who was brought here for medical treatment lodged an application for a visa. That was considered. As part of that, a security assessment was required and the result of that was that there was no objection to the visa being granted.

**Senator LUDWIG**—I should take it up with ASIO and see what they can help me with. Is there a view about the continuation of the Nauru facility? Has any decision been made about whether you are going to put it on contingency or mothball it?

**Mr Correll**—There has been no decision taken to change its current status.

**Senator LUDWIG**—It is difficult to ask whether it might be empty because we have eight people there at the moment and that question might cut across the legal advice. I will ask the question anyway and we will see what the answer is. Do you have an indication of how long the eight who are on Nauru will be required to be at the detention centre on Nauru?

**Mr Metcalfe**—Not presently.

**CHAIR**—Mr Metcalfe, you said you had a response for Senator Crossin.

**Mr Metcalfe**—Yes. Earlier this morning Senator Crossin asked me about a DVD. We worked out that that question related to a DVD produced by our office in Western Australia. I took some other questions on notice more generally, but I do have a response on that one point. As I indicated, I was aware of that DVD. In fact, I saw it in its final form when I was in Perth on 22 December last year. I understand that it was commissioned by the Perth office quite a long time ago—indeed, in advance of the formation of our National Communications Branch, which now has in-house capability to produce high-quality visual and audio products. Were we to commission a similar product in the future, I would look to provide it in-house.

As I understand it, the intention of the DVD was to produce a high-quality factual briefing that could be displayed on televisions for use in our office to provide clients with information about products that the department has available. The presentation is also for use at skilled migration expos, overseas student presentations, industry meetings and related activities. The department has been providing more and more participation at seminars and other public activities associated with skilled migration or students and it was seen as more effective to have a high-quality standard presentation than deploying staff to do this particular information presentation time and time again.

I am advised that the DVD has four parts: a general overview, a session on studying in Australia, information about skilled migration and information about settlement services. The total running time is about 25 minutes. I am advised that the total cost of producing the DVD was \$69,552.60. The majority of that expenditure, \$48,819, was incurred in the 2005-06 financial year. Final editing, voice-over and duplication totalling \$20,733.60 was paid for this year.

I think the issue may have arisen in terms of references in that DVD to the former name of the department. Obviously, as the opportunity arises, the DVD will need to be edited to present the new name of the organisation. I do not have an estimate of what that will cost. It would be my expectation that if it were possible to do that in-house, using existing facilities, that is what we would do. I would also expect that, to the extent that the material provided is

quite generic and therefore able to be used around the department and around the world, the department would look to use the initiative more generally in its client information activities.

[5.05 pm]

**CHAIR**—We are now on outcome 2, output 2.1—settlement services.

**Senator HURLEY**—I apologise if you went through this earlier, but I want to start with a breakdown of what the responsibilities of the new minister are compared with those of the parliamentary secretary in regard to outcome 2.

**Mr Metcalfe**—Yes. I had a look at that this morning. I am not quite sure whether these are absolutely final, because I have not seen any final documentation emanate. But, certainly, the working assumption of the department at this stage, based upon advice from the minister, is that he will have responsibility for all aspects of immigration policy apart from one or two exceptions, which I will outline, as well as citizenship policy and programs. He will also have responsibility for all parts of the legislation which provide the minister with a personal non-compellable, non-delegable power—the so-called intervention powers—in particular, those powers which arise following Refugee Review Tribunal decisions or those powers which arise following Migration Review Tribunal decisions.

The parliamentary secretary, Ms Gambaro, is expected to have responsibility for multicultural affairs, policies and programs and settlement issues—in other words, those parts of outcome 2 apart from citizenship. She is also expected to have responsibilities for some aspects of temporary entry policy but not including the 457 or related visas. She is also expected to have responsibility for some issues such as detention health matters. But, in very simple terms, she will be responsible for multicultural affairs and settlement, and the minister will be responsible for immigration and citizenship.

**Senator HURLEY**—If we start before settlement begins and with the pre-embarkation program, I understand that IOM was again the successful tenderer for this program, which is designed to provide intending immigrants with knowledge about Australia and what happens in Australia, in particular, to refugees and humanitarian settlers. Could you go through some of the changes that have been put in place to strengthen the existing program?

**Mr Metcalfe**—I will ask Ms Pope, who is the acting first assistant secretary, Citizenship, Settlement and Multicultural Affairs Division, to answer that question. In doing so, I should let you know that Mr Vardos, who is the normal occupant of that position, has moved to a temporary task force that I have established to oversee developments relating to the citizenship test and the related value statements on application forms. So Mr Vardos, who would normally respond to that question, is now working full time on the citizenship issues and Ms Pope, for the next few months, will be looking after the rest of the division's responsibilities.

**Ms Pope**—And after that warm invitation, I am afraid I am going to pass the question to Judith O'Neill. It actually belongs in the Refugee, Humanitarian and International Division area of responsibility.

**Ms O'Neill**—Since the new contract came in, it has been extended to some other countries, including India and Malaysia. The length of the course has been extended from three days to

five days, plus we have piloted some new courses in Africa for youth and trialled some preliterate programs as well. They are the main changes.

**Senator HURLEY**—Why was it extended to India and Malaysia?

**Ms O'Neill**—Because we now have case loads out of there as well.

**Senator HURLEY**—Malaysia?

**Ms O'Neill**—We have a humanitarian program with a Burmese case load.

**Senator HURLEY**—So Malaysia will deal with the Burmese case load?

**Ms O'Neill**—That is correct.

**Senator HURLEY**—Can you tell me how much that AUSCO tender is?

**Ms O'Neill**—I think I will have to take that on notice; I am sorry.

**Senator HURLEY**—That is fine. Has the program been developed in terms of the information that is provided to migrants about Australian culture and values?

**Ms O'Neill**—I do not think it has. The program is about trying to orient people for their settlement in Australia, and we cover a whole range of items in that course. But I do not think it has actually focused on Australian values in that sense.

**Senator HURLEY**—So how would you describe the cultural education that people get?

**Ms O'Neill**—Basically, the course focuses on things like settlement prospects and realistic expectations. We focus on—sorry, I cannot find my notes at the moment.

**Mr Metcalfe**—Senator, I actually observed one of these courses when the former minister and I visited a camp at Mae Sot on the Thai-Burmese border about seven or eight months ago. The courses were being conducted by IOM, but they probably would have been in a more abbreviated form of the version that we are moving to now. The courses—there were some for children, some for older people, and they were attempting to give a snapshot of life in Australia. We can probably provide more detail as to how that is actually provided and the sort of information that is conveyed. It includes some fairly basic information, such as the type of housing that we have in Australia and the type of experiences you might have in the supermarket or shopping. But, as you know, we are largely talking about folks who have been living in refugee camps, in a dependency type of situation, in an institutional situation, and who are moving, with a great deal of support under the IHSS, into a situation where they have to make these sorts of choices themselves about how they live their daily lives. If you would like a more detailed picture of the sort of information that is provided, I am sure we could do that on notice.

**Senator HURLEY**—Yes, I would like that, thank you. Specifically, I am looking at whether the new program, the extended program, includes more about Australian culture and family life and Australian values.

**Ms O'Neill**—I have found my notes. The course is more about travel to Australia, health care, education and finding a job, and we have enhanced some of those aspects of the course now it is three to five days long.

**Senator HURLEY**—Okay.

**Mr Metcalfe**—Senator, I think I have taken on notice a more detailed response, so we will still provide that to you.

**Senator HURLEY**—Yes, thank you. Can you tell me who decides what kind of information goes into that course? How is it worked out?

**Ms O'Neill**—The course is prepared in consultation with IOM. We also have what is now called a program—

**Senator HURLEY**—Do you mean in consultation with the department of immigration and IOM?

**Ms O'Neill**—Yes, sorry—the department of immigration and the International Organisation for Migration. We also have now established what is called a program advisory group. We established that at the end of last year. We go through the curriculum and talk about what are the most suitable elements for the course. We have had one of those meetings and the next one is scheduled for March.

**Senator HURLEY**—And who are the members of that program advisory group?

**Ms O'Neill**—There are a range of educators, health professionals and law enforcement officials. We have got them from across Australia and from a range of institutions and professional bodies.

**Ms Pope**—We take up those issues in the settlement field once people arrive. We have talked at previous estimates about the DVD that we are developing, which encapsulates a whole range of topic areas which I can go through if you would like to hear about them. That is the next chapter after our entrants complete AUSCO and arrive in Australia. We have just about completed filming and are doing the editing phase of that DVD at the moment. I can run through the services and areas that that will cover if you would like.

**Senator HURLEY**—Are those the same kinds of services that are discussed with AUSCO?

**Ms Pope**—It links and takes up what is logical to discuss onshore. There is a limit to what you can do offshore in the context of a refugee camp and how much can be absorbed and made relevant. We take it up in the context of arrival in Australia and the sorts of issues that people need to focus on once they get here and are confronted with the reality of settling in Australia. We cover the kinds of services people are eligible to receive across our services and mainstream services. We talk about dealing with culture shock. We give advice on: the kind of accommodation available in Australia and what they might be able to work towards; health services and dealing with emergencies; education and learning; employment—and we had a lot of assistance from DEWR in preparing the employment section; parenting and childcare issues; budgeting across a range of topics; Australian law and an overview of our legal system; the role of the police in our community; driving; becoming part of the community, the kinds of organisations you can belong to; and how you can further your sense of participation in your community. They are the main topics that the DVD is going to cover.

**Senator HURLEY**—Does it deal with Australian values?

**Ms Pope**—There is not a section on Australian values but, intrinsic to the way it is presented and the issues that are discussed, it does cover the basics of Australian culture, in that sense. But there is not a section on idioms or anything as direct as that.

**Mr Metcalfe**—I think it would be a fair comment that underlying all that information being provided is a set of statements about Australian values implicit in that material, such as about people's freedom, the fact that they can trust law enforcement officials—because quite often they will have come from environments where they may distrust people in authority—and those sorts of issues. What I think my colleagues are saying is that we do not have a section saying, 'Here are our values,' but underlying this material is a message that conveys the sort of country that Australia is.

**Ms Pope**—For example, we cover gender equality and domestic violence issues, and other things which are underpinned by Australian values on those kinds of issues.

**Senator HURLEY**—What kind of quality assurance framework is in place for this program? How is the success or otherwise of it assessed?

**Ms Pope**—Are you referring to AUSCO?

**Senator HURLEY**—Yes.

**Ms O'Neill**—We are looking at the moment to establish a new quality assurance framework for it. The AUSCO advisory group is undertaking an analysis of that at the moment. At this stage, we have evaluated that through feedback on how the course is operating, through individual participants and through settlement providers in Australia.

**Senator HURLEY**—Is there a framework for the existing program or is this a new development?

**Ms O'Neill**—There is a framework in place, but I will have to take that one on notice to give you the details.

**Senator HURLEY**—When is the start date for the expanded program?

**Ms O'Neill**—It is already underway.

**Senator HURLEY**—Are there any plans for further expansion of the program?

**Ms O'Neill**—At the moment, we are covering the four main regions. As the need arises—if the program shifts, for example, to other parts of the world—we would of course try and look at putting an AUSCO in certain places. Where necessary, we have established one-off AUSCOs. For example, last year when we did an emergency resettlement of Uzbeks from Europe, we did a special AUSCO there.

**Senator HURLEY**—Speaking of the shifting groups, there has been some reporting that there will be a reduction in the number of refugees and humanitarian entrants coming from Africa. Is that the case? Is that expected?

**Mr Metcalfe**—We covered this in a fair bit of detail earlier on but, in summary, the composition of the program will vary over time, depending upon areas of identified need. As we explained to the committee earlier, the government makes decisions annually on the composition of the program, taking into account advice from the United Nations High

Commissioner for Refugees, as well as consultations the government has with relevant interested bodies in Australia, such as the Refugee Council of Australia.

After small numbers of Africans some years ago, the numbers from the Sudan, sub-Saharan Africa and Central Africa built up quite rapidly in the last few years. That reduced to around 50 per cent of the program in the current financial year. In relation to the future, decisions will be taken in due course. The reduction this year reflects advice from UNHCR and others about refugees from this region becoming available who may not have been accessible before. Most particularly, we have seen an expansion in the numbers of Burmese coming from camps in Thailand and I think we are also expanding our numbers of Burmese refugees coming from Malaysia, as well. That reflects the dynamic and ongoing nature of the program.

**Senator HURLEY**—It seems that you are saying that the reduction in the number of African refugees is due to the number of refugees wanting to come. There were media reports earlier this month that the refugee quota was likely to be cut because of the failure of African refugees to integrate into our society. That was not a consideration?

**Senator Ian Campbell**—We have been through this for about an hour already today. I am sure that Senator Hurley is very earnest in her questions, but she could read the *Hansard* and get all these answers. We ploughed this ground very thoroughly about two hours ago.

**Senator HURLEY**—Thank you. But I am leading into the settlement part of the debate here, and I want to explore different ground and find out whether the settlement strategy is working. I want to ask the question.

**Mr Metcalfe**—Perhaps I can help by saying that we spent some time earlier talking about how the composition of the program is determined and I am not aware of any changes to that. As we have discussed in this place before, each element of the refugee case load presents unique issues that we have to be very mindful of. It is true to say as a sweeping generalisation that the African cohort have had some particular issues because of the levels of education and some of the terrible situations that they have come from. They are in many respects the most disadvantaged people, and hence their eligibility for resettlement under UNHCR's auspices. We have spent a lot of time talking about how we are trying to improve the very substantial programs that are already in place to make them even more responsive and better. I would note for the record that over \$500 million of Commonwealth funds is spent on settlement of refugees and that the fully funded program was increased two or three years ago from 4,000 places to 6,000 places.

**Senator HURLEY**—Will the needs of the intake of Burmese refugees differ significantly from the needs of African refugees?

**Mr Metcalfe**—As I said, each case load brings its own unique issues, depending upon the circumstances people have come from. For example, with the Karen from Thailand, an entire generation have lived in a refugee camp all their lives. There are young adults who were born in some of those camps along the Thai border who have only recently become available for resettlement. We are dealing with people who are admirable people and who have a very strong will to succeed in the future but whose knowledge of life has been developed inside a small refugee camp in a mountainous part of Thailand over 20 or 25 years.

The refugees from Africa have come from many different experiences. As you know, we have been dealing with some very large and extended families. We have been dealing with families with a large number of children. Quite often the single parent is a mother, because the husband has been killed or lost along the way. So I would not want to generalise that we see these features in the African cohort, these in the Burmese cohort or these in a different cohort. They do present challenges and that is not unexpected because we are talking about people from very difficult backgrounds who are being given another chance to have a future by countries like Australia, Canada and the US.

**Senator HURLEY**—Was the Refugee Resettlement Advisory Council involved in these decisions?

**Mr Metcalfe**—Which decisions?

**Senator HURLEY**—About the change in emphasis of the refugee intake.

**Mr Metcalfe**—To clarify, are we talking about decisions about the composition of the program?

**Senator HURLEY**—Yes.

**Ms O'Neill**—They were certainly able to provide input to the consultations process on the program. At each meeting we give an update on the program, how it is progressing and what we think the future trends will be.

**Senator HURLEY**—I will move to the IHSS program, the resettlement program. There have been claims from the department that there is 75 per cent or above client satisfaction among those who have exited the program, but there are a number of different measures of that. I think there was some discussion in the last estimates that there would be a review of the quality assurance of the program. What progress has been made there?

