



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL AFFAIRS  
LEGISLATION COMMITTEE

**Estimates**

MONDAY, 23 MAY 2011

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**  
**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**  
**Monday, 23 May 2011**

**Senators in attendance:** Senators Abetz, Barnett, Bilyk, Boyce, Bob Brown, Brandis, Cash, Crossin, Hanson-Young, Furner, Mason, Parry, Pratt and Trood



## IMMIGRATION AND CITIZENSHIP

### In Attendance

Senator Carr, Minister for Innovation, Industry, Science and Research

Senator Lundy, Parliamentary Secretary for Immigration and Multicultural Affairs

### Department of Immigration and Citizenship

#### Executive

Mr Andrew Metcalfe, Secretary

Dr Wendy Southern PSM, Deputy Secretary

Mr John Moorhouse, Deputy Secretary

Ms Jackie Wilson, Deputy Secretary

Mr Peter Vardos PSM, Deputy Secretary

#### Internal Products:—Enabling divisions that provide services and support to the delivery of all programs

Mr Stephen Sheehan, First Assistant Secretary, Financial Strategy and Services Division

Ms Jenny Hardy, Chief Lawyer, Governance and Legal Division

Mr Craig Farrell, First Assistant Secretary, People and Executive Services Division

Mr Christopher Callanan, Acting First Assistant Secretary, Visa and Offshore Services Division

Ms Marie Johnson, First Assistant Secretary, Client Strategy and Performance Division

Mr David Walsh, Acting First Assistant Secretary, Refugee, Borders and Onshore Services Division

Mr Sandi Logan, National Communications Manager

Ms Renelle Forster, Assistant Secretary, Ministerial and Executive Services Branch

#### Outcome 1—Managed migration through visas granted for permanent settlement, work, study, tourism, working holidays or other specialised activities in Australia, regulation, research and migration policy advice and program design.

##### Program 1.1—Visa and Migration

Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division

Mr Peter Speldewinde, Assistant Secretary, Labour Market Branch

#### Outcome 2—Protection, resettlement and temporary safe haven for refugees and people in humanitarian need through partnering with international agencies; assessing humanitarian visa applications; and refugee and humanitarian policy advice and program design.

##### Program 2.1—Refugee and Humanitarian Assistance

Mr Garry Fleming, First Assistant Secretary, Border Security, Refugee and International Policy Division

**Outcome 3—Lawful entry of people to Australia through border management services involving bone fide traveller facilitation; identity management; document verification; intelligence analysis; partnerships with international and domestic agencies; and border policy advice and program design.**

**Program 3.1—Border Management**

Mr Garry Fleming, First Assistant Secretary, Border Security, Refugee and International Policy Division

Mr Gavin McCairns, First Assistant Secretary, Risk Fraud and Integrity Division

**Outcome 4—Lawful stay of visa holders and access to citizenship rights for eligible people through promotion of visa compliance responsibilities, status resolution, citizenship acquisition integrity, case management, removal and detention, and policy advice and program design.**

**Program 4.1—Visa Compliance and Status Resolution**

Mr Robert Illingworth, Acting First Assistant Secretary, Compliance and Case Resolution Division

**Program 4.2—Onshore Detention Network**

Mr Greg Kelly, First Assistant Secretary, Detention Operations Division

Ms Fiona Lynch-Magor, Acting First Assistant Secretary, Infrastructure and Services Management

**Program 4.3—Offshore Asylum Seeker Management**

Mr Greg Kelly, First Assistant Secretary, Detention Operations Division

Ms Fiona Lynch-Magor, Acting First Assistant Secretary, Infrastructure and Services Management

Ms Kate Pope, First Assistant Secretary, Community Detention Implementation

Mr John Lynch, CEO, Independent Protection Assessment Office

**Program 4.4—Illegal Foreign Fishers**

Mr Greg Kelly, First Assistant Secretary, Detention Operations Division

**Outcome 5—Equitable economic and social participation of migrants and refugees, supported where necessary, through settlement services, including English language training; refugee services; case coordination; interpreting and translation services; and settlement policy advice and program design.**

**Program 5.1—AMEP and Settlement Services for Migrants and Refugees**

Mr James Fox, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

**Outcome 6—A cohesive, multicultural Australian society through promotion of cultural diversity and a unifying citizenship, decisions on citizenship status, and multicultural and citizenship policy advice and program design.**

**Program 6.1—Multicultural and Citizenship Services**

Mr James Fox, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

**Migration Review Tribunal and Refugee Review Tribunal**

Mr Denis O'Brien, Principal Member, Migration Review Tribunal and Refugee Review Tribunal