**Ms Pope**—We contracted WalterTurnbull to develop the framework for the IHSS quality assurance program. Using their expertise in auditing and quality assurance reporting, they have assisted us in putting together a comprehensive program that we commenced rolling out in December 2006. We conducted a pilot of the project in the ACT and Wagga and we are progressively completing the first tranche of reviews of all the services provided by our providers across the 20 contract regions. We expect to complete that by June 2007 and, after that, institute a process of rolling audits of areas that may come to attention for a range of reasons. We will work that out on an ongoing, as I say, rolling basis.

**Senator HURLEY**—Regarding this survey by WalterTurnbull, could you describe for me who they are and what their background is?

**Ms Pope**—They are on our panel of experts in relation to auditing and quality assurance and they assisted us to develop the framework that we use for our quality assurance for IHSS.

**Senator HURLEY**—How much is this program costing?

**Ms Pope**—The price that we paid WalterTurnbull was \$110,000.

**Senator HURLEY**—You were saying that that has already been done in the ACT and Wagga.

**Ms Pope**—Yes, the first audits have been done. I do not have the results of those to hand but that is where we started.

**Senator HURLEY**—Sorry, to go over that again—at the same time you are developing an audit program?

**Ms Pope**—The way we are commencing the implementation of the quality assurance program is to do an audit of all service types across all service providers, which will give us a base readout across the 20 contract regions, and then we intend it to become a rolling program that can focus on whatever area in whichever contract region we think needs our attention.

**Senator HURLEY**—How are those audits being carried out? What is being targeted?

**Ms Pope**—I would like to ask my colleague, Mr Daniel Boyer, to respond to that question.

**Mr Boyer**—The reviews will include visits to service provider premises to review systems, documents and records; client contact visits to client homes, and other locations where clients receive services, to verify information obtained through the reviews of service provider systems and processes; and an on-arrival observation visit to ensure that new entrants are being met appropriately and in a culturally sensitive manner, and that the service providers' on-arrival contractual requirements are being met.

**Senator HURLEY**—What is the progress with the proposed complex case program and how will it fit into the IHSS program?

**Ms Pope**—We are in a process of going back to government with proposals in relation to that, so I am limited in what I can say, but the concept for the complex case proposal is that we have found that a number of cases need greater attention and more intensity in terms of service delivery than was envisaged when IHSS was developed, as we discussed at a previous estimates. We put this proposal forward in order to give us the capacity to address those more complex cases. I can describe the sorts of cases we have in mind, if you wish.

**Senator HURLEY**—Yes, if you could. Thank you.

**Ms Pope**—For example, there was a case in Newcastle which was quite well publicised where a man murdered his wife and left seven or eight children with no parents. They included some young children, and the eldest of the family had two very young dependants of her own. We contracted a provider to give additional assistance to that family. They are a family who had actually exited IHSS before this tragedy occurred. We want the capacity to be able to respond either within IHSS or outside it to the sorts of cases that we think will need that sort of attention, and that is an example. We have had a number of other cases where some additional trauma or tragedy has occurred onshore, where obviously people's ability to settle is quite compromised by that event, and they are the sorts of cases where we want to be able to give further assistance.

**Senator HURLEY**—So it is going to be more in the nature of emergency services?

**Ms Pope**—Perhaps not so much emergency but we want to be able to deliver a much more intensive service. For example, in the case in Newcastle we have had a caseworker living with the family supporting them on a 24-hour a day basis. We think there are some other instances where that sort of level of assistance might be required, or something less than 24 hours a day but still more intensive than what is provided under IHSS in normal conditions.

**Senator HURLEY**—Earlier, in other estimates, I think we were discussing that it might be more of a whole-of-government approach of coordinating services rather than a response to a particular event.

**Ms Pope**—There is that element to it as well, although access to mainstream services is a feature of IHSS as it currently stands and our caseworkers link all of the clients to a broad range of settlement services. But we would be looking for additional focus to it, to access programs that perhaps are not generally used by IHSS clients but which might be specific to the sorts of cases we are talking about. So we would be looking for assistance to really focus on what else is available locally for those kinds of families in those difficult situations.

**Senator HURLEY**—What kinds of guidelines would be in place for those complex case situations? I understand that one of the reasons that IHSS was set up in the way it was was that there was concern that people were developing a dependency. How are you going to avoid that with the complex case proposal?

**Ms Pope**—We have not completed the design of the program at this stage, but we are very aware of that as an issue. The end point is important. Establishing when service delivery at an intensive level has been sufficient and when to scale it down and have an exit strategy for these cases is an important part of the policy development work we will be doing around this if it goes forward.

**Senator HURLEY**—Has there been any costing of that complex case proposal yet?

**Ms Pope**—There has, but it is subject to cabinet consideration.

**Senator HURLEY**—I would like to turn to the Adult Migrant English Program now and the action plan for that. In the 2005-06 annual report, there is an 80 per cent target for rural and regional intensive language tuition that was not met, and an action plan was put into place. Can you advise me on what has occurred there?

**Ms Pope**—I think my colleague Ms Ellis might take that question.

**Ms Ellis**—I would have to take that on notice.

**Senator HURLEY**—In that case, I will put a more comprehensive set of questions on notice. Another initiative that was announced last October at the AMEP National Conference was that the government would be looking at using AMEP as a means to accelerate people into the workforce. Has there been any further discussion on that?

**Ms Ellis**—We did provide a response to a question on notice on that matter. At that stage we advised that the government was still considering options in this regard, and that is still the case.

**Senator HURLEY**—So the matter is no further advanced since late last year or is it still being considered?

**Ms Ellis**—I would not say that it is no further advanced, but I am not in a position to be able to give details as to where the consideration is up to.

**Mr Hughes**—I should add that we obviously have to put these matters to the incoming minister for consideration.

**Senator HURLEY**—Sure. Continuing with the AMEP, the AMEP tender is due to end and a new tender will start on 1 July 2008. I understand that a tender team has been put together, which was due to commence work around now. Has that progressed?

**Mr Hughes**—At this stage we are just looking at the configuration of our approach to the new tender team. We had originally planned to handle it in a particular way. We are now looking at the availability of tender expertise across the department and we may slightly reconfigure it, compared to the regional approach.

**Senator HURLEY**—So that, effectively, means a delay in the start-up date for the tender team?

**Mr Hughes**—I think it means a short delay.

**Senator HURLEY**—The latest estimate would be another month or two?

**Mr Hughes**—I think we will have resolved that precise approach within another few weeks.

**Senator HURLEY**—Will part of that include an evaluation of the current AMEP program?

**Mr Vardos**—I believe the question you raised was one that we took on notice at the last estimates hearings.

**Mr Metcalfe**—Could we perhaps come back when we are ready?

**Senator HURLEY**—Certainly, although I do want to continue on for a while with the AMEP program and talk about the cost. In an answer at previous estimates hearings the cost of the current program was put at around \$2,907 per person. I want to know whether the cost has increased or whether the cost stays around the same. How does the tender process currently work?

**Ms Ellis**—The figure that was given in response to the question on notice was a figure based on the previous financial year. The full costs were derived from looking at the number of hours that were accessed. We would not have a new figure for that until we reached the end of this financial year.

**Senator HURLEY**—This goes back to my question about the evaluation of AMEP. We have had quite a discussion about the success of AMEP. A question was asked on notice, and an answer given, about the number of people who achieved functional English on completion of the program and the number of people who actually completed it. Has there been any decision about having a look at how the level of people completing the program might be increased if required and how the success rate of achieving functional English might be improved, or is the department happy with the current figures?

**Ms Ellis**—I did explain at the last estimates that a number of factors impact on the success an individual has in learning English. That can range from the level of education they have in their first language to the number of hours per week they attend English language tuition. Certainly the outcomes have been fairly steady over recent years. There is not much variation in terms of the outcomes because there are so many factors that will have an effect on the outcome for an individual. Education is an area in which it is quite difficult to be able to say

that a course is being taught very well, based on the outcomes of the students, because of those factors.

**Senator HURLEY**—We have had a great deal of discussion about this. But I suppose it is not only about whether English is being taught well but also about whether the structure of AMEP allows participants to access it well and allows people to meet their flexibility requirements—for example, if they have some employment or have childcare problems. My question goes back to a previous question about a review of AMEP and whether there has been any discussion about changing the program to allow people more flexibility and to increase the number of people who are finishing the program.

**Mr Vardos**—As we have been talking, my recollection of the last session has come back. As part of preparing for the next tender, there will be an assessment examination. What we cannot tell you at the moment is what form that review will take—whether it will be an internal or an external evaluation—but there will obviously be a review of the previous four or five years of the operation of AMEP to inform the setting of specifications for the next tender around. But, at this point, we cannot be definitive as to what form that review will take. That is where the matter stands at the moment.

**Ms Ellis**—The program is very flexible. I think we have mentioned in the past that there is full- or part-time classroom tuition in formal or community based settings. There is a distance learning course for clients to learn at home with curriculum materials that are specifically designed for out-of-classroom learning, supported by regular telephone contact with a qualified teacher. There is the home tutor scheme, and individual learning is available through individual learning centres.

**Senator HURLEY**—But the fact is that, on the figures you provided to me, 16 per cent of people who are eligible for 510 hours under AMEP achieve functional English, 22 per cent of those eligible for 610 hours achieve functional English and 38 per cent of those eligible for 910 hours achieve functional English. Is the department happy with those figures or are they looking to improve them?

**Ms Ellis**—That is a very difficult question to answer because of the range of factors that affect a person's ability to learn a second language—in this case English, which is quite difficult for some people to learn. To suggest that we would be looking to improve those figures would mean that we had an idea of what was possible, taking into account all of those factors that impact upon an individual's ability to learn, and I do not believe that we are in a position to do that.

**Senator HURLEY**—So I suppose the answer is that you are relatively satisfied with those figures.

**Ms Ellis**—The figures are the outcomes that are there. I would not say that it is a matter of us being satisfied or not being satisfied. We certainly are in the process, as part of the preparation for the new centre, of doing a client satisfaction survey. So we do get feedback from our clients as to what they think of the program.

**Senator HURLEY**—I suppose my frustration in all of this is that a number of people, including government ministers and parliamentary secretaries, have talked about the overriding importance of functional English for becoming part of Australian society and for

getting a job. AMEP is set up to enable refugees and humanitarian entrants to do that. When we have the kinds of results that we are getting, it would seem that large number of those refugees and humanitarian entrants are not achieving functional English and therefore, it would seem, are being excluded from society.

**Ms Ellis**—I will note that the AMEP is not just about refugee and humanitarian entrants; all of those who arrive in the country and have less than functional English are entitled to English language tuition under the Immigration (Education) Act. I have mentioned the range of factors that impact on the ability of individuals to learn English. Clearly, these figures are total figures and there would be some people who would have access to 610 hours but may not have used all of those hours. The fact that people are not achieving a particular rate does not mean that people are not getting access to their entitlement. They may choose not to use all of their entitlement. The other thing that I should point out is that there are other government English language tuition programs that people may progress to even if they do use all of their entitlement and have not yet reached functional English or sufficient English to be able to obtain employment.

**Senator HURLEY**—What programs are they?

**Ms Ellis**—There are programs that are administered by the Department of Education, Science and Training: the Language, Literacy and Numeracy Program and the Workplace English Language and Literacy Program.

**Senator HURLEY**—The latter would assume that people were in the workplace already.

**Ms Ellis**—And indeed some are. In fact, some people accessing their entitlement under AMEP may well be accessing it part time while they are working part time. It is entirely a matter for the individual as to how they go about accessing that entitlement.

**Senator HURLEY**—It seems from your response that there is not the intention to do a big shake-up of the program under the new tender.

**Ms Ellis**—We have already said that the government is having a look at how the English language tuition programs are arranged. Those matters are still under consideration.

**Senator HURLEY**—In terms of ‘functional English’, the definition has not changed for some time. Are there any plans to look at how that is defined and what it means?

**Ms Ellis**—Not that I am aware of.

**Senator HURLEY**—I asked this next question previously in estimates and was given an answer relating to the success rate for the number of hours done: are there any plans to review what is required in the workplace and in the general culture to achieve a functional level of English—for example, with occupational health and safety requirements? Or is the department satisfied that the current definition of ‘functional English’ covers any changes to the modern workplace, for example?

**Ms Ellis**—That suggests to me that there is an expectation that the definition of ‘functional English’ for the purposes of the Migration Act and the Immigration (Education) Act is used much more broadly than for those two pieces of legislation, and I am not aware that that is the case.

**Senator HURLEY**—So the definition of ‘functional English’ has not been amended since it was inserted on 1 January 1993?

**Ms Ellis**—It is a definition that is in the Migration Act 1958, and there is a reference to the term ‘functional English’ in the Immigration (Education) Act 1971, but I am not aware that that definition is used outside those two pieces of legislation, and therefore we would not be in a position to make a comment.

**Senator HURLEY**—If that is the case then obviously there has been no discussion within the department, no looking at that old definition to see if it is still relevant.

**Ms Ellis**—As far as I am aware, it is relevant for the purposes for which it is required in those two pieces of legislation.

**Senator HURLEY**—Thank you. You referred not long ago to the fact that not only refugees and humanitarian entrants but also other people are eligible for the AMEP. However, for skilled migrants the primary applicant or visa holder would not be eligible for AMEP language services; their family or dependants may be—

**Ms Ellis**—Yes.

**Senator HURLEY**—if they do not have functional English. I presume this is due to the fact that skilled migrants undertake some English language testing before they come to Australia. However, there has been quite a lot of discussion in the last year or so, perhaps longer, about the fact that, for some skilled migrants, their level of English is not regarded as adequate to enable them to get a job. So is it right that skilled migrants are not offered AMEP courses because they are deemed to already have functional English?

**Ms Ellis**—Anyone who has passed the English requirements for a visa that requires them to have functional English would by definition not be eligible for the AMEP.

**Senator HURLEY**—Because they are deemed to already have functional English?

**Ms Ellis**—The Immigration (Education) Act 1971 provides for people who have less than functional English to get access to English language tuition, up to a total of 510 hours or until they reach functional English, whichever is the earlier.

**Senator HURLEY**—But skilled migrants are required to have functional English before they are offered a visa?

**Ms Ellis**—Senator, I am not in a position to answer in detail exactly what the range of skills visa holders are required to have before they are issued that visa. Certainly any of their dependants that do not have functional English and are assessed as such would be eligible for the AMEP, as would family migrants.

**Senator HURLEY**—The discussion I have seen about skilled migrants and their level of English is mostly anecdotal. Has there been any research into whether lack of adequate English is a problem for some skilled migrants?

**Mr Hughes**—Generally speaking, I think there has been quite a bit of work on the employment of skilled migrants after arrival in Australia and I think they in fact have extremely positive outcomes by international standards and higher outcomes in terms of employment—certainly than, say, Canada, which is a comparable immigration country. There

has been some criticism of the English language competency of some skilled migrants—in fact, often ones graduating from Australian educational institutions. We covered this morning in answers to some questions the fact that there was a review of the general skilled migration program, and the government announced some changes to the tests into that program, which will include raising the English language thresholds, and these are expected to be implemented later this year.

**Senator HURLEY**—So the emphasis has been on increasing the English skills of new migrants. Has there been any discussion about whether it might be possible for skilled migrants to access the AMEP? I am aware that they can do that if they pay the fees. Is there any discussion about whether they should be able to access the program if they do not have a job?

**Mr Hughes**—None that I am aware of, Senator.

**CHAIR**—Senator Nettle has a couple of questions under settlement services.

**Mr Metcalfe**—Senator, you wanted to ask us about the Niyonsaba matter?

**Senator NETTLE**—Yes.

**Ms Bicket**—Senator, I think you asked a question this morning about the Niyonsaba matter. Was it that you just wanted an update on where the litigation matters were up to?

**Senator NETTLE**—That is right.

**Ms Bicket**—A statement of claim in the Niyonsaba matter was lodged in August of last year and an amended statement of claim was lodged in relation to the Niyonsaba matter on behalf of the family on 12 December 2006. The Commonwealth lodged its defence to that statement of claim on 16 January. Preliminary discovery has been completed in relation to the matter. A timetable was established last week by the District Court for the progress of the matter. That includes the taking of witness statements, medical reports and so forth. That is essentially where the matter lies at the moment.

**Senator NETTLE**—Has the department admitted any liability?

**Ms Bicket**—No, we have not at this stage.

**Senator NETTLE**—Who is responsible for the health care of migrant families in circumstances like these?

**Ms Pope**—A family in a circumstance like this have been settled in Australia for quite some time and have been accessing mainstream health services for the younger members of their family and for themselves.

**Senator NETTLE**—Was there something about a medical escort related to this case?

**Ms Pope**—This family was not escorted by a medical officer.

**CHAIR**—Thank you very much. I think that deals with matters in 2.1, so those officers are free to go. Are there questions in 2.2?

**Senator NETTLE**—I am not sure which area my questions are in. I have questions in relation to the citizenship test, which I think is 2.3. Where do questions in relation to the

removal of the words 'multiculturalism' and 'multicultural policies' from the department come? Is it 2.4?

**CHAIR**—Yes. Are there any questions in relation to translating and interpreting services, which is 2.2? There are not, so those officers can also go. We will resume with 2.3.

**Proceedings suspended from 6.01 pm to 7.01 pm**

**CHAIR**—We will resume, as indicated before the break, in output 2.3—Australian citizenship. Senator Hurley, why don't you start and then we will go to Senator Nettle.

**Senator HURLEY**—I suppose the newest and most important topic is the proposed new citizenship test. With regard to the current citizenship process, are there any instances of people who do not have proficient or functional English being refused citizenship at the interview stage?

**Ms Ellis**—They are not required to have functional or proficient English. There are certainly instances—and there is provision in the legislation for this—where a decision is deferred. There are occasions where people are assessed as not having the level of English required and they are asked to come back again. I do not have statistics on it, but I understand there are occasions when applications are refused on that basis.

**Senator HURLEY**—When you say you do not have any statistics on it, is that just now? Are they recorded?

**Ms Ellis**—I would have to look at whether it is in fact possible to get that information out of the system. But anecdotally—

**Senator HURLEY**—So it is recorded?

**Ms Ellis**—I don't know if is accurately recorded. I would need to take that on notice. But, anecdotally, I know there are times when decision makers, in interviewing a person, are not satisfied that they possess the basic knowledge of the English language that is required by the legislation. Certainly, if the person conducting the interview thinks that it is only a matter of time, that the person may within two to three months, say, be able to respond to the questions that are being asked, then they will defer making a decision on the application and will make another time for an interview with that person.

**Senator HURLEY**—And that is the method of resolution, is it, just to ask people to come back, to delay the application?

**Ms Ellis**—If the person doing the interview thinks the applicant is close to having the required level, they will suggest they come back, but if they are not satisfied that the person has the level and is not likely to have that level within a reasonable period then they would decide the application and it would be a refusal.

**Senator HURLEY**—Are you aware of any instances where that has occurred?

**Ms Ellis**—Only anecdotally.

**Senator HURLEY**—If you could get any figures on that, I would be grateful—if that is possible.

**Ms Ellis**—We'll see if that's possible.

**Senator HURLEY**—The new citizenship test—could you tell me about the costs of implementing that? I notice there are some costs in the portfolio additional estimates statements; can you go through those costs?

**Mr Vardos**—Senator, yes, as the portfolio budget statements indicate, we do have an allocation this financial year to start the implementation process. The costings for the future years for maintenance of an ongoing test are matters still to be resolved. I can give you a macro level breakdown of what that allocation is for this financial year and the sorts of things it will pay for.

**Senator HURLEY**—If you could, thanks.

**Mr Vardos**—If my memory serves me correctly, there are about 10 or so discrete projects underway to address various aspects of bringing the test together. Without looking at the program budget statements, the budget, which is some \$18 million, will cover systems development, the cost of the task force that I am running, salaries, a communication campaign associated with the introduction of the test, some money to deal with an increase in applications and processes leading up to the introduction of the test, and there will be form changes. They are the sorts of general things to maintain the momentum and develop those various projects to bring the citizenship test to fruition later in the year.

**Senator HURLEY**—It is just over \$18 million by my calculations. When you say ‘systems development’, does that cover software development or just—

**Mr Vardos**—There is software activity underway. The software will drive the actual test; it will be an internet based test. I am not an expert in the area but there is an IT project looking at the software that is available to do this sort of thing to build into what we have in mind.

**Senator LUDWIG**—What do you have in mind? Has that been articulated in any way?

**Mr Vardos**—A basic outline, Senator. There are still many issues to be decided by government and the new minister is getting on top of the issues. It will be computer based. There will be 25 to 30 multiple choice questions drawn from a bank of about 200 or more questions. They will be randomly generated through the software so that you could have two people sitting in a room doing the test and they may not get exactly the same questions. That is the sort of concept we are developing.

**Senator LUDWIG**—And they will have to come to a centre to do that? They will not be able to do that at home?

**Mr Vardos**—No, they will not be able to do that at home. There was some speculation that anybody could just log on to the internet and away you go. There will be testing centres around the country but what they will be and where they will be is still to be resolved. There will be an identity checking process involved on arrival at the test centre so that we know who they are. There will be an identity verification process. These are the sorts of concepts that are being developed. The pass mark is yet to be determined—what level that will be. These are all policy matters still to be resolved by government.

**Senator LUDWIG**—And in terms of the questions themselves, who would write them, who would review them and who would ensure that they are questions that are capable of a reasonable answer?

**Mr Vardos**—We cannot put the cart before the horse, Senator. A resource booklet is being developed as a first-up. It will contain chapters on, for example, the principles which underpin Australian society, Australian geography, Australian democratic processes and Australian law. Effectively, it will be a textbook or resource book or curriculum book—whatever you like to call it—and from that, questions will be derived.

**Senator LUDWIG**—So now we have got the broad brush. Is there a time line for when the resource book will be printed and made available? Is there a draft underway?

**Mr Vardos**—Our rough timing is that the booklet in detailed outline, rather than the booklet itself—you start with a comprehensive chapter outline and then annotate it at that point—will be available at the time that the legislative amendment is put forward to allow for the introduction of the test. It will inform debate at the time.

**Senator LUDWIG**—And when will that be?

**Mr Vardos**—I am not certain, Senator.

**Senator LUDWIG**—I was not particularly after a specific date but more generally whether it will be in the first half of this year—

**Mr Vardos**—It will be during the winter sittings.

**Senator LUDWIG**—You are going to crowd my legislative program again.

**Mr Vardos**—Ms Ellis is saying perhaps earlier.

**Senator LUDWIG**—There are not too many sitting days earlier, unfortunately. So we will have the rough guide for the legislation that will then introduce this. How far will the IT project be developed at that point?

**Mr Vardos**—I think the IT team were undertaking what is known as a ‘proof of concept’ of a particular software package this week or next week—about now. A number of activities are running in parallel.

**Senator LUDWIG**—A few have already been generated, which I think universities use. There are different styles. I think CASA use a style for their testing.

**Mr Vardos**—And driver licensing operations. The concept is not new. It is just a question of what is available off the shelf that can be adapted for the purposes we are working on.

**Senator LUDWIG**—Have the locations been determined yet? How will they be determined?

**Mr Vardos**—The objective is to have testing centres in all state capitals and the national capital, and in all major regional centres. Then we will see how far beyond that we can go. No benchmark has been finally determined as yet—but reasonably accessible to all people who would be doing the citizenship test in advance of applying for citizenship.

**Senator LUDWIG**—Will they be co-located in any existing department establishment?

**Mr Vardos**—It could be departmental facilities. It could be other government agencies. It could be private sector facilities that are rented by the government. As I said, there is no definitive view on that. It could be a combination of all of the above. We are looking at whatever delivery vehicles are available.

**Senator HURLEY**—But there would still need to be an authorised person to check the identity.

**Mr Vardos**—The Department of Immigration and Citizenship will be running a citizenship test.

**Senator HURLEY**—I see. So currently people can apply for citizenship at their nearest local government office, basically, which is the route most people would choose.

**Mr Vardos**—I think you are thinking of post offices.

**Senator HURLEY**—No. Currently, if people want to undertake citizenship testing and the ceremony, that is done through local government.

**Mr Vardos**—The applications and the interview can be conducted at post offices, and the conferral ceremonies are conducted by local government in the main.

**Senator HURLEY**—But under the new system the test will be required to be administered by an employee of the department of immigration.

**Mr Vardos**—Yes, that is the concept. So you will need to have passed the test before you apply for citizenship. When you come to fill in your citizenship application form, part of the documentation that you will have to lodge with the application will be your test results from the citizenship test.

**Senator HURLEY**—How many officers of the department of immigration are there outside capital cities?

**Mr Vardos**—Except for Cairns and Southport and a couple of others in the broader metropolitan areas, there aren't any outside the capital cities. That is why we are looking beyond just the department as a testing centre.

**Senator HURLEY**—Employees of the department of immigration will be required to go out though, I understand.

**Mr Vardos**—It will be a travelling roadshow, yes. Again, that is the concept.

**Mr Metcalfe**—That is not dissimilar to what we may have done in the past, whereby departmental officers visit regional centres on a regular basis every month or two or three and interviews are pre-arranged and activity occurs. So we are quite used to dealing in regional and remote localities on an appointments basis with a range of departmental business. I think the current expectation is that that is the way this would be handled as well. But we are very much at the stage of developing the detail around this, and no final answers or decisions have been taken as to precisely how we will do it.

**Senator HURLEY**—So, for example, someone who lived in Coober Pedy in South Australia would have to wait until an Immigration official—

**Mr Metcalfe**—They would always have the opportunity, if they were going to be in Adelaide for other purposes, to arrange an interview or we would look at what is a reasonable time for us to pay a visit to that part of the world. We might pay a visit to Port Augusta, if they wished to come down that far. All of those issues as to accessibility, given that the department's primary locations are in capital cities, apart from in Queensland, are things that we are working through at the moment.

**Mr Vardos**—Senator, a reasonable amount of travel time for the applicant to get to a testing centre is part of the mix as well. We cannot possibly be in every single location in Australia where there may be a citizenship applicant. So to the extent that we can cover appropriate regional centres, that is one part of the equation, but also what a reasonable travel time would be for the applicant to get to a testing centre.

**Ms Ellis**—Certainly, as far as the current process for a citizenship applicant is concerned, it is not possible for an interview to be conducted in every town in Australia. So there are arrangements for rural and regional areas but it does not mean that an interview can be conducted in every town.

**Senator HURLEY**—That leads to a cost if people are going to be required to travel. My understanding is that in Canada, where they have a test, the fee is \$200, in the United States the fee is \$230 and in the Netherlands the new test costs €350. Is there any estimate of how much extra it will cost Australians to do the new citizenship test?

**Mr Vardos**—Not at this time. That is clearly an issue that needs to be resolved, including whether there is a one-time application fee or you pay a fee every time you sit the test. They are still matters of detail to be worked out. I can confirm that the fee for taking the test in the UK is £34, in the Netherlands it is €260, in the US it is \$330 and in Canada it is \$200. I understand that in the US it is going up to \$900.

**Senator HURLEY**—\$900!

**Mr Metcalfe**—That is in the United States.

**Senator LUDWIG**—Is there a range? What do you think the cost might be here? You are talking about putting the cart before the horse. It seems to me that you have an idea of having a test, and some of the primary issues would be the cost, whether it will be cost recovery and how much it will cost a person who intends to take the test.

**Mr Metcalfe**—There have been no discussions or decisions in relation to what the cost might be, and I think it would be premature of us to speculate.

**Senator BARTLETT**—What is the fee now?

**Ms Ellis**—It is \$120 unless the person is eligible for a fee concession or is exempt from the fee.

**Senator BARTLETT**—That is each time, isn't it?

**Ms Ellis**—To apply for citizenship, yes.

**Senator HURLEY**—Is there any intention to cover the extra cost with the fee revenue? Is that being contemplated?

**Mr Metcalfe**—I would not want to speculate either way on that. No decision has been taken.

**Senator LUDWIG**—What about the price of the starter kit, the information booklet and all that? Will the department bear the cost of that? Has any decision been made about where those costs will fall?

**Mr Vardos**—Part of the mix that Mr Metcalfe is talking about is whether the book is provided as part of the one-time application fee or whether there is a separate fee to buy the book. They are matters still to be resolved.

**Mr Metcalfe**—Or whether it is simply made available on the internet for people who wish to access it in that way.

**Senator LUDWIG**—Yes, in a PDF form. Has a decision been made as to whether it would be full cost recovery or partial cost recovery?

**Mr Metcalfe**—As I said, we cannot speculate about that at all.

**Senator LUDWIG**—When will we know?

**Mr Metcalfe**—I do not know. It could be—

**Senator LUDWIG**—Then when will you know?

**Mr Metcalfe**—I do not know. We are currently about to enter the annual budget process so I am sure that, if there are decisions, the Treasurer will let us know on budget night.

**Senator LUDWIG**—You are not going in in a strong position at the moment, are you, Mr Metcalfe?

**Mr Metcalfe**—I have got lots of strong positions, Senator Ludwig, but I am not going to share them with you.

**CHAIR**—Very wise, Mr Metcalfe.

**Senator HURLEY**—Who is on the task force that is considering this mix of cost structures and accessibility for people?

**Mr Metcalfe**—Essentially, it is a small operating branch within the department that was formed out of Ms Ellis's citizenship branch last year. As I indicated at the beginning of estimates this morning, Mr Vardos has moved for the next few months to head up that task force. It is within the department and it comprises a small number of staff.

**Mr Vardos**—We are staffing up at the moment because of the December-January hiatus, so things are starting to fall into place now. I will have a core group of staff who work directly to me—obviously through a hierarchy within the department—but I am chairing a steering committee which has representatives from right across the department who are involved in various activities. Whether it is IT, forms change, legislation or whatever the issue might be, a representative from the relevant area sits on that steering committee that I chair.

**Senator HURLEY**—I am a little worried about these issues of cost and accessibility for people. Has any consideration been given to putting external bodies on the task force so that we can get some feedback about how practical people will find these new structures?

**Mr Metcalfe**—There has been significant public discussion and information about this issue already. The issue of options for ministers who wish to consult further upon receiving advice is an issue for the government.

**Senator HURLEY**—Obviously the government has decided not to consult further if there is no-one on the task force.

**Mr Metcalfe**—I think you are verballing the government. What we have done is the classic bureaucratic response. The government has announced an intention to proceed with a particular policy initiative and the department is now providing resources around developing that initiative. Precisely how it is advanced and what consultations might occur have not yet been decided, and they are a matter for the minister.

**Senator HURLEY**—Mr Vardos mentioned that part of the \$18 million that is already in the budget is to be spent on communication. Do we have a figure for that?

**Mr Vardos**—I would have to take that on notice to give a more detailed breakdown of the \$18 million.

**Senator HURLEY**—As well as cost, could you give me whether there has been any consideration of when that communication promotion will occur?

**Mr Vardos**—Yes.

**Senator HURLEY**—Because the test is computerised, will there be any consideration, perhaps in the AMEP course or any other settlement practices, for people who are not computer literate?

**Mr Vardos**—That is certainly something that is on the table for consideration as an issue, to ensure that people are given the means to be able to participate in this test. But I think it would also be a bit of a fallacy to assume that people who have come out of refugee camps are not familiar with that technology. In fact, mobile phones and internet cafes, surprisingly, are a feature of refugee camps and are a principal form of communication. I am not saying that every single adult that is settled under the refugee humanitarian program is computer competent and will not need any assistance; I am saying that technology is a little more prevalent amongst that cohort than we would at first think. But the short answer to your question is, yes, it is an issue in the mix for how best to prepare people for sitting the test.