Ms Amanda MacDonald, Deputy Principal Member, Migration Review Tribunal and Refugee Review Tribunal

Mr Colin Plowman, Registrar, Migration Review Tribunal and Refugee Review Tribunal

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

**Committee met at 09:00**

**CHAIR:** I declare open this public hearing of the Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure in respect of the year ending 30 June 2012, and the particulars of certain proposed expenditure in respect of the year ending 30 June 2012 for the Attorney-General's and the Immigration and Citizenship portfolios. The committee must report to the Senate on 21 June 2011 and we have set the date of 8 July 2011 as the date by which answers to questions on notice are to be returned. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance then our secretariat has a copy of those. I want particularly to draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised and which we will now incorporate into Hansard.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

**CHAIR (Senator Crossin):** Officers called on for the first time could I please ask you to state your full name and the position that you hold for the Hansard record. Just a reminder that it is useful if your name tags are in front of your glasses. It is not so much for us; it is really for Hansard's sake to read those. I remind everyone in the room to please turn off your mobile phones.

The committee will commence examination of the Immigration and Citizenship portfolio. We are going to begin today's proceedings with the Migration Review Tribunal and the Refugee Review Tribunal. This will be followed by the Department of Immigration and Citizenship commencing with cross-portfolio, corporate and general questions, followed by outcomes 1, 2, 3 of the department and so on down our program.

I want people to know that we have agreed to indicative time frames for today's proceedings, as listed on the program. However, if we do actually finish an area earlier than expected then we will move on to the next outcome. We are just going to keep rolling through. I particularly want people to note, for example, that if we happen to finish outcome 3 before 11 o'clock we are going to move to outcome 4, no matter what the hour is. I know you will be here with your staff, thank you, Mr Metcalfe. Also proceedings will be suspended for



the breaks that have been outlined on the program. I want to draw your attention gain to the fact that lunch is 12.30pm to 1.30pm and the dinner break again is 6.30pm to 8.00pm.

Having said all of that as a bit of an introduction and background I now welcome Senator, the Honourable Minister Kim Carr, to our proceedings this morning. Senator Carr of course is the Minister for Innovation, Industry, Science and Research and is representing the Minister for Immigration and Citizenship today. I welcome officers of the Department of Immigration and Citizenship and also officers from the Migration Review Tribunal and the Refugee Review Tribunal. We might proceed immediately to the MRT and RRT. I am going to assume, Senator Carr, that you do not have an opening statement?

**Senator Carr:** Good morning, Chair, and you are right in your assumption.

### **Migration Review Tribunal**

### **Refugee Review Tribunal**

[09:04]

**CHAIR:** We might deal with the MRT and the RRT and then when we move to the department, Mr Metcalfe has an opening statement for us. I welcome officers from the MRT and RRT. Mr O'Brien, do you have an opening statement that you wanted to provide for us this morning?

**Mr O'Brien:** Yes just a brief one, Madam Chair. The MRT and the RRT last appeared before the committee in February and by way of opening I would just like to highlight some of the more significant developments since then. First of all, turning to our workload in this financial year up until 30 April, our workload has continued to increase with lodgements in both tribunals continuing their upward rise. As at 30 April, the details for both lodgements and decisions are as follows. On the RRT, we have had 2,368 lodgements which is an increase of 29 per cent when compared with the same period in 2009-10. We have made 2,144 decisions, which is an increase of 19 per cent when compared with the same period in 2009-10 and as at 30 April we had 962 active cases, an increase of 46 per cent when compared with the same period in 2009-10. Turning to the MRT, we have had 8,367 lodgements, an increase of 26 per cent when compared with the same period in 2009-10. We made 5,035 decisions up until 30 April, which is a decrease of 22 per cent when compared with the same period in 2009-10. We had, as of 30 April, 10,381 active cases, an increase of 59 per cent when compared with the same period in 2009-10.

You can see from these figures that lodgements continue to be high across the MRT. While those high lodgements are in the area of bridging visitor and permanent business visa refusals and also student visa cancellations, the notable increase continues to be in the area of student visa refusals. I mentioned that there has been a decrease in our MRT decision output, and that is principally due to the substantial increase in our RRT work to which we must give priority. In general, RRT cases are more complex and time-consuming than the MRT cases.