**Senator HURLEY**—Given that refugees are so computer literate, what about the rest of the population who might have been here for 20 years? I can think of a number that I know who are not computer literate at all.

**Mr Vardos**—I am not too flash myself.

**Mr Metcalfe**—I think another way of responding is to say the issue of accessibility for clients, to ensure they can participate effectively and without any discrimination if they are not computer literate, is one that Mr Vardos's task force is very aware of. It will be taken into consideration and addressed as part of their work.

**Senator HURLEY**—I have seen a couple of estimates of the age limit for people not required to take the test. Can you tell me what that age is?

**Mr Vardos**—18 to 60.

**Senator HURLEY**—So anyone over 60—

**Mr Vardos**—Over 60 or under 18.

**Senator HURLEY**—will not be required to take the test.

**Mr Vardos**—The exemptions that apply under the current citizenship regime include people who have a permanent incapacity, intellectual or physical, which prevents them from doing the test. Ms Ellis may be able to give more detail.

**Ms Ellis**—There are exemptions in the legislation at the moment. The age exemption at the moment in relation to English language is 50. As you will be aware, that is being increased to 60 in the legislation currently before the parliament. The other exemptions remain. There are currently exemptions for people not to be required to possess the basic knowledge of English and the adequate knowledge of the responsibilities and privileges of citizenship, and those exemptions will continue to apply to the test.

**Senator HURLEY**—Why was it increased from 50 to 60?

**Ms Ellis**—The decision that was announced in July 2004 was to align the age at which people are exempt from the requirement to have a basic knowledge of English with the exemption from the requirement to have an adequate knowledge of the responsibilities and privileges of citizenship.

**Senator HURLEY**—So the age for exemption now was increased to align it with the new citizenship test?

**Ms Ellis**—No. There are two requirements for citizenship. One is a basic knowledge of the English language and the other is an adequate knowledge of the responsibilities and privileges of citizenship. The government announced in 2004 that there would be an alignment for the age exemption in respect of those two criteria, because the age exemption from adequate knowledge of the responsibilities and privileges of citizenship was 60, whereas the exemption with regard to English language knowledge is 50. That is being changed in the legislation.

**Senator HURLEY**—What about those people who fail the test more than once? How will they be dealt with?

**Mr Vardos**—That is one of the hot issues that we have to deal with. It is not yet determined whether a person has to fail once, twice or three times before they are provided with an assisted approach to doing the test. As matters stand at the moment, no-one will be exempt but they will be provided with an alternative pathway or approach or an assisted approach to get the test result required. But that is still a matter to be finally determined, and one of the issues that will be put to Mr Andrews.

**Senator HURLEY**—I think that you alluded to this before, but I presume that whether they have to pay a new fee each time is yet to be determined as well.

**Mr Vardos**—Yes. All these matters of detail that will cement the structure in place are in the mix.

**Senator HURLEY**—And there is no plan to take this out to public consultation before the legislation is put in?

**Mr Vardos**—No.

**Senator HURLEY**—Speaking of public consultation, has there been a final analysis yet of the consultation paper that was put out about the test?

**Mr Vardos**—Yes. I can give you some basic data. Overall, there were 1,644 responses. Of that total, 60 per cent supported the introduction of the test, 25 per cent opposed it and 15 per cent did not express a clear position either way but may have expressed a view. Of the 1,644 responses, 158 were from organisations. Of those 158, 68 per cent opposed the test, 18 per cent supported it and 14 per cent did not express a clear position either way. The remaining 1,486 responses were from individuals and 64 per cent supported, 21 per cent opposed and 15 per cent did not express a clear position either way.

**Senator HURLEY**—When you are talking about support for the test, there are two tests, aren't there? There is the values test and an English language test.

**Mr Vardos**—No. That is one of the misconceptions that is doing the rounds at the moment. There will not be a separate English language test. Your ability to pass the citizenship test will be an indication of your level of English. With the level of English that the test is pitched at—which is yet to be determined—your ability to pass it is an indication that you have attained that level of English. There will be an oral exchange upon arrival with a designated officer, who will ask things like: 'Who are you? Are you here to do the test?' There will be a conversation in English, and then the person will sit the test, and that will be a demonstration of their English language capacity. There will not be a separate English language test that they must pass as an adjunct to the citizenship test.

**Senator HURLEY**—At last estimates, we were talking about the United Kingdom, and there was an evaluation that they were due to do in November last year. Have the results of that been—

**Mr Vardos**—I am just doing a quick flick through my other countries brief. I would have to take that on notice. I am advised that we have not received anything from the UK on that.

**Senator HURLEY**—So you do not know whether they have done that evaluation or not?

**Mr Vardos**—I am not certain what status that proposed evaluation has at the moment. Clearly we will take that on notice and see what we can find for you.

**Senator HURLEY**—I think the question I asked last time was whether other countries had evaluated the effects on their citizenship application and pass rate et cetera. So you do not have the UK one. Do you have ones from any other country?

**Mr Vardos**—What I do have here is the citizenship test pass rate for the UK and the Netherlands, but that is separate from an evaluation. In the UK from 1 November 2005 to 31 July 2006 almost 86,000 tests were conducted, with a pass rate of 69.7 per cent. I do not have information on how many people sat the test in the Netherlands, but over roughly the same time frame 67 per cent passed each component of the test the first time around.

**Senator HURLEY**—I think, Ms Ellis, you indicated previously that you do not know how many people pass or fail the test in Australia currently.

**Ms Ellis**—In terms of being assessed as not meeting the requirement based on interview, no, we do not have those statistics. I took on notice that we would see whether it was possible to obtain those statistics.

**Senator HURLEY**—So we do not know what the current pass rate of the test is. I want to talk about the case of Mr Julian Fenech, who was born in Australia. As an 18-month-old he

left with his Maltese born parents to return to Malta. Last year, when he was 32, he returned to Australia with his wife on a working visa. In October last year he applied for citizenship but was informed by the department that he was already a citizen, and he subsequently received a citizenship certificate in the mail. I believe that following that the department of immigration requested Mr Fenech to return that citizenship certificate directly to their office because they had in fact made an error and he was not eligible for citizenship. The local paper reported Mr Fenech's initial excitement on getting his Australian citizenship and then on 7 February featured a photo of Mr Fenech with his citizenship certificate accompanied by the story that the department of immigration had made a bungle and that he was not in fact a citizen. Can you tell me when the department first learned of Mr Fenech's desire to confirm his Australian citizenship?

**Ms Ellis**—I can explain what happened and why. Mr Fenech, when he first approached the department, used the name 'Julian' and presented a birth certificate that showed the name 'Julian Fenech'. That showed him as having been born in Australia. He was asked if he had ever renounced his Australian citizenship. He said that, no, he had not, and departmental records confirmed that he had not. On that basis he applied for and was given a certificate of evidence of Australian citizenship.

Subsequently, the department identified a record in the name of Julya Fenech with the same date of birth. The department's records showed that one Julya Fenech with the same date of birth had lost his Australian citizenship in November 1994 because he had applied for and acquired Maltese citizenship. The department contacted Mr Fenech immediately and said that it was likely that he was not currently an Australian citizen and that, if it was confirmed that he was not, it was likely he would be able to resume his Australian citizenship.

An appointment was made to discuss the matter with Mr Fenech and to resolve the issue. The appointment was cancelled by Mr Fenech and rescheduled for some days later. When Mr Fenech came into the department, he provided information that explained what had happened. His original birth certificate shows his name as Julya Fenech and, in discussions with the department, he confirmed that in November 1994 he had reacquired Maltese citizenship. The decision was based on the information that he had initially provided to the department and, when he provided the department with other information, the department was able to resolve the issue on the same day that he applied to resume his Australian citizenship.

That application was approved, so he is now an Australian citizen. When he was first given a certificate of evidence of citizenship, he was not, but an assessment was made on the basis of the information that was available and it is clear that the information that was available was incomplete. It seems that in 1991 he applied for and obtained an amended birth certificate, and that explains both the original birth certificate in the name of Julya and the birth certificate in the name of Julian Fenech that he presented when he first approached the department.

**Senator HURLEY**—Is the process by which he applied to resume Australian citizenship currently available to everyone?

**Ms Ellis**—Anyone who has lost their Australian citizenship under section 17, which was repealed in 2002, can apply to resume their Australian citizenship. Mr Fenech was unlike the

majority of young dual Australian-Maltese citizens who went back to Malta with their parents. Most of them renounced their Australian citizenship between the ages of 18 and 19 years because Malta, at the time—in fact until 2000—did not allow dual citizenship, and so, if they wished to retain their Maltese citizenship beyond the age of 19 years, they were required to renounce their Australian citizenship. Mr Fenech is one of I think a reasonably small number of people who did not renounce their Australian citizenship but, on subsequently discovering that they were no longer a Maltese citizen—because they had not renounced their Australian citizenship—then chose at a later date to reapply for Maltese citizenship and in doing so lost their Australian citizenship under section 17 of the Australian Citizenship Act 1948, as it was then.

**Senator HURLEY**—So he was not required to renounce his citizenship; he just applied?

**Ms Ellis**—None of them were required to; it was a voluntary act to renounce, and most of those who were born in Australia and returned to Malta with their parents chose to renounce their Australian citizenship because they wanted to retain their Maltese citizenship. Mr Fenech did not reach that point and so, once he turned 19, under Maltese law he lost his Maltese citizenship. Then a couple of years later he wanted his Maltese citizenship back. He applied for Maltese citizenship and when he acquired it he automatically lost his Australian citizenship.

Because he did it in that way—because he had done any act or thing, the sole or dominant purpose of which was to acquire the citizenship of another country—he was then able to resume his Australian citizenship. Whereas, for people who renounced their Australian citizenship under section 18, there was no provision for them to resume their Australian citizenship until 2002. That provision in fact has an age limit of 25, which, as you would be aware, will be removed under the legislation currently before the parliament.

**Mr Metcalfe**—I cannot let this opportunity go by without saying that that is illustrative of the complexity of some of the cases we deal with. Firstly, it is quite a complex area of law, as Ms Ellis has described. Secondly, with respect to an issue that went to the identity of the individual, where he advised us of a name, it turned out we knew him by a slightly different name. But some good work by the department identified that earlier name and, ultimately, on the same day, we were able to resolve his issue and he is now, again, an Australian citizen. So the officers who had been involved in that case, I think, showed a great deal of commonsense and provided client service in dealing with that quite complicated issue.

**Senator HURLEY**—The department contacted Mr Fenech and advised him that he could apply for the resumption of citizenship. Is that right?

**Ms Ellis**—Yes, in contacting him and advising him that he may in fact not be an Australian citizen, it is my understanding that he was advised that if indeed he had lost his Australian citizenship he would be able to resume it. The detailed advice to him to cover the circumstances was not possible until he met with departmental staff.

**Senator HURLEY**—When he met with departmental staff he applied then and there to resume citizenship?

**Ms Ellis**—They had the discussion and they sorted out the issue of the original birth certificate and the amended birth certificate. He confirmed that he had applied for Maltese

citizenship and he was advised he had lost it. He completed an application form on the spot, to my understanding, and that application was approved.

**Senator HURLEY**—On that day?

**Ms Ellis**—On that day.

**Mr Metcalfe**—So the headline should not have been ‘Departmental bungle’; it should have been ‘Department sorts out problem for client and provides good client service’.

**Senator HURLEY**—Although it was a departmental bungle in that he was originally told that he was a citizen.

**Mr Metcalfe**—Because he told us a different name. He told us he was Julian and we knew him as Julya. He produced a birth certificate as Julian, and he did not tell us that he had sought and acquired Maltese nationality. Notwithstanding all of that, we fixed his problem.

**Senator HURLEY**—When he applied for his work visa to come here from Malta, he knew he was not an Australian citizen then?

**Ms Ellis**—I am not privy to the detail of what he knew or did not know at that point. In terms of what information he may have given the high commission in Malta and what they advised him, we would need to take that on notice.

**Senator HURLEY**—Is the other Mr Fenech, Julya Fenech—

**Mr Metcalfe**—The same Mr Fenech. He is the same person.

**Ms Ellis**—He is the same person.

**Senator HURLEY**—There was an assumption by the department that there were two—a Julian and a Julya?

**Mr Metcalfe**—No, he told us he was Julian. We checked our records. We had no record of Julian. We then checked later and said: ‘That’s interesting; we have a Julya, with the same date of birth. Maybe it’s the same guy.’ It was. It was his act of changing his name from Julya to Julian and then not telling us that he had renounced his Maltese nationality that led to the confusion about this case, which we managed to get sorted out. But it underlines, as I said, those issues that do go to identity of people with various permutations of names, which are sometimes within their control, and sometimes errors are made and whatever. So the issue about the real and proper identity of someone and understanding their circumstances can be a vexed question, as that example showed. But, fortunately, Mr Fenech was able to be led through that range of issues and, with commendable swiftness of action, was able to use provisions in the legislation to reacquire Australian citizenship.

**Senator Ian Campbell**—Madam Chair, I was briefed by the department on this last week and I thank them for the briefing, so it is not news today. On hearing it fleshed out in more detail, it seems that it was all relatively innocent. What Mr Fenech could have done may not have crossed his mind. When he was asked whether he had renounced Australian citizenship, he may well have thought, ‘I haven’t; I have just taken up Maltese’. So it may have been entirely innocent. If he had said, ‘But, by the way, I have done this’, it would have been easy to pinpoint. If you take a constructive, positive view about the goodness of mankind it sounds

as though basically it was all pretty innocent and it is to the credit of the department that they picked it up.

**CHAIR**—As, indeed, we are minded to do, Minister. Thank you.

**Senator HURLEY**—But he had not actually renounced his citizenship—he had lost it.

**Ms Ellis**—He had lost it, under section 17, rather than renouncing it under section 18.

**Senator HURLEY**—We are told all the time that this is a different thing from renunciation.

**Mr Metcalfe**—As you know, that provision no longer exists. So the issue of losing Australian citizenship by acquiring foreign nationality is now a thing of the past. It applied to him.

**Senator HURLEY**—So he was correct in saying he did not renounce his citizenship; he had lost it—

**Ms Ellis**—That is correct.

**Senator HURLEY**—by getting citizenship of another country. So what happens to his work visa? He now stays on as a full citizen?

**Ms Ellis**—A visa cannot be held by an Australian citizen. He is an Australian citizen; he does not hold a visa.

**Mr Metcalfe**—He is an Aussie.

**Senator HURLEY**—I should point out that one of the reasons this was all sorted out, I believe, is that he went to his local MP, Mr Chris Bowen, when he was informed that his citizenship certificate would be taken away from him.

**Ms Ellis**—It is my understanding that contact was immediately been made with Mr Fenech when we realised that we had records of a Julya Fenech, with the same date of birth. An arrangement was made to meet with Mr Fenech to sort it out. Mr Fenech cancelled the appointment and I understand also went to the media. An article talked about him being under threat of deportation. He was at no time under threat of deportation. When he attended the meeting which had been rescheduled it was sorted out. It was always going to be sorted out.

**Senator HURLEY**—Just to clarify this, if someone had been in the position where they had renounced their Australian citizenship in acquiring Maltese citizenship, they would not be in Mr Fenech's fortunate situation, would they?

**Ms Ellis**—That is correct.

**Senator BARTLETT**—Can I ask a few more questions about the citizenship test. The \$14 million-odd that is in the additional estimates is purely seen as the implementation costs? Ongoing costs will be absorbed into general—

**Mr Vardos**—That amount of money is to continue the work this financial year, to keep the various activities going, to pay for salaries and software, etcetera. Costings to maintain and implement a test in the out-years are yet to be considered by government.

**Senator BARTLETT**—So there probably will be more, come budget time?

**Mr Metcalfe**—We would certainly expect that the task of administering the test, from what we have discussed with Senator Hurley, obviously will incur some additional costs. Those are issues that we will pursue through the budget process.

**Senator BARTLETT**—The way it works the moment, if somebody puts in an application for citizenship, say, prior to when their residency qualification is met—so prior to already being here for two years—can they apply before they are here for two years or do they have to wait?

**Ms Ellis**—They could apply, but their application would be refused because the act requires them to have satisfied the residence requirement at the time of application.

**Senator BARTLETT**—So it does not just sit there until they hit two years; they have to redo it again?

**Ms Ellis**—No. The only exception would be people who perhaps have not met the residence requirement but for some reason might have a case for an exemption. For example, people who have served three months in the Australian defence forces are exempt from the residence requirement.

**Senator BARTLETT**—Are citizenship and pending citizenship in the defence forces a matter for defence law rather than you? You do not have anything to do with that per se, do you?

**Ms Ellis**—If it is a matter of employment and whether they would employ someone, it is a matter for the Defence Force.

**Senator BARTLETT**—The reason I asked my previous question is that it has been suggested to me that some people, particularly refugees, who are understandably keen to nail down their futures, can sometimes put in applications in anticipation so that they can hit the ground running as soon as they hit their two years—or three or four or whatever it will be in the future—residency. Is there any way to advise people not to put their applications in now so that they do not have to pay a fee now and another fee later?

**Ms Ellis**—I do not know that it happens all that often. Certainly those who participate in the Adult Migrant English Program and do the Let's Participate course on citizenship would be well aware of the requirements, because they are told about them. I do not know to what extent that does happen, and if they ring up the 131800 number they would be advised of the requirements.

**Senator BARTLETT**—I imagine it would be a bit difficult for you to dig up any data on how many premature applications you get.

**Ms Ellis**—I am not sure whether the system can do it but, even if we were able to identify the numbers or percentages of applications that were refused because the person had not met the residency requirements, there would be a number of circumstances mixed up with that. For example, someone may well have been a permanent resident for two years but not spent sufficient time in Australia; therefore, they may well be recorded as not having met the residence requirement because they did not spend that time in Australia and their circumstances did not warrant exercise of the discretion that is available under the legislation. I suspect it is unlikely that we would be able to get a very clear answer for you on that.

**Senator BARTLETT**—I think I heard you say before that there is still legislation that you will need to bring in for the citizenship test; is that right? It is not part of what is before the Senate at the moment?

**Ms Ellis**—Yes. It is not included in the bills currently before the Senate. It will be a separate amendment.

**Senator BARTLETT**—I heard your answers before about having a way to go with developing all the systems. Once you have those 200 questions, or whatever the number ends up being, will they be publicly available for people to study?

**Mr Vardos**—No, they will be kept secure. But applicants will be advised that all they need to know is contained in the curriculum document. Let us say, for example, that it has 10 chapters, four or five of those chapters might be on background generalities, and it may only be the bit on the Australian parliamentary system or on Australian geography that they need to focus on. So the information will be there, but the questions will not be made public.

**Senator BARTLETT**—Is there any expectation that the test will be run past existing Australians, just to see how they go?

**Mr Vardos**—That is one of the issues of pilot testing it on a small sample of people. These are still issues to be resolved, and it is a question of the time available in which to do it. Ms Ellis reminds me that it is not a committee of public servants sitting around a table drafting the questions. We will be engaging experts in this area who are competent in test design to make sure that it is a valid exercise. I cannot give a direct answer to your question.

**Senator BARTLETT**—I am genuinely thinking of the credibility of the whole thing and, therefore, the credibility of citizenship. After it has been in place for a few months, I am sure we can all imagine media stories of 50 per cent of Australians flopping the test. I think pre-testing to make sure that a good 90 per cent or so pass would not be a bad idea.

**Mr Metcalfe**—We certainly share the same objectives you have enunciated: the test should be credible, fair and representative. The work that will be done over the months ahead will head towards that objective.

**Senator LUDWIG**—What concerns me is that you intend to introduce it by the winter sitting. When do you intend to have it passed? If that is the case, this will obviously go to a Senate committee—maybe even the one I am on—

**CHAIR**—If you are very, very lucky, Senator.

**Senator LUDWIG**—Yes. All of those questions will ultimately need answers at least by then. By my reckoning, this does not leave us very many months.

**Mr Metcalfe**—We will be very busy in the next few months.

**Senator BARTLETT**—You mentioned before how the taking of the test will have an in-built English language proficiency component to it. What is going to happen with the existing language requirement that is in the act? Is that going to stay there alongside it?

**Ms Ellis**—I do not think it would be appropriate to pre-empt the amendments that will be introduced. We would need to leave it for when the legislation is introduced so that it can be seen how that will work.

**Senator BARTLETT**—Can you clarify for me what the current requirement is—my understanding is that this will continue for the time being until the bill before the Senate passes—for the department to be satisfied the person has an adequate level of English, leaving aside all of the exemptions for age et cetera?

**Ms Ellis**—The requirement is that the applicant possess a basic knowledge of the English language.

**Senator BARTLETT**—And that does not automatically require a test to be taken. It means a test can be asked for if the department feels it is necessary.

**Ms Ellis**—There is no reference to a test. The person's ability to meet that requirement is tested, if you like, at interview. It is through the interview process that applicants have the opportunity to demonstrate that they possess a basic knowledge of the English language.

**Senator BARTLETT**—And those interviews will still continue alongside the test?

**Ms Ellis**—Our expectation is that the test will replace the interview, because the primary purpose of the interview is to assess whether the individual has a basic knowledge of English, understands the nature of the application and has an adequate knowledge of the responsibilities and privileges of citizenship.

**Senator BARTLETT**—I appreciate you are still sorting things out, but will the test be reading? It will not be spoken words or verbal interaction; it will be reading off a computer or something?

**Mr Vardos**—At the moment the concept is reading from a computer, point and click with a mouse on a multiple-choice range of answers. Whether we need to introduce an oral option is to be determined.

**Mr Metcalfe**—I made the point earlier that of course we are conscious that not everyone may be able to undertake a test in that way. The issue of accessibility for applicants is an issue that we are obviously mindful of.

**Senator BARTLETT**—I am just thinking about the aspects of shifting from what is basically adequacy in conversing in English to adequacy in reading and comprehension. They test different types of things. It is a work in progress I guess.

**Senator NETTLE**—I have a couple more questions about the citizenship test. How long will people have to complete the test?

**Mr Vardos**—We are estimating it will take anywhere from 45 to 60 minutes.

**Senator NETTLE**—Would you have a limit on the amount of time you could spend completing the test?

**Mr Vardos**—There will need to be a time limit, because there will be the facilities and appointments booked and scheduled in. That is our best estimate at the moment: somewhere between 45 and 60 minutes per test.

**Senator NETTLE**—You talked about experts being involved in determining what the questions will be. Can you give us any more detail about how that process will occur?

**Mr Vardos**—No. At the moment we are focusing on the resource document to do the bulk of the work on that. We are in the process of making inquiries through various channels to identify people who may be engaged for that purpose.

**Senator NETTLE**—Are there experts external to the department involved in the process of developing the resource document?

**Mr Vardos**—Yes, we have engaged the AMEP Research Centre, which is a consortium of Macquarie and La Trobe universities. That is the body we have engaged to develop the resource document. The AMEP Research Centre is the body that developed the Let's Participate course, which is part of the AMEP program. A large part of the framework or outline of what we are on about with the resource document is drawn from the Let's Participate framework.

**Senator NETTLE**—You mentioned the categories earlier, and I think they are on the website as well. Is that the intention of the categories that the questions will be in?

**Mr Vardos**—In broad outline, yes. I cannot tell you at this point precisely how the resource booklet will be structured, but it will cover the principles which underpin Australian society, geography, national symbols and emblems, the parliamentary system of government, responsibilities and privileges of citizenship, law and history, by way of example of the sorts of things that would be encompassed in a document of that nature. Then, once those chapters are drafted, questions will be derived from the content of the booklet.

**Senator NETTLE**—No sports category?

**Mr Vardos**—There may well be an element in there that covers sport. It is part of Australia's history; it might be part of the values and principles which underpin Australian society—a passion for sport.

**Mr Metcalfe**—We will just have to wait and see, Senator, I think.

**Senator Ian Campbell**—We have a whole section on Nick Cave.

**Senator NETTLE**—There is speculation out there!

**Mr Metcalfe**—We had noticed that it is something that virtually everyone has an opinion about, so I am sure there will be great public interest when the material is provided in due course.

**Senator NETTLE**—Mr Vardos, you mentioned before that the department was still be determining whether there will be a limit on the number of times that you can sit the test. On the department's website it says that you can sit it as many times as you need.

**Mr Vardos**—In terms of a concluded view, it has not been determined yet whether you can fail the test two or three or four times before an alternative pathway is determined for you. I am not sure what reference you are making to the website.

**Senator NETTLE**—In the questions about the citizenship test, there is a question that says 'What happens if I fail?' and it says you can sit it as many times as you need. There is also mention in those questions and answers of people being able to take the test in an alternative format if they have low levels of literacy. What sort of alternative format would that be?

**Mr Vardos**—The baseline is that no-one would be exempt from doing the test, but what they may have is assistance. This is purely speculative but, for example, you might have someone sitting next to you to read the questions for you if literacy is the issue. But the applicant will still have to determine the answers.

**Senator NETTLE**—Because this test is also, as you described before, intended to be designed to test your level of English language skills, how does that interact with the explanation that, if people have low levels of literacy, they can do it in an alternative format?

**Mr Vardos**—It is, in one sense, a concession for people who do come to this country with low levels of education. I think the average education level of people coming out of refugee camps in Africa is 1.5 or 1.7 years of schooling. So it is paying particular attention to people in that vulnerable situation. They will still be encouraged to go through the process of absorbing what the resource booklet is about and then the idea is to find a way of assisting them to complete the test. But they will still be doing the test in some way. Listening and speaking skills are an integral part of all of this as well. That will be part of the exercise.

**Senator NETTLE**—Regarding people studying to do the test, the intention is to have a book. Is there any intention to have a class that you can go to or any coaching or assistance in other ways?

**Mr Vardos**—I have no doubt that enterprise will move into this area and people will be going to swot shops to help learn some of the aspects of what the booklet contains. But the AMEP is the most logical vehicle for harmonising with what is happening in the test arena.

**Senator NETTLE**—But it is not intended that the department would have any role in any coaching class or anything like that?

**Mr Vardos**—No, but to the extent that the AMEP is a program that we administer then, yes, by default we will be working through the AMEP to deal with this issue.

**Senator NETTLE**—I do not think you have indicated this already. How much is it costing for the AMEP to be producing the resource document?

**Mr Vardos**—I would have to take that on notice. I was looking for that for you earlier on. I do not seem to have that amongst my briefing papers.

**Senator NETTLE**—Okay. I want to ask a question that relates to the new citizenship laws and the power to revoke people's citizenship. I want to ask how many people have had their citizenship revoked over recent years. I do not know what is reasonable to suggest—five years?

**Ms Ellis**—Over the last five years there have been four decisions to deprive people of their Australian citizenship.

**Senator NETTLE**—Were any of those on the basis of ASIO security assessments?

**Ms Ellis**—No.

**Senator NETTLE**—Can you give a broad sense of what they were about without disclosing things?

**Ms Ellis**—One was following conviction for migration related fraud and there were three relating to convictions for serious criminal offences that were committed prior to their applications being approved.

**Senator NETTLE**—So you are not aware of anyone having been denied citizenship because of an adverse security assessment?

**Ms Ellis**—No.

**Senator NETTLE**—How far back would that answer of ‘no’ go?

**Ms Ellis**—I think in total there have been only nine occasions on which someone has been deprived of their citizenship.

**Senator TROOD**—I am wondering if the department keeps any statistics on the number of citizenship applications that are refused or declined. If so, can you provide them over a period of time—10 years, for example?

**Ms Ellis**—I would need to take that on notice.

**Senator TROOD**—The proposition or the number of years?

**Ms Ellis**—How many applications have been refused over the last 10 years. I would need to take that on notice and see what data we had available.

**Senator TROOD**—Would you mind doing that, please?

**Ms Ellis**—Certainly not.

[8.07 pm]

**CHAIR**—As there are no further questions on output 2.3, we will move on to output 2.4, Promoting the benefits of cultural diversity.

**Senator HURLEY**—At the last estimates I asked a question about the status of the Australian multicultural policy, which was current from 2003 to 2006, and I was informed at the time that it was in the in-tray of the then parliamentary secretary, Mr Robb. I am wondering if I could be advised as to what is happening to it now. Has it been moved to Ms Gambaro’s in-tray or has some action been taken?

**Mr Metcalfe**—You are absolutely right. It has moved in-trays.

**Senator HURLEY**—Has the policy therefore expired?

**Mr Metcalfe**—I think that the policy continues under the previous arrangements and it will be a matter for the new parliamentary secretary as to what she wishes to do in relation to that.

**Senator HURLEY**—I do not suppose we have a time line for that either.

**Mr Metcalfe**—She has only recently been appointed so I have not got a sense as to when she might take any action in relation to that issue.

**Senator HURLEY**—The very word ‘multicultural’ has been dropped from the title of the department, so there is a question of whether the government sees any need to continue a multicultural policy.

**Mr Metcalfe**—If you read the administrative arrangements orders, you will see that the department still has responsibility for multicultural affairs, and indeed ethnic affairs, issues.

There are a range of programs and policies administered by the department, and we will continue to do that.

**Senator HURLEY**—It does not seem to be much of a priority if the policy in the area of multiculturalism is not updated within the time allocated.

**Mr Metcalfe**—That ultimately is an issue that the parliamentary secretary may wish to answer, but what I can tell you is that it remains an important part of the department's work.

**Senator Ian Campbell**—It may well be that the existing policies are delivering good results and outcomes.

**Mr Metcalfe**—Certainly we are very pleased with the work that the Multicultural Affairs Branch undertakes. There have been some major initiatives over the last year—for example, in relation to Muslim Australians and the national action plan, which was announced by Mr Robb, and the very significant funding associated with it. So I would have to disagree with your proposition.

**Senator HURLEY**—Speaking of the Muslim task force, I think it was Mr Robb who flagged that it might have served its time and should be disbanded and I think the Prime Minister, Mr Howard, said that that was not going to happen. Has there been any final decision on that?

**Dr Nguyen-Hoan**—Certainly the Muslim Community Reference Group has finished its term because it was appointed for only one year, from September 2005 to September 2006. At the moment we are still looking at a successor. But possibly it is to help us in the implementation of the national action plan; by the role of the reference group is under active consideration with the new parliamentary secretary.

**Senator HURLEY**—So there is no decision there. What about the Council for Multicultural Australia, which is also in suspension? Has any decision been made there?

**Dr Nguyen-Hoan**—The Council for Multicultural Australia finished its term on 30 June 2006. We will bring the membership and the terms of reference to the attention of the new parliamentary secretary for her consideration.

**Senator HURLEY**—It is very difficult to ask questions in this area because of the change in parliamentary secretaries. I suspect that I will just keep getting this answer that a decision will be made later.

**CHAIR**—Senator Hurley, matters can be put on notice. That is hardly down to the department. If there are questions you wish to pursue and you wish the department to consider, I am sure matters can be put on notice.

**Senator Ian Campbell**—If the senator is having difficulties, we are here to genuinely work through those with her and will try to do the best we can.