As I advised you when we appeared in February, our capacity difficulties have been exacerbated by the loss of a number of experienced RRT members to the department's Independent Protection Assessment Office, which assesses the claims of irregular maritime arrivals. We have had eight tribunal members who have taken leave of absence to do this work.

Turning to judicial review applications, the number of judicial review applications in relation to our decisions continues to be much fewer than in previous years. Court remittals also remain low for both tribunals, consistent with recent trends. Of the 5,035 MRT decisions made to 30 April, 144 or 2.9 per cent have been the subject of an application for judicial review and 148 judicial review applications were finally determined. The judicial review application was dismissed in 142 or 77.2 per cent of those cases. In the same period, of the 2,144 RRT decisions made, 18 per cent or 385 have been the subject of an application for judicial review, 507 judicial review applications were finally determined and the judicial review application was dismissed in 92.9 per cent or 471 of the cases.

I will just briefly mention our strategies to deal with the increased workload. At the last estimates hearings I let you know about a range of strategies we had put in place to deal with the increased MRT workload. Those strategies included the establishment of task forces to deal with particular cohorts of cases and greater use of allocations to members of batches of cases of a similar kind. The strategies are working and we will finish the year quite strongly in terms of MRT output. I look forward really to our next appearance before the committee when I can give senators some solid data about that.

I will briefly mention member recruitment. As I mentioned at our last appearance, action is underway to recruit additional members and senior members in order to address our capacity problems. The selection advisory committee's recommendations are now with government and subject to cabinet processes. I am hopeful that we will have additional members on board in July.

Finally, I will mention resourcing arrangements flowing out of the budget. The 2011-12 budget proposes increased appropriations for the tribunals, being \$13.9 million over the four years of the forward estimates. Those appropriations will be offset by increases in the MRT and RRT application fees from 1 July. The fee changes will be reflected in amending migration regulations and will involve a couple of principal things: firstly, increases in application fees by 10 per cent from \$1,400 to \$1,540 with future two-yearly CPI increases; secondly, there will be modifications to the fee waiver and fee refund arrangements for the MRT, imposing a reduced fee of \$770 in financial hardship cases and refunding 50 per cent of the fee if a favourable decision is made. The tribunals' resourcing arrangements were last reviewed in 2004 and as senators are aware, we have been under financial pressure over the last few years given the impact of cost increases, the increased complexity arising from court judgments and the large increases we have had in our lodgements. The \$1,400 application fee has not been increased since 1999 for the MRT and since 2003 for the RRT. I should mention that the proposals for fee changes do not affect current arrangements for the RRT, under which no application fee is paid upfront and only becomes payable if the person is found not to be a refugee.

My colleagues and I are happy to elaborate on any of these matters or to answer any questions the committee may have.

**CHAIR:** Are there no other statements from your other members?

**Mr O'Brien:** No.

**CHAIR:** We will go to questions then.

**Senator CASH:** Could the opening statement be tabled please and we all receive a copy?

**CHAIR:** Yes, it will be.

**Senator CASH:** Thank you. Mr O'Brien, in your opening statement you stated that the tribunals' resource arrangements were last reviewed in 2004. Does that include your staffing resources?

**Mr O'Brien:** No, I was referring there simply to the fees.

**Senator CASH:** Simply to the fees?

**Mr O'Brien:** Yes.

**Senator CASH:** A few brief questions which we ask at each estimates; the first is in relation to set-aside rates. What has been the set-aside rate for the RRT and the MRT for 2011-12 by country of origin and visa category and how does this compare with previous years?

**Mr O'Brien:** Could I give the overall figure on the MRT? Our set-aside rate this year to 30 April is 43 per cent.

**Senator CASH:** Is that an increase or a decrease?

**Mr O'Brien:** It is slightly less than it was in 2009-10; it was 45 per cent in 2009-10. It has indeed been decreasing over the last few years. I think in 2007-08 it was 50 per cent, in 2008-09 it was 48 per cent, in 2009-10 it was 45 per cent and this year so far it is 43 per cent. Were you interested in the categories?

**Senator CASH:** Yes please.

**Mr O'Brien:** The highest set-aside rates this year are for partner refusals, which are 63 per cent; skilled refusals stand at 56 per cent set-aside rate; and visitor refusals had a 56 per cent. The other categories are obviously lower than that, so they are the highest three.

**Senator CASH:** Could I get you to table or provide on notice the additional categories?

**Mr O'Brien:** Yes, we could do that. Moving to the RRT, our set-aside rate for this year is 24 per cent which is entirely consistent, in fact exactly the same as our set-aside rate for last year. I can run right through the countries if you wish?