**CHAIR**—We did want to finish tonight, actually, Minister.

**Senator Ian Campbell**—It is hard to have an estimates hearing only a few days after a ministerial reshuffle. We are working hard and there is significant continuity in what we are doing. We are dedicated to delivering policy results and the officers are here to help.

**Mr Metcalfe**—You will see on page 21 of the portfolio additional estimates statements document, for example, some funding for aspects of community engagement around the national action plan, so there is real money associated with some of these projects. It is not something that has been forgotten about; it has actually been the subject of a great deal of deliberation and consideration, including between the Commonwealth and the states. It was the major subject for discussion at the Ministerial Council on Immigration and Multicultural Affairs last year, and is reflected in part in the additional estimates.

**Mr Vardos**—I would add that, in July last year, the government committed \$35 million over four years to the national action plan. That is an existing commitment that the Multicultural Affairs Branch is now responsible for following through.

**Dr Nguyen-Hoan**—May I add that the funding for multicultural affairs in the next four years, from July last year, will total \$55 million over four years. So you can see that we are still implementing our programs.

**Senator HURLEY**—If I can put questions on notice then perhaps I might ask the question of whether the four so-called guiding principles of the Galbally report, which was probably the founding report in the development of multicultural policy, still apply. They are: equality of opportunity and equal access to programs and services for all; the right of all Australians to maintain their culture without prejudice or disadvantage; the need for special services and programs for migrants to ensure equality of access and provision; and the principle of full consultation with clients with encouragement of self-help for migrants to become self-reliant as quickly as possible.

**CHAIR**—Thank you, Senator.

**Mr Metcalfe**—I think we have taken that on notice.

**CHAIR**—Yes, I understood that to be the case, and that is what I have indicated.

**Senator NETTLE**—Have there been any complaints from the public about the removal of the term ‘multicultural’?

**Mr Metcalfe**—I think you have probably seen various media commentary about the fact that the government, in changing the name of the portfolio, has put a very strong emphasis on citizenship as being the common, unifying aspect of full participation for Australians. So I probably do not need to sort of rehearse that for you. There has been, regrettably, a small number of people in the local media who have had a little bit of fun with the acronym that results from that name change, but that is something I will simply have to wear. For that reason the department is calling itself DIAC, the Department of Immigration and Citizenship.

**Senator NETTLE**—I meant specifically have there been any complaints about the dropping of the word ‘multicultural’? It was not about the acronym.

**Mr Metcalfe**—I think there has been some media commentary. I am not aware of any complaints as such. I am sure that some people would have views about the symbolism. Others probably have views about the important symbolism of citizenship being referred to in the name of the portfolio.

**Senator NETTLE**—Has there been any change in policy documents as a result of the removal of the term ‘multicultural’?

**Mr Metcalfe**—There is a process that is underway, as we described first thing this morning, simply about changing references in signage in documents and whatever.

**Senator NETTLE**—I meant more content than—

**Mr Metcalfe**—I think my response to that is that, as I said earlier, although the name of the department has changed, the actual administrative arrangements order has not changed. Therefore the department continues to be responsible for a range of issues, including multicultural affairs. That is certainly an important part of the work that we do.

**Senator NETTLE**—Any staffing changes?

**Mr Metcalfe**—No, apart from Mr Vardos being taken offline to deal with the citizenship test. But that is a perfectly normal activity that would have occurred in any event, regardless of the change of name of the department.

**Senator NETTLE**—There is a document that I think is colloquially referred to as the multicultural policy but I understand it has the name, *Multicultural Australia: united in diversity*. Is that document currently being reviewed?

**Dr Nguyen-Hoan**—We worked with the former parliamentary secretary to look at the new policy because, as you know, that policy was supposed to be from 2003 to 2006. So we are still developing that policy and we will talk to the new parliamentary secretary in finalising it.

**Senator NETTLE**—So, because it was due to finish in 2006, does that mean there is no multicultural policy? Does that mean it is continuing on until it is replaced? How does that work?

**Mr Metcalfe**—We just had that discussion with Senator Hurley, I think. We have basically said that the issue of a successor document is a matter for the parliamentary secretary. In the meantime, the principles of the earlier document continue to apply.

**Senator NETTLE**—But everything has been completed in terms of the review and the department going to the parliamentary secretary, and the decision is there.

**Mr Metcalfe**—That is ultimately a matter that goes to policy. I would not want to comment on that. But it is an issue that I am sure the incoming parliamentary secretary will address.

**Senator NETTLE**—There was a review and that review has been completed, so presumably we are now at the decision point. I am not trying to find out what is in it; I am just trying to understand the process.

**Dr Nguyen-Hoan**—It was an internal review. We discussed that review with the former parliamentary secretary. Now that we have a new parliamentary secretary we will take our review and development of that policy to the new parliamentary secretary.

**Senator NETTLE**—And that review was initiated by the former parliamentary secretary.

**Dr Nguyen-Hoan**—Yes.

**Senator NETTLE**—So you cannot indicate whether that review was about seeking to downplay the importance of multiculturalism?

**Mr Metcalfe**—It would not be appropriate for us to go into matters of policy, Chair.

**CHAIR**—Thank you, Mr Metcalfe.

**Senator NETTLE**—That is fine. I am just asking you to comment on reports that that was the intention.

**Mr Metcalfe**—I think that is an issue that goes to policy.

**CHAIR**—I think Mr Metcalfe has made his position clear.

**Senator NETTLE**—How does the document affect the operations of the department?

**Mr Vardos**—The programs that sit underneath multicultural policy continue. Whether it be the Living in Harmony program or the national action plan or any other activities that have been implemented by Dr Nguyen-Hoan's branch, they continue. They sit under the umbrella of multicultural policy but they have a life of their own in terms of implementation timetables. They continue.

**Senator NETTLE**—Thank you.

**CHAIR**—There is nothing else in 2.4. Thank you very much for that. In fact, that brings us to the end of the outputs in outcome 2. Mr Metcalfe, I thank you and your officers for your assistance with the program today.

[8.22 pm]

#### **Migration Review Tribunal and Refugee Review Tribunal**

**CHAIR**—Good evening. I welcome Mr Karas, Mr Lynch and Mr Jones.

**Senator KIRK**—Welcome, gentlemen. The questions that I have primarily go to both the MRT and the RRT, so if it is okay with you I will just shoot out the questions and whoever thinks it appropriate may answer. That would be appreciated. I am interested in the duty to communicate all information to the applicant in writing and how that impacts upon the processing of review cases. The questions are in the context of the legislation that is currently before the Senate Standing Committee on Legal and Constitutional Affairs—

**CHAIR**—Which makes the matter difficult to explore in the context of the estimates because it goes to a bill before the chamber.

**Senator KIRK**—I understand, but my questions really go to how, currently, the process works and where there may be delays in the system.

**CHAIR**—These are matters the subject of consideration by the committee in a legislation inquiry in relation to a bill that is before the chamber. The Clerk has indicated on other pieces of legislation that it is not really a matter for the consideration of estimates. I would be keen not to traverse that ground. That is certainly the Clerk's advice, as I understand it. I am happy to be corrected by the Clerk, of course.

**Senator KIRK**—My questions really go to the operations as they currently are.

**CHAIR**—I will listen very carefully to your questions. You would be aware, as Mr Karas and Mr Lynch in particular are, that a plethora of questions was placed on notice in relation to this matter in the process of the bill inquiry.

**Senator KIRK**—Perhaps if there is some overlap the gentlemen could indicate that.

**CHAIR**—I am sure they will be able to say it has been asked and answered.

**Senator KIRK**—You seem to say that perhaps the questions were on notice so perhaps they—

**Senator Ian Campbell**—So we could probably get rid of estimates altogether.

**CHAIR**—A point I am often tempted to make, Minister.

**Senator KIRK**—I might begin, Madam Chair. Quite a few do go to questions of self-representation of litigants and the like, which is not strictly speaking within the ambit of the legislation.

**CHAIR**—Certainly, Senator Kirk. I am just trying to be careful around all of this; that is all.

**Senator KIRK**—I will begin with questions about applicants from non-English-speaking backgrounds, which I think would not traverse upon the provisions of the bill. Could you inform the committee as a percentage how many applicants are from a non-English-speaking background across both tribunals?

**Mr Lynch**—You will see from our last annual report that a very high percentage of the tribunals' hearings—both of the MRT and the RRT—are conducted with the aid of interpreters. If you look at the tribunals at a glance—and this is on the first page of our annual report—we have in fact for the MRT 4,577 hearings in the last financial year and for the RRT we have 2,199. Of those cases where hearings were held, there were 60-plus languages and dialects spoken. There were 66 per cent of hearings conducted with the assistance of an interpreter on the MRT, and on the RRT 90 per cent of hearings were conducted with the assistance of an interpreter. I might add to that that, in addition to the assistance that applicants derive from the assistance of an interpreter at hearings, 67 per cent of cases were attended by a representative of the MRT and 63 per cent by a representative of the RRT. That does not necessarily equate precisely with the number of cases in which an interpreter was used. In some cases where there might have been representation there may not have been an interpreter.

**Senator KIRK**—And there could be some overlap between the two?

**Mr Lynch**—Yes. In the case where an applicant speaks good English and has not requested an interpreter for the hearing—and that is their right—they are invited, at the time of an invitation to the hearing, to indicate whether they wish or need an interpreter to be present and, if so, the particular language dialect that needs to be spoken by the interpreter and the gender of the interpreter.

**Senator KIRK**—When a person brings along someone who is merely their representative in the way that you describe it, is that person able to give the applicant assistance during the hearing?

**Mr Lynch**—Under the act, immigration assistance is permissible.

**Senator KIRK**—I meant language assistance as well.

**Mr Karas**—Usually the interpreter would be the only person that would be utilised in relation to communication between the applicant and the tribunal. That is their sole role. The

tribunal does have a policy that it does not allow normally or usually the migration agent to also act as an interpreter. Because the act provides that if a person does require the assistance of an interpreter, the tribunal interprets that as meaning a person that is there to interpret for the tribunal and the applicant and that should in no way be associated with the applicant. For example, it would not be appropriate for an applicant to bring a member of their family along to interpret. The tribunal does have a contractual arrangement with a provider of interpreters. We usually look to have interpreters at the NAATI accredited level for interpreting purposes.

**Senator KIRK**—How is an assessment made as to whether or not a person needs an interpreter? Is that for the person to decide?

**Mr Karas**—It usually is for the applicant at first instance. However, if the applicant does come along to a hearing and it is obvious that he or she is unable to communicate, in most cases the tribunal would adjourn and arrange for an interpreter to be made available. On occasions we have had situations where the person has asked for an interpreter, an interpreter has come along, and then they say they are happy to provide their evidence in English and on very few occasions do they turn to the interpreter and ask for an explanation. So we do have both aspects of the use of interpreters in those situations, but if an applicant does ask for an interpreter the tribunal will provide one at no charge to them.

**Mr Lynch**—If I may just add to that, there was an element of crossover in your question with the inquiry. I say that just by way of assistance, because the tribunal has very recently responded to questions on notice in relation to questions arising out of that inquiry and it has very comprehensively answered some of the issues that you are raising now. I just say that for assistance, because you may wish to obtain the tribunal's response to the committee in due course, if that is possible.

**Senator KIRK**—Did you say that has been provided to the committee?

**Mr Lynch**—Yes.

**Senator KIRK**—I do not think I have seen a copy of it.

**CHAIR**—Those responses have been made available to committee members as a matter of course.

**Senator KIRK**—I am wondering whether or not there is a process for people who have had difficulties with interpreters during the hearing to make a complaint or perhaps request that another interpreter be provided. Does that arise very often? If so, how is it dealt with?

**Mr Karas**—I do not know if it arises very often because, as I said, we do have contractual arrangements with a firm that provides interpreters to provide NAATI accredited interpreters. But that is not to say that on occasions difficulties do not occur. Either it is recognised by the member per se, or it is raised by either the applicant or the interpreter. Interpreters on occasions do say that they are having difficulty. In those circumstances, the tribunal would more than likely adjourn the hearing and arrange for an interpreter in the language or the dialect of the language that the particular applicant does nominate. Where possible, whether they are there on a face-to-face basis or if we get them in on video or telephone, the tribunal will go out of its way to provide an interpreter in the language requested.

**Senator KIRK**—So it is up to the applicant to nominate the dialect, I assume, and you try to match it.

**Mr Karas**—The applicant knows which language he or she speaks and in which language they are most competent in. Usually when we ask them to attend a hearing there is also a requirement for them to nominate an interpreter or the language or the dialect, or, as Mr Lynch pointed out, whether in fact there are other considerations in relation to the selection or the appointment of a person to interpret in that particular case. There might be gender considerations as well, given the nature of the evidence and the feelings of the particular person who is to appear before the tribunal.

**Senator KIRK**—Are hearings normally taped, or is that something which only happens on request?

**Mr Karas**—They are always taped. It is a requirement that they are taped, and at the end of the hearing the member will usually advise the applicant that they are entitled to a copy of the tape. On most occasions the applicant will usually wait with their adviser in the waiting room, so to speak, while we copy the tape. We make it available to them on the same day or within a short period of time after the hearing.

**Senator KIRK**—Is the applicant charged for the provision of that tape?

**Mr Karas**—No.

**Senator KIRK**—What are the current provisions of the act in relation to representation by migration agents or lawyers of applicants?

**Mr Karas**—If a person is to give migration assistance, under the act they have to be registered as a migration agent. The act does provide for assistance to be provided. The act also provides for the applicant to bring a friend or some other person along with them. Under the Migration Review Tribunal provisions that person can assist them at a hearing. However, it is common knowledge that the general provisions refer to the right of address to the tribunal only in exceptional circumstances. It is usually the interplay between those two requirements that the tribunal member has to involve themselves with in the situation in the cases that come before them.

**Senator KIRK**—And representation by lawyers—is that only by leave?

**Mr Karas**—For representations by lawyers at the tribunal level, they have to be migration agents as well, because there is a difference between giving immigration assistance and immigration legal assistance. Lawyers can give immigration legal assistance, from what I recollect of the terms of the act, but they have to be registered migration agents to give immigration assistance.

**Senator KIRK**—And that immigration assistance can—

**Mr Karas**—That involves appearances before the tribunal and applications of that type. Where there is immigration legal assistance usually involves taking a matter to a court.

**Senator KIRK**—And that is an automatic right; there is no need to get permission to bring along somebody for that sort of advice?

**Mr Karas**—I understand that the person who is giving immigration legal assistance does not have to be a registered migration agent, but in the normal course of events would be a lawyer.

**Senator KIRK**—In what sort of circumstances—you have mentioned some—would an adjournment be granted? You have mentioned in the context where perhaps there were difficulties with the interpreter or the like. What are the other circumstances in which an adjournment would be granted?

**Mr Karas**—If an applicant asks for an adjournment—a comfort break or something of that sort. In cases where a member feels that the matter has been going for a period of time and it may be that the applicant is feeling under some pressure, becoming distressed or may feel that the emotions are getting to them, a member will usually call for an adjournment. I can give an example myself. When I was doing a hearing I wanted to adjourn on the basis that I could see that the applicant was perspiring quite profusely. The advisor said, ‘No, let’s continue.’ But it was my view that it was inappropriate to continue and I called for an adjournment, even though the applicant’s advisor thought that one was not necessary in the circumstances.

**Senator KIRK**—So it is really either for the presiding member or for the applicant to make a decision when to ask for an adjournment.

**Mr Karas**—The applicant would suggest it, normally, and it would be considered by the member as such. But we have an understood policy—not so much a stated policy—that if a hearing is going for an hour or over an hour, and it involves an interpreter, it is usually good in those circumstances to call a break so that the interpreter can have a bit of a break and, if necessary, the applicant can regain their composure or whatever the circumstances may be.

**Senator KIRK**—So normally the adjournments would take place for a short period of time—it is just a short break and then they resume?

**Mr Karas**—Yes, depending on the circumstances. Sometimes they would last five or 10 minutes; some might go a little longer.

**Senator KIRK**—So it would not be adjourned to a date down the track in most circumstances.

**Mr Karas**—It would be in certain circumstances, if in fact the hearing has not been able to proceed for some particular reason. Again, to give you an example, I was dealing with a matter and, after the hearing had progressed for quite a period of time—in fact, it was completed, from what I recall—the interpreter was not thought to have been all that competent. Once the tape was checked and it was verified by NAATI that that was the case, that hearing was aborted entirely and we had to hear the whole matter again.

**Mr Lynch**—If I could add as well: where an applicant wishes to obtain further evidence or an advisor indicates that there is additional material that can and will be obtained, or which they have not had time prior to the hearing to accumulate and bring to the tribunal’s attention, those issues are notified to the member, either orally or in writing before the hearing, and second hearings do occur. They are not infrequent. I do not have a percentage of matters that involve more than one hearing, but it is not an infrequent occurrence. The members currently

exercise discretion as to whether the justice of the case requires the applicant to have more time than has been allowed to prepare for the hearing.

If there is a representative, it depends on when the representative has been briefed. Sometimes they are briefed the day before the hearing and sometimes on the day of the hearing. Clearly the tribunal is sympathetic to the situation when advisers have not been fully briefed and have not had time to take instructions. For the purpose of getting instructions on the day advisers often seek to use the interpreter that the tribunal has contracted or seek to take an adjournment during the course of the day to get further instructions about whether and how the case can be better presented, whether it be on that day or to seek an adjournment for a subsequent hearing. Much of the evidence put before the tribunal does involve obtaining evidence from overseas, and it is in relation to those matters in particular that evidence may be outstanding. It may come in and require a further hearing, or at least further submissions from the applicant or the adviser.

**Senator KIRK**—You said that you do not keep any figures on how often a hearing is adjourned.

**Mr Lynch**—We do have statistics, certainly on how many hearings a particular matter has. We can gather that material for you if you are interested.

**Senator KIRK**—If it is not too much trouble, that would be good.

**Mr Lynch**—Not at all.

**Senator KIRK**—Thank you. I want to go to the question of cost savings. On page 4 of the portfolio additional estimates statements there is mention of the portfolio seeking additional funding of \$52.6 million, which is offset by savings of \$0.8 million. Can you advise the committee of where you see those savings to the total of \$0.8 million being made?

**Mr Lynch**—We have a saving of approximately \$815,000, which arises out of the reduction in case load which the tribunals are experiencing. The revision of budget estimates relates to a reduction of appropriation in that sum. On the MRT we are looking at a revised down estimate of 900 cases and 330 cases down on the RRT, from estimates for 2006-07 of 9,000 cases for the MRT and 3,380 for the RRT.

The tribunals are experiencing an ongoing decline in case load. The RRT had traditional figures of up to 6,000 just a few years ago, or in that region since 1993. It has fluctuated quite a bit of course over the years, and particularly over the last three years the number has been in decline. I think we now have roughly 600 cases on hand, and most of those at any given point in time are allocated to members to commence action on in order that we can observe the 90-day time limit as much as possible. We are currently at about 76 per cent compliance with the 90-day time limit on the RRT.

We still face some challenges with time lines in the MRT, but we are bringing the times down. I think the average across the board for the full range of visa classes is about 38 weeks at the moment. That is part of an ongoing improvement on some few years ago when it was in the 50- and 60-week category. So we have been devoting resources to the RRT to a degree and now, with the benefit of an initiative by government to cross-appoint all members of the RRT and MRT, we have got some real flexibility in how we apply member resources to the case

loads of both tribunals and are looking to improve our performance on the MRT and reduce those cases on hand from roughly 4,000. We hope in the next 18 months to at least halve that, with attention being diverted and members all being cross-appointed to the MRT case load.

**Senator KIRK**—I will come to the question of members and their qualifications in a moment. What sort of percentage does the downturn in the number of cases represent? You gave me some figures, which I think were 9½ per cent and 10 per cent.

**Mr Lynch**—It is about 10 per cent on both, from the budget figures that we forecast for this financial year.

**Senator KIRK**—What do you attribute that to? Is it just a reduction in the number of visas being granted, or are decisions being made which are considered by applicants to be not worthy of having reviewed?

**Mr Lynch**—I think there are a number of factors. Certainly the government's integrity measures legislation has had a substantial impact, particularly on the RRT where we have had complaints—though none formal—where applicants' advisers have indicated to their clients that they could expect a six, 12 or 18-month delay in getting their cases heard in the RRT but have found, to their chagrin, that it is actually just 90 days or less these days. So I think that has been a factor—that some of the more frivolous and unfounded applications have not been made in the numbers they used to be. Certainly, the 90-day time limit is a factor there. And I think the tightening of the time limits on the Federal Court might have had an impact. There are probably a number of other factors, going to the quality and professionalism of the tribunals, their capacity to deal with cases quickly and efficiently, which have all been factors in this. There may be other factors at play as well, but those are the ones that come to mind.

**Senator KIRK**—On the question of members, I understand that, as of 31 July 2006, of the 96 members, 73 worked part time. I am assuming that was across both tribunals. Is that correct? And would you give me the updated figures as well.

**Mr Karas**—There are 95 members of the tribunal presently—as at 1 February 2007. As you have identified, there are about 73 part-time members and the rest are full-time members, including three senior members, a principal member and 18 full-time members. One of the reasons there is a large proportion of part-time members is that, with the volatility in the case load, in the past there had been a situation where—particularly on the Refugee Review Tribunal—there were a large number of full-time members and it was found that a number of those members may not have been as actively engaged as they perhaps might have been previously with the declining case load. It would be highly inappropriate to have full-time members sitting around, so to speak, not working at full capacity because of a declining case load, whereas having a large number of part-time members does give the tribunals the flexibility to utilise the resources, as has been indicated by the registrar, where they are needed.

Given the declining case load last year in relation to the Refugee Review Tribunal, we had utilised a large number of members on the Migration Review Tribunal case load and it was looking as if, significantly, we would be able to reduce the number of cases on hand in relation to that tribunal. However, given the 90-day legislation that was introduced, requiring the completion of reviews of the Refugee Review Tribunal within that time period, and given

the large number of cases that had been remitted to the tribunal by consent given the outcome of some court cases, we had to then swing back, so to speak, the people from the Migration Review Tribunal case load to the Refugee Review Tribunal case load.

But the situation now is that, if a person were working, say, some 230 days per year in a full-time capacity, that person would be expected to complete about 142 cases on the Migration Review Tribunal and about 55 on the Refugee Review Tribunal. Of course, with part-timers working from two to four days, it would also be adjusted in relation to the number of days worked there. But I think that the large number of part-time members does give the tribunal the flexibility that I have spoken of to best use its resources to deal with the cases at hand.

**Senator KIRK**—So how does the part-time membership work? You mentioned a moment ago that members are employed often for between two and four days a week. Are members employed for a fixed period of either two days a week or four days a week? How does it work? Could you be called in for two days one week and four days the following week? Or is it a set number of hours?

**Mr Karas**—No, they normally nominate the number of days they are available to work. Sometimes, with encouragement by the tribunal when the case load requires it, they can increase the days. You do have people who had worked two days who now work three days and three days who now work four days. There is a flexibility involved in it. But, to enable the tribunal to continue dealing with the cases at hand, members usually nominate the days they are available on. Let us say that some do Tuesdays, Wednesdays and Thursdays and others do Wednesdays, Thursdays and Fridays et cetera. That enables the staff to know when they are going to be there so they can set down their hearings and ensure that the files are available for them along with all of the other material they need to look at.

**Mr Lynch**—We do have a pattern of days that the part-time members agree to with their senior members, who have responsibility for them. There are three senior members and each of those has a fairly equal number of members to supervise. A pattern of days is agreed. It can vary. Subject to performance, the cost-effectiveness of the members, the quality of their decision making and their professional development needs, the number of days they are actually working with the tribunal is subject to agreement and further negotiations. It is not set in concrete.

We sometimes ask part-time members to work more days than they are currently, particularly if they are very competent members. If they are not competent and are performing very badly they may be given fair warning that their days may be reduced. If they are on four days, it may be reduced to three days and so on. Generally, we have no-one working fewer than two days a week because we feel that, to maintain competence, you do need to have at least two days exposure to the tribunal's work. The case law is pretty complex. We need to have members who understand the case law and can work properly within it.

**Senator KIRK**—So, when people sign on, they have to commit to at least two days—is that what you are saying?

**Mr Karas**—Yes.

**Senator KIRK**—You mentioned a few words there like competency and performance. Clearly there could be some issues there in that how many days you work depends on how competent you are and how you are performing—in other words, the types of decisions that you are making. I am somewhat concerned about that variability and how those things are measured. How do you go about doing that? You mentioned that it was the senior members who allocate to the cases to the individuals. Is that right?

**Mr Lynch**—The senior members work in conjunction with a case load management team that allocates cases under our case load management and constitution policy, essentially, as fairly as possible and by blind allocation. People do not pick and choose which cases they want to work on. Everyone gets their share of what is in the compactus of both tribunals. Senior members do have a professional development responsibility and they do an annual performance appraisal of members. So they have responsibilities to mentor their colleagues, keep an eye on how they are conducting hearings and value-add to their development within the tribunals. So there is a lot of peer review.

We have a code of conduct that looks to consistency of decision making on similar facts. We have complaints mechanisms. The principal member is active on the professional development committee and listens to tapes of members where there might be a complaint from an applicant or adviser. If a senior member believes that a member is not performing, that is brought to the notice of the member and strategies are put in place to try to help the member through whatever difficulties they may be having. There is a fairly comprehensive response to members who need development and assistance.

Ultimately, it is really a question of last resort to reduce the number of days they work. That is generally brought around over a period of three to six months. If they cannot overcome whatever the problem is then the number of days can be reduced. We seldom have that occur, I am happy to say. But it is not something that has not happened in the past.

**Mr Karas**—I would just add that our members do sign a performance agreement in relation to their activities with the tribunal. We do provide ongoing training where required and, if required, counselling as well for members in relation to their case management and case loads and things of that type or whatever their position might require.

**Senator KIRK**—When appointments are made, are they made for a period of time—say, a three-year appointment?

**Mr Karas**—It is usually three years. The round of appointments now for some period of time have been for a period of three years.

**Senator KIRK**—Does that apply for the full-time members as well currently?

**Mr Karas**—Yes.

**Senator KIRK**—I understand that it is usually the case that a single member constitutes an RRT panel. How is the constitution of the panel determined? When is a decision made that a principal member or a full-time member will preside, as opposed to a part-time member? Is it the senior members who make that decision, as you indicated before?

**Mr Karas**—No, as indicated by the registrar, we do have a case load and constitution policy. The allocation of cases is now fair and equitable amongst the members as such.

Usually, a member who requires five cases gets the next five cases. You are right when you identified that they are single-member tribunals, and that has been the case now for quite some time. It has worked well and it continues to work well. At this stage, there is no contemplation on the part of the tribunal to alter that on the basis that, as I said, it has been working well and at the same time it is providing for the case load to be dealt with in the timely fashion that has already been referred to.

**Senator KIRK**—You also referred to cross-appointments. I think you said it is now the case that all members appointed to one tribunal are effectively appointed to the other tribunals.

**Mr Karas**—Yes. That has been the case since January last.

**Senator KIRK**—Since January this year?

**Mr Karas**—January last.

**Senator KIRK**—This year or last year?

**Mr Karas**—Last year, 2006.

**Senator KIRK**—You now have co-location in place as well?

**Mr Karas**—Yes, the tribunals have been co-located for some period of time. The first co-location occurred in Melbourne in 2003 and, in Sydney, in 2005.

**Senator KIRK**—It sounds, for all intents and purposes, that you are really working as one tribunal with two divisions. Would that be fair to say, or is there still separation?

**Mr Karas**—No, legally, they are two discrete tribunals as such. But, administratively, even the staff work for both tribunals.

**Senator KIRK**—It sounds as though there has virtually been an amalgamation through administration and appointments to the tribunal?

**Mr Lynch**—Part of the government efficiency initiative, now dating back some years, was to make tribunal efficiencies in every federal portfolio agency. In the immigration portfolio the two tribunals we have are the Refugee Review Tribunal and the Migration Review Tribunal. It has made very good sense to bring them together. In Melbourne they were actually in the same building but on different floors, with space that could be usefully combined. We have moved to other premises in Lonsdale Street. In Sydney, the tribunals were in three different buildings on five different floors—tower blocks—so it made a great deal of sense to co-locate us. We did that and, administratively, we are, as you say, operating largely as one.

From a financial management point of view, the government recognised the need for us to become a single prescribed agency and that occurred on 1 July last year. That has led to us being able to issue a single annual report. Hopefully, the next annual report, which the principal member issues, will have one set of financial statements instead of two sets of financial statements, which the current annual report still has. But at least it is one report and, hopefully, that is more convenient to everyone who needs to use it, including this committee.

**Senator KIRK**—Have assessments yet been made as to cost savings, if any, that have been achieved as a consequence of the changes to the administrative arrangements that you have spoken of?

**Mr Lynch**—That is a bit of a moving feast because, as we co-locate and plan for greater efficiencies, savings and so forth, which are on a long-term basis, we do have to take account of volatility in the case load and also new policy, new legislative requirements and so forth. So it is hard to pin a figure and say, ‘Yes, we’ve made a 10 per cent savings here or a five per cent savings there.’ Essentially, we are looking to consolidate the possibility of making substantial savings over the next few years.

We have, for example, moved away from the use of two case management systems. I recall from earlier sittings of this committee your interest in our new case management system. It went live on 3 April last year, and we have named it ‘Casemate’ because it is meant to be, and has been, very friendly to its users. It is easy to use. Our members, quite unusually amongst tribunals, and courts for that matter, are using the case management system themselves, not only to manage their own cases but to access reports on tribunal work and how they are going in comparison with their peers and so forth. So it has been a boon for the tribunals. We are hoping that a single case management system will deliver not only the efficiencies we have been pursuing, but some savings in staff numbers and ultimately member numbers once we have a member component that is fully cross-trained, cross-skilled, on both tribunals.

**Senator KIRK**—How do you go about cross-training the appointments so that they can easily move between one tribunal and the other? Do they receive the same training? What sort of professional development do the members receive?

**Mr Karas**—We start off with induction training, which initially is general in its nature. Then it moves into what a member would be required to be able to work on with both of the case loads as such. I think I indicated earlier that it is continuing and it is ongoing. We have a professional development committee, which I chair, which consists of the senior members and other managers within the tribunal. We set a program of training forward for a few months and we take advantage of important, well-recognised speakers. To give you an example, Professor Hathaway, who is well-known in the refugee area, will be addressing tribunal members informally in Sydney and more formally in Melbourne, if I remember correctly, later this month. At the same time we have the benefit of ambassadors and high commissioners who are overseas who come back mid-term to Australia for various reasons. They give of their time and come along to the tribunal to give an update, usually for the members who are working in the area of those countries and who are familiar with their position and situation.

At the same time, we bring in prominent academics and on occasions have also used people overseas via the satellite link. So I think it is true to say that our training is ongoing and as and when new situations arise, either as a result of an important court case decision or amendments to that act or the regulations, we would have the legal area schedule specific training for that.

**Senator KIRK**—How often are these training sessions held, and is attendance by all members compulsory? It sounds worthwhile.