**Senator CASH:** Perhaps, just due to time, I will get you also to provide to us the countries.

**Mr O'Brien:** We could certainly do that too. The Chinese cohort still represents our largest cohort on the RRT. It runs at about a third of our cases and the set-aside rate for China, just to give you a flavour of it, is 22 per cent.

**Senator CASH:** Do you have a list of the members of the RRT and the MRT including the dates on which their appointments commenced and when their appointments are due to expire?

**Mr O'Brien:** I do not have that with me.

**Senator CASH:** But could you provide that to us?

**Mr O'Brien:** Indeed I think that information is largely on our website, is it not?

**Mr Jones:** It is also included in our annual reports.

**Senator CASH:** That is fine if you could still provide it to us that would be greatly appreciated.

**Mr O'Brien:** We can do that.

**Mr Jones:** That is the up-to-date list?

**Senator CASH:** Correct.

**Mr Jones:** The annual report clearly does not have the up-to-date list.

**Senator CASH:** What was the total cost of running the tribunals in 2010-11 to date?

**Mr Plowman:** We will have to take that on notice because I do not have the to date figure in front of me.

**Senator CASH:** What figure can you provide to the committee today seeing that it is budget estimates?

**Mr Jones:** I can give you the total expenditure to 30 April 2011, which is \$38.2 million.

**Senator CASH:** How does that compare with the previous period?

**Mr Jones:** I do not have the figure for the previous year.

**Senator CASH:** What figures do you have? What did you come prepared with today?

**Mr Jones:** I do not have a previous figure; I have just got a figure to the end of April for total expenditure.

**Senator CASH:** Can you provide to the committee the comparison since August 2008?

**Mr Jones:** We will take that on notice.

**Senator CASH:** In relation to the answer to a question that was provided on notice to the committee in relation to the copy of an MOU for the independent protection assessment committee, we ended up with the memorandum of understanding concerning the provision of legal and country advice services between the department and the Refugee Review Tribunal. Can you take me through exactly what this document is?

**Mr O'Brien:** Yes. That was the initial document that we entered into with the department relating to the provision by us of country advice services and legal advice services to the assessors in that office. That is principally what that document deals with. With the increased volume of work of the Independent Protection Assessment Office, it has been found necessary for us to renegotiate some of the financial terms of that document. We are in the process of trying to finalise an amendment of the document, which we do hope to finalise next month.

**Senator CASH:** Answer 4 that we were provided with also states:

A review of the MOU is presently being undertaken by the Independent Protection Assessment Office and the RRT.

What is the exact status of the review?

**Mr O'Brien:** As I said to you, we have been talking with the Independent Protection Assessment Office and we are very close to agreeing an amended memorandum of understanding, which we are expecting really to sign off next month.

**Senator CASH:** What would be the implications of not signing off on it next month?

**Mr Plowman:** There would be no real implications. The main focus of the review is over what costs we apply in terms of the country and legal services that we provide. We continue to provide those services while we are renegotiating the MOU, which is particularly with regard to costs. There are a few other things around the type of services we do, quality and

things like that, and having certain words in there about that but there are no implications. We still provide those services and it carries on until we finalise it. We are very close to finalising the details now.

**Senator CASH:** Will there be an increase in costs that the department has to pay under the new MOU?

**Mr O'Brien:** The MOU is based on the fundamental assumption that it is a cost recovery based service that we provide. In other words, the provision of services to the Independent Protection Assessment Office is not intended to impact adversely on the provision of country and legal support to the tribunals. To the extent that we need, for example, to provide extra legal services to the Independent Protection Assessment Office, the funding is meant to cover the costs of any member of staff, another lawyer or another half of a lawyer, who would be needed to provide that service.

**Senator CASH:** You said it is not intended to impact adversely, has there been any case where it has impacted adversely?

**Mr O'Brien:** No, we have been quite clear about this. It operates on the basis that the work provided to the tribunals by both our country advice area and our legal services area remains a priority. Indeed there are certain standards that the tribunal has for the provision of those services to members of the tribunal. To date we have had absolutely no impact at all on advice being provided within the time standards and so forth that we are customarily used to.

**Senator CASH:** What has been the total cost to the department, to date, under this memorandum of understanding?

**Mr O'Brien:** When you talk about the department, do you mean to us?

**Senator CASH:** Sorry to you, yes.

**Mr Plowman:** I think we would have to take that on notice. We keep records about it but I do not know what sort of fees we charge them to date.

**Senator CASH:** Could you please provide to the committee an outline of the fees that you have charged to date and what has been the total cost?

**Mr Plowman:** We certainly can.

**Mr O'Brien:** We can take that on notice, yes.

**Senator CASH:** So you actually pay the tribunal under this?

**Mr O'Brien:** Sorry, the department?

**Senator CASH:** The department.

**Mr O'Brien:** The department pays the tribunal, yes.

**Senator CASH:** Are there any cases where the money received by the tribunal is in excess of what is actually incurred by way of costs?

**Mr O'Brien:** There should not be because, as I say, it is a cost recovery exercise. Perhaps the registrar might want to say something?

**Mr Plowman:** We do not do an assessment on each individual request to see that the present MOU has a fee per case. We are looking probably to change it to a fee in terms of what resources are provided. It is not really an assessment on what is charged for each individual case. We just have a case fee, we provide that service, and we manage so as it

balances out their needs versus our needs. We do not do any assessment of costs on the individual arrangement.

**Senator CASH:** In terms of set-aside decisions of the tribunal, how many were actually challenged by the minister in the financial year 2010-11 to date?

**Mr O'Brien:** Do we have those figures to date? We are just finding that. We did provide an answer to a question on notice last time relating to last year.

**Senator CASH:** You did.

**Mr O'Brien:** I do not think I have got the up-to-date-ones for this year. From 1 July 2010 to date, there have been two MRT decisions which the minister has sought judicial review of.

**Senator CASH:** Just two?

**Mr O'Brien:** Just two. One of them I think did not go anywhere and in regards the second one, my note here says that after the Full Court of the Federal Court dismissed the minister's appeal from the federal magistrate, the minister's appeal against the second MRT decision was withdrawn. They have not been significant matters.

**Senator CASH:** Going back to the memorandum of understanding are you able to tell the committee what is the fee per case and how that is determined?

**Mr Plowman:** I think it is \$436. It should be in that MOU that you have in the attachment. It was set in 2010 in August, I think. I do not know what the basis was at the time of setting that one.

**Senator CASH:** Are you able to provide to the committee information as to what was the basis of that fee? You can take that on notice?

**Mr Plowman:** We can certainly try. I can look back to see what the basis was.

**Senator CASH:** I am assuming there is some sort of formula around how you determine that \$436 is the amount that is going to be charged.

**Mr Plowman:** We will have a look at that and see what we can provide.

**Senator CASH:** Because if there is not, I think that would raise a whole lot of questions within itself.

**Mr O'Brien:** Certainly it was worked out. There was a basis for arriving at that figure and we would be able to provide that, I am sure.

**Senator CASH:** Thank you very much. Mr O'Brien, in your opening statement you also said in relation to your case loads that you have task forces to deal with cohorts of cases. How many task forces do you have?

**Mr O'Brien:** We have a student visa refusal task force. In New South Wales we have referred I suppose generally to a task force but in New South Wales the task forces really deal with batches of cases. For example, student refusals, skilled refusals and other sort of groups of cases that we have put together and given to members who have been solely devoted to MRT work. We have tended to try and put like cases together so that they can get through a sort of a run of cases.

**Senator CASH:** Have additional resources been provided to these task forces or have they been taken from within the existing members?

**Mr O'Brien:** Taken from within existing members, yes.

**Senator CASH:** Can you provide to the committee a list of task forces that you have dealing with the cohorts and obviously information regarding the cohorts and which individual members are actually on those task forces?

**Mr O'Brien:** Yes. We can indicate which members have been exclusively working on MRT cases for the last six months.

**Senator CASH:** Thank you very much, I appreciate that. In terms of member recruitment, do you consider that you currently have enough members to carry out your work efficiently?

**Mr O'Brien:** Not at the moment, and that is why we are going through a recruitment phase and I am hopeful we will end up with some additional members out of that.

**Senator CASH:** So you are only hopeful but there is no guarantee that you will end up with additional members?

**Mr O'Brien:** It is a matter for cabinet.

**Senator CASH:** In terms of the member recruitment that you referred to, can you provide me with information as to what actually has been done to date in terms of recruiting additional members?

**Mr O'Brien:** It is really a matter for the department as the process is run by the department. It might be something that the secretary could comment on.

**Senator CASH:** Mr Metcalfe, are you able to enlighten the committee?

**Mr Metcalfe:** I am not actually here at the moment. The department is not before you, but we are happy to answer the question.

**Senator CASH:** I do apologise.

**CHAIR:** This is the MRT and RRT first.

**Senator CASH:** Even though the department is listed under that heading? That is fine. I can ask at the next outcome.

**CHAIR:** The department is next.

**Senator CASH:** I will ask those questions then. In terms of the current number of members, could I confirm that you do not have enough resources, and to quote you, your capacity difficulties continue?

**Mr Metcalfe:** I think you should be aware that there have been advertisements placed for senior members and members of the Migration Review Tribunal and Refugee Review Tribunal in a range of papers last November.

**Senator CASH:** Last November?

**Senator Carr:** That is right. Applications closed on 13 December. Three hundred applications were received with over 60 applications for senior members' positions. Some people, of course, applied for both. The interviews occurred in March?

**Mr O'Brien:** Yes.

**Senator Carr:** Perhaps you could advise the senator on what progress has been made since then.

**Mr O'Brien:** As I indicated, the selection advisory committee, which is appointed under the government's guidelines for making appointments to statutory offices, has reported. The report that it has made is now with government.

**Senator CASH:** Mr O'Brien, have you made any approaches to the department or to government in relation to the urgency surrounding the need for additional resources?

**Mr O'Brien:** I think the minister has been well aware of the need for us to have more resources.

**Senator CASH:** Did you make any of those representations yourself?

**Mr O'Brien:** Yes. I wrote to the minister at various stages.

**Senator CASH:** Are you able to provide the committee with a copy of that letter?

**Mr O'Brien:** I am not sure. I provide the minister with advice on various things. I am not sure that that would be appropriate.

**Senator CASH:** If you could take that on notice, that would be greatly appreciated. The advertisements were placed in November 2010. Applications closed on 13 December. Over 300 applications were received. We are now almost in June 2011. This might be a question that is more appropriate for the department—what is the hold-up?

**Senator Carr:** There is a process through the Australian Public Service Commission for the appointment of statutory office holders. The selection advisory committee was established and we would expect that appointments would commence on 1 July 2011.

**Senator CASH:** 1 July 2011 is when you actually expect those people to commence. Minister, do you have any idea as to how many additional members will be going to these tribunals?

**Senator Carr:** The advice that I have is that five senior members and 22 normal members are likely to be appointed in this recruitment round.

**Senator CASH:** So it is five in this round and 22 in addition?

**Senator Carr:** Twenty-two members, made up of 10 full-time and 12 part-time members, and five senior members are likely to be appointed in this recruitment round.

**Senator CASH:** I will put the rest of my questions on notice. Thank you very much.

**Senator BARNETT:** You mentioned the eight RRT members were being transferred to the independent something office—what is it?

**Mr O'Brien:** The Independent Protection Assessment Office.

**Senator BARNETT:** You said they were on leave of absence. What are the terms and conditions of this leave of absence?

**Mr O'Brien:** There is a current senior member of the RRT and a couple of other full-time members. We have given them leave of absence, effectively, for two years, which is, I understand, the terms of their engagement by the Independent Protection Assessment Office. Although I have referred to it in a shorthand way as leave of absence, there has been nothing formal for the part-time members because part-time members do not have any period or full-time engagement with us.

**Senator BARNETT:** Are they still on your books?



**Mr O'Brien:** They are on our books. Their terms of appointment by the Governor-General still continue as members of our tribunal, but it is just that they are not with us at the moment.

**Senator BARNETT:** So you have part-time members that actually do not exist doing the work for the RRT or the MRT?

**Mr O'Brien:** At the moment we have got, if you like, active members who are doing the work with us and we have got those eight members who we are regarding for the moment as inactive because they are doing other work for the government.

**Senator BARNETT:** For the full-time members, is it abnormal to have two years leave of absence in such a situation?

**Mr O'Brien:** This is quite unusual.

**Senator BARNETT:** It seems unusual.

**Mr O'Brien:** We have not had this sort of thing before. Those members were approached and asked to assist. As a body that is an expert body doing refugee assessment, obviously we were the logical place for the government to come to get some officers.

**Senator BARNETT:** I can understand that, but from our point of view, if this type of procedure continues into the future, then you are going to have a list of full-time and part-time members in the RRT and MRT which will actually be a phantom list. You will have people on that list who actually do not exist doing the work that they are dedicated to do. They will actually be off doing leave of absence for the protection assessment office, will they not?

**Mr O'Brien:** At the moment we have got, as I said, eight of them. It is not a huge number but it has had an impact on our work. We are quite open about it. Who those members are will be mentioned in our annual report.

**Senator BARNETT:** There has been, obviously, a very substantial increase in your workload. It is as simple as that. Senator Cash picked up on whether it is sustainable or not. Obviously it is not sustainable on your basis unless you get the recruitment numbers that you envisage now. Based on the minister's advice, are those recruitment numbers adequate to meet the needs of your workload or are they inadequate?

**Mr O'Brien:** As those new members become more experienced in the work, I think that will place us well to deal with our backlog.

**Senator BARNETT:** I guess we will find out at the next estimates.

**Senator Carr:** Perhaps I could help you with some further particulars. In view of what I have already said, I am advised that the tribunal's current membership is 89. That comprises a principal member, a deputy principal member, six senior members, 28 full-time members, including two currently acting as senior members, and 53 part-time members. The proposed appointments would result in a total establishment of 112 members, which does not exceed the prescription under the legislation. That should be sufficient to meet the requirements.

**Senator BARNETT:** Is that for the RRT or both?

**Mr O'Brien:** The members will be appointed to both tribunals.

**Senator BARNETT:** Just to clarify, I think you said there was a 59 per cent increase in the active cases for the MRT; is that right?

**Mr O'Brien:** Yes, I did say that.

**Senator BARNETT:** That is a huge increase.

**Mr O'Brien:** It is. In addition to the appointment of new members, we will need to continue with our taskforce approaches, our batching of cases, just looking at what we can do internally within the tribunal to move cases more efficiently than we have been able to do in the past.

**Senator BARNETT:** It is fair to say that, if the numbers are growing in detention, then the pressures will continue, will they not?

**Mr O'Brien:** I do not quite understand that reference to detention cases. Detention cases for us are quite a small portion.

**Senator BARNETT:** No, not cases, but those in detention.

**Mr O'Brien:** No, I do not think that should affect us at all, unless the government wants to recruit more members from my tribunals.

**Senator BARNETT:** There are a multitude of reasons for the massive increase in workload on both the RRT but particularly the MRT.

**Mr O'Brien:** Yes. The main area of increase on the MRT has been in student visa refusals. That has been the most significant area. We have found in the past that there are peaks and troughs in this work. Perhaps in two years' time, if I am in front of this committee, I would be indicating that there is some other cohort of cases as outliers.

**Senator BARNETT:** On page 2 of the *Australian* today is an article called 'Call to protect gay refugee claimants'. Have you read it and can you comment on that?

**Mr O'Brien:** I have not read it. It was drawn to my attention. I do not think there is much in it. We occasionally set aside decisions of the department, whatever the claim.

**Senator BARNETT:** It says:

In the case of a Ugandan woman, who had been beaten and raped in Africa because she was a lesbian, an immigration official had accused her of "adopting the persona of a homosexual" to secure a protection visa.

Do you know if that is correct or not?

**Mr O'Brien:** I do not know if that is correct.

**Senator BARNETT:** I will have to ask the department that. Based on your understanding of that article, does that sound accurate to you, from what you read this morning?

**Mr O'Brien:** I just do not know. I am not in a position to comment on the case.

**Senator BARNETT:** Thank you.

**CHAIR:** Mr O'Brien, I thank you and your colleagues once again for assisting us during this process.

**Mr O'Brien:** Thank you very much.

#### **Department of Immigration and Citizenship**

[09:40]

**CHAIR:** We are now move to the Department of Immigration and Citizenship. Firstly, we have got cross-portfolio, corporate and general questions. I understand, Mr Metcalfe, you are going to begin with an opening statement. We invite you to do that.

**Mr Metcalfe:** Thanks very much, Chair, and good morning. Thank you for the opportunity to deliver an opening statement. Our administration occurs within a global, regional and national context. People flows to and from Australia affect our economy, our society and our border security. I would like to use this opening statement to explain that context, which is highly relevant to the information we will be providing the committee by way of answers to your questions today and tomorrow. When I last appeared before the committee in February, the northern hemisphere Arab spring uprisings had deposed governments in both Tunisia and Egypt. Protests have since spread and continued in many other countries and have sparked an ongoing civil war in Libya. The International Organisation for Migration estimates that between February and mid-May almost 800,000 people crossed Libya's land borders into neighbouring countries. In comparison, around 12,000 people fled by boat to Italy and, in some cases, to Malta. In these momentous events we witness a singular example of the interplay between what migration specialists inelegantly call push and pull factors.

Australia receives around two per cent of the global total of new applications for asylum each year. These new applications are only a small fraction themselves of the total number of people displaced each year by war, civil unrest and persecution. Globally, applications for asylum in developed nations peaked in 2002, then fell each year to 2006, before again beginning to rise. This pattern matches the experience of Australia over the last decade. According to the United Nations High Commissioner for Refugees, at the end of 2009 there were more than 43 million people forcibly displaced worldwide; the highest number since the mid-1990s. There were almost four million refugees in the Asia-Pacific region at that time, accounting for 37 per cent of the total number of people in refugee-like situations worldwide.

Madam Chair, the world is progressively opening up to greater migration flows, in large part spurred by the mutuality of interests between the developed world, with its ageing populations, and a rising cadre of young, aspirational, well-educated people in the developing world. There are presently 215 million people living outside their country of birth, accounting for just over three per cent of the world's population. By 2050 that figure is expected to approximately double, with increasing flows to the developed world. Those countries that have the capacity to regulate and manage increased flows; those with the right institutions and the right governance arrangements, are the ones that will benefit from it.

Within this environment the department will continue to provide policy support and program delivery services, as we have done throughout our 66-year history. To do this, we draw on our long experience in this area, together with the use of contemporary research and analysis, as well as a keen appreciation of global and regional events.

In the financial year ending June 2010, there were 28.8 million crossings of the Australian border by passengers and crew; a figure almost one-third larger than our total population. Even within this large volume of border crossings, the total number of irregular migrants in Australia at any one point constitutes around 0.2 per cent—that is, 0.2 per cent of our population; a rate that is at the low end for all developed countries. By way of comparison, in the United States irregular migration is estimated to be about 20 times larger—that is, around four per cent of their population.

There has been a substantial public discourse in Australia on immigration issues over the last year or so, some of which has been based on discussion of fact, but, sadly, some of which

has been ill-informed and has engendered public confusion. As an example of this, a survey conducted last July by Essential Research found that 38 per cent of the Australian population believed that irregular maritime arrivals constituted at least a tenth of the annual immigration intake, and 10 per cent of people thought it was at least half. The correct proportion of irregular maritime arrivals to the migration intake for 2009-10 was far smaller, at 2.9 per cent of the permanent migration and humanitarian programs.

It is true, of course, that in the last two years or so we have experienced a significant number of irregular maritime arrivals. Australia has experienced irregular maritime arrivals for more than 30 years in several major ways, and the department is drawing on our long experience in this area in responding to and providing policy advice in relation to the current situation. In this context I can confidently state that the endorsement of the regional cooperation framework at the Fourth Bali Process Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime in March this year was a milestone in addressing the issues of people smuggling and displacement affecting many countries in the region.

The conference recognised that a regional approach is required to address the challenges of people smuggling and to discourage asylum seekers from the sort of life-threatening sea journeys in overcrowded boats that we have recently, tragically, seen. With your agreement, Madam Chair, I would like to table a copy of that regional co-operation framework.

**CHAIR:** Thank you.

**Mr Metcalfe:** A key policy initiative pursuant to the regional cooperation framework was the Australian and Malaysian Prime Ministers' announcement on 7 May this year of the transfer arrangement of asylum seekers with Malaysia. This is a very important initiative under the regional cooperation framework, and the United Nations High Commissioner for Refugees and IOM are playing a constructive role on this. In addition to these new arrangements, it is important to note that the department has, for many years, made a significant contribution to international efforts in this area by engaging with regional partners to target people-smuggling operations at their source and build the capacity of regional officials to manage their borders. To date, in 2010-11, capacity building training programs have been provided to more than 1,350 officials from foreign immigration and border agencies.

I would now like to turn to the department's management of the large number of persons currently in immigration detention, who are a mixture of clients being processed in relation to their asylum claims, people detected for visa non-compliance or people awaiting removal from Australia. Immigration detention can take different forms, based in various facilities or in community arrangements. It is for administrative purposes only; not for correctional or punitive purposes. To assist in managing this we continue our close and very productive engagement with key advisory groups and stakeholders such as the Council for Immigration Services and Status Resolution, the department's health advisory group, and various NGO forums, for which I again thank them. Together with the Red Cross and their partners, we have made significant progress in the expansion of the community detention arrangements since the Prime Minister's announcement late last year. The minister has approved more than 800 placements for children and vulnerable families to move them from alternative places of detention to community based accommodation, including more than 400 children. The

government has also expanded the immigration detention accommodation capacity on the mainland to help relieve pressure on existing facilities.

We are deeply concerned about the serious issues that exist in relation to deaths in immigration detention and the self-harm and suicide attempts