**Mr Karas**—Members are encouraged to come along to them. I have always said it is compulsory. We do it on alternative dates to take into account the large number of part-time members we have. We do it at a time—usually just after lunch time—when most members do not have hearings and other matters. Because we give them notice of it and the notice is usually a month or more, they arrange their affairs so that they are able to attend. Also, there is a collegiality between members; they chat amongst each other. We also have an annual members' conference, where matters of interest are discussed.

**Mr Lynch**—Our induction of new members who were appointed from 1 July last year was the first time that we have trained new members in both tribunals' work. That has been a success, we are very pleased to say. They have slipped into the regular regime of training of the more experienced members. So they have come along in great strides since coming on board. In a way, they have not carried the baggage of members experienced in either of the other tribunals because they have not been used to two case management systems or to one that is now obsolete and not used. They have just got used to the one new one at almost the same time as the older, more experienced members. Secondly, appraisal of members by senior members does have a look at their training attendance.

**Senator KIRK**—Good.

**Mr Lynch**—So it is integrated in the whole process.

**Senator KIRK**—How many members did you say you inducted in July of last year?

**Mr Lynch**—We have taken on board a total of 17 new members from 1 July last year.

**Senator KIRK**—Is that the total increase in the number of the members of the tribunal?

**Mr Lynch**—Some of those were replacements for members who had left at the end of their appointment or who had retired or resigned.

**Senator BARTLETT**—Earlier on I asked the department about the set-aside rates with a couple of visa classes, in particular, partner visas and the reasonable jump back up again with some student visas in the last financial year in terms of the percentage set aside. I think the partner visa rate is one that is particularly high. I note that it is easy to make these decisions about the validity of relationships when you have had a longer time, but I still want to get an idea from the tribunal about whether, when you get these sorts of trends, you seek to do anything about reducing the set-aside rates. I would have thought that it was preferable to have lower set-aside rates in general. I know it is the department's job to get the decisions right in the first place but, from the point of view of your workload et cetera, does it particularly matter to you whether set-aside rates in a particular area are going up or down, or do you just call it as you see it and leave that for others to worry about?

**Mr Karas**—The members are independent in relation to their decision making. We do ask—in fact, it is required of them—that they test the evidence. You are right in identifying the partner review cases as having a high set-aside rate. That has been traditional now for some time. It has always hovered in the high sixties, and I notice that as at 31 January this year it was at 71 per cent for the partner set-aside rate.

You have also identified some reasons for that—namely, that the department would most probably see an application for a spouse or a partner visa quite early on in the relationship,

and by the time it comes to the tribunal there has been quite a lot of water under the bridge and a lot more evidence has been obtained since then.

I think as well that there is a high proportion of cases which go to the department. I am not too sure of their set-aside rate, but it is only out of those cases that come on to the tribunal. I think you are also aware that the partner category, so to speak, of our workload is, on the MRT, over a third. It hovers between 33 per cent and 37 per cent and I suspect it is sometimes about 40 per cent or so of our case load as such.

We did conduct a couple of years ago a review in relation to spouse cases. It was thought at one stage that perhaps because they were taking so long within the tribunal that was one of the reasons for it. We did have another look at this again, and a number of cases which were looked at were decided in a shorter time frame. Again, it was found that the set-aside rate was also quite high.

Overall, it is an area where we do set aside a large number of the cases. We are talking about personal relationships. From the time of the departmental decision to the time of the tribunal decision, the relationship is more established, there is much more evidence in relation to it and on occasions there is a child born and other associated matters. My colleagues might want to add something in relation to this area.

**Mr Lynch**—We are aware of the issue. We do have informal discussions with our colleagues at DIAC. We have examined the issue over the last few years, as Mr Karas has said. We have a number of points of contact where we discuss these issues informally, day to day. Also, we have a more formal meeting opportunity with senior colleagues at the department and this issue does come up. We are as concerned as you may be to make sure that we make good decisions and of course we hope that the review mechanism that we have provides some learning opportunity for the department's decision makers. To that end, at our last meeting in December we discussed with the department the prospect of arranging some more structured, formal feedback mechanism. We already engage in opportunities to brief decision makers. We have the principal member visit departmental state offices. He has attended a national office training opportunity at the training college to brief staff on how we do business and why we reach the conclusions we reach on the evidence that we examine.

Our state colleagues in the New South Wales and Victorian registries meet with the departmental colleagues in the state offices. That is increasing in frequency now. Recently the senior member in Victoria met a range of officers from the Victorian office and explained why we make the decisions we make. Those are great learning opportunities not only for the tribunals but also for the departmental officers. We are looking to try and consolidate that into a more structured feedback program. We have an MOU that says that that is one of our aspirational requirements of the relationship: to value add to each other's business.

**Senator BARTLETT**—In an organisational sense, does it matter to the tribunal whether set-aside rates are high or low, whether the numbers of appeals coming your way are up or down? Do you deal with what you are dealt, do you have an overall corporate desire that it would be beneficial if the number of appeals coming to you was decreasing—which I note they are in total—and the number of correct initial decisions was higher, or doesn't it really matter to you?

**Mr Karas**—I think it has always been accepted that it is supposed to be an outcome of proper administrative review that primary decision making does improve. Perhaps it is a symptom of that that the tribunals have been now making decisions in this area for a period of time. I think that it has to, as with judicial review on tribunal decisions, have that sort of effect. But, yes, you are right. We do deal with the case load as it comes to us. We do not have any sort of requirement, whether formal or informal, within the tribunal that this is the optimum number of set asides. Each member has to make a decision in relation to the merits of the case and in accordance with substantial justice. We are charged, as everyone well knows, with providing a mechanism of review that is fair, just, economical, informal and quick. The members are independent in relation to the decisions that they make. As I said earlier, I think so long as people can see that the evidence has been tested, the outcomes will be those that are determined by the members.

**Mr Lynch**—There is a corporate ethic or ethos that goes to what you are saying. We are concerned that applicants get the best value at primary and review levels. For example, if we detect a trend in overseas decision making at a particular post, we will have informal discussions in the main with somebody in the department and draw that to attention. That is acted on expeditiously in our experience, and with gratitude for the feedback. It is often not the best way to provide the feedback by decision, where there might be a high level of criticism of an individual delegate. I think that would be most unfortunate. So we have a range of informal feedback opportunities.

**Senator BARTLETT**—Again, I do accept that the total number of cases coming before you in the MRT is going down, and I guess that is a positive reflection on the department. But a total of over 50 per cent of all decisions being set aside still strikes me as high, even with some of those specific issues about partner visas.

**Mr Lynch**—We perhaps should not underestimate the value of the review opportunity to applicants who can improve their cases.

**Senator BARTLETT**—Definitely, particularly if 50 per cent of them are set aside—it is very valuable.

**Mr Lynch**—There is better representation of course. Most applicants do not have representation at primary level. By the time they have understood what a refusal is and why they have failed, they find an opportunity to develop a case, which often meets the regulatory criteria.

**Senator BARTLETT**—Could I ask a similar type of question. With the RRT, I think it is relatively small numbers, but there have been Iraq and Afghanistan case loads two years running now—for Iraqis 97 per cent were set aside, for Afghanis it was 94 per cent, and there were fairly similar numbers the year before. I know you are dealing with fluid situations in other countries, but that seems an almost perfect strike rate, really.

**Mr Karas**—I think a lot of that had to do with the situation in those countries as such and the fact that the tribunal in making its decisions in those areas did have quite a lot of country and other information available to it. To give you an example, with Afghanistan, in the last financial year there was only one case lodged. I think it may have been a favourable outcome with 100 per cent. Overall, the top five lodgement countries and the top five decision

countries of the Refugee Review Tribunal for this financial year have now dropped off, if I can use that expression. Up until 31 January, to give you an example, China, India, Indonesia, Bangladesh and Sri Lanka were providing the five top lodgements and also the five top decision outcomes rather than the Iraq, Afghanistan and Iran case load that you were referring to, Senator.

**Senator BARTLETT**—With regard to China—it is partly towards the department side of things, and I will not go back there—there has been quite a dramatic increase in the last few years compared with others, which have dropped down. I do not want to traverse what Senator Kirk has just gone through, but with the shifts and the very different sorts of country issues that you have to consider, rather than going out and finding new people with expertise in those areas, I presume you skill up people amongst your members about particular countries as the demand increases?

**Mr Karas**—There has always been a China case load, even though there has been a different emphasis, so to speak, in relation to the basis of applications. As indicated, yes, it has been an ongoing training program in relation to the membership. But, importantly, we are talking about a number of very experienced members who have been around for quite a period of time and who hit the ground running and are able to pick up quickly in relation to what might be regarded as an increased case load from a particular country as such.

As you well know, within the Refugee Review Tribunal we are dealing with an international convention, and with domestic legislation that has been the subject of quite a bit of judicial review. As a result of that, I think the tribunal is well equipped and I think the statistics speak for themselves in relation to its ability to deal with cases from a number of countries and with the variations which occur within the applications that are lodged to the tribunal from whichever part of the world it might be. As I said, the top five or 10 countries do change from time to time. If you look back at our annual reports over a number of years, you will see there have been changes in relation to those countries, even though it is true to say that China always does figure in the statistics.

**Mr Lynch**—The complexion of the case load is a challenge. As the principal member said, we do have a very active training program. We also have an excellent country research facility. The support that members, both new and more experienced, get from that research facility is high. We also have Chinese academics who come to the tribunal on a fairly regular basis to brief us about the environment in China.

**Senator BARTLETT**—The current level of lodgements is one in every three—33 per cent—from China. That would be a higher proportion than I can recall.

**Mr Lynch**—The case load is very different. It is, with our new policy, requiring a great deal of diligence on the part of members to get across issues and deal effectively with whatever country comes their way. When the case load was 6,000, we had a great many countries with large numbers of cases—Indonesia, Fiji and others—and it was easier to give members cases that reflected their interest and their expertise. This poses a challenge for us; there is no question about it. It goes to the issues of complexity of case load, time and so on.

**Senator KIRK**—I want to ask some questions about so-called frivolous claims. We quite often hear about these types of matters. How do you determine when a matter is frivolous? Do you keep some kind of record of percentage of claims of this nature?

**Mr Lynch**—The hard statistics essentially are our primary source for making that statement, although there is very high anecdotal evidence from members themselves regarding the sorts of stories and accounts from applicants of why their application for review is not really their application for review; it was actually produced by a friend or a migration adviser and does not bear any resemblance to their true circumstances. The hard statistic is that 72 per cent of RRT decisions are affirmed—that is the current statistic to the end of January this year from 1 July last year—21 per cent are set aside and the remainder are matters without jurisdiction or cases that are withdrawn. Apart from the anomalies that Senator Bartlett raised a short while ago with particular countries like Afghanistan and Iraq, that has been a fairly constant set aside affirm rate, for the tribunals for many years.

**Senator KIRK**—Is that the same for the MRT?

**Mr Lynch**—The MRT has been fairly constant—roughly half the incoming case load is set aside. That has been fairly constant since 1999, and the spouse set-aside rate has been constant since 1999 at 60 per cent or higher.

**Senator KIRK**—The fact that a matter is affirmed does not mean that it is frivolous, does it? I am wondering how you make some sort of assessment of that.

**Mr Lynch**—If a person is not a refugee, there may be humanitarian or compassionate circumstances attaching to the application. There are relatively few of those that the tribunal might identify for the minister's consideration through the department, or for assessment by the department for possible ministerial consideration. Apart from those, we really are left with the fairly firm statement from a member's decision that this person is not a refugee and may in many cases—I cannot say precisely what figure of that 72 per cent—be producing a fabricated case. Many people might flee persecution in that organised crime is seeking to deal with them or they may be fleeing a harsh parental environment or something of that nature. So, in that sense, they are unfounded or frivolous. The court does identify such cases as well sometimes. There are some fairly celebrated cases where the courts have said that an applicant almost should be estopped from lodging further litigation because of the vexatious nature of their claims.

**Senator KIRK**—In situations where a member thinks that perhaps the matter is frivolous, they are still given a hearing? They are still treated in the same manner as any other applicant?

**Mr Karas**—We are required under the legislation that, if we are unable to make a favourable decision on the papers, one has to offer a hearing unless, of course, one does correspond with the applicant and there is no response to the correspondence. There is provision within the legislation that you can move to make a decision without a hearing being offered or without the applicant being invited to a hearing.

**Senator KIRK**—I wanted to ask, actually, about applications decided on the papers. I understand that it is quite rare for a matter to be determined on the papers. Do you keep figures as to the cases that are decided without going to a formal hearing?

**Mr Lynch**—We can get you those statistics. Certainly, we collect statistics on those. But, of the cases that are set aside and heard, we could not give you a precise number today. The other point I should have mentioned was that we do make judgements on frivolous or unfounded applications from the rate of no-shows at hearings when an invitation to a hearing has been issued and also from no replies—where somebody does not reply at all. Sometimes people reply to your invitation to hearing saying, ‘We are coming,’ but they do not show. In many cases they do not reply at all. So we make a judgement that they really did not have a case, otherwise they would have come along and made it.

**Senator KIRK**—So a matter is then just determined in their absence, I take it, if a person does not turn up for the hearing?

**Mr Lynch**—Yes, that is the case.

**Senator KIRK**—Is that regarded as a decision on the papers or is that a different process?

**Mr Karas**—No, that is regarded as a decision in accordance with the legislation, because it does allow that, if a person does not show up at a hearing, we can go on to make a decision with the evidence that is there before the tribunal.

**Senator KIRK**—And then, as to applications decided on the papers, you said you were going to explain that and how often that actually occurs. I understand it is quite rare.

**Mr Lynch**—We have to get you some figures on that. We can take that on notice if you are happy with that.

**Senator KIRK**—That is a small percentage of cases, is it fair to say?

**Mr Karas**—It is a small percentage of cases. I think it occurs more on the Migration Review Tribunal than it does on the Refugee Review Tribunal. Even though I am not sure of the exact number, I do recall that, in the partner case load which Senator Bartlett was referring to, there are a number of decisions that are sometimes made on the papers in relation to partner applications given the fact that, as we have indicated and I think the senator himself indicated, there has been a period of time when the relationship has been strengthened and there is much more evidence available to the tribunal than would have been available to the primary decision maker.

**Senator KIRK**—Finally, in relation to your performance, in the 2005-06 annual report you mentioned that in the fourth quarter of the year, 76 per cent of cases were decided within 90 days, which is an improvement on the first quarter. What are the figures currently? How many are determined within the 90 days and how many are going beyond that?

**Mr Karas**—I think it is about 80 per cent, but—

**Mr Lynch**—We currently have 92 cases that are older than 90 days. That comprises 15 per cent of our case load of 620. So some 92 out of those 620 are over 90 days. We are travelling with an average of—

**Mr Karas**—From 1 July 2006 to 31 January 2007 the average time taken for all cases decided was 81 days.

**Mr Lynch**—We have been improving since the 90-day time limit was brought in. We are currently complying in 76 per cent of cases.

**Senator KIRK**—So that is a current figure as well, is it? The 76 per cent of cases I had was from the annual report last year.

**Mr Karas**—I was going to say that 76 per cent of the cases decided from 1 July 2006 to 31 January 2007 were completed within the 90-day time limit, according to the figures that I am looking at here.

**Senator KIRK**—That is all the questions I have.

**CHAIR**—There are no further questions for the tribunals. So Mr Karas, may I thank you, Mr Lynch and Mr Jones for joining us. Mr Metcalfe, as I said at the conclusion of the previous session, we thank you and your officers for your assistance today. We look forward to seeing you again in May. Thank you very much, Minister, for your attendance at our estimates hearings. I declare the evening's proceedings adjourned.

**Committee adjourned at 9.31 pm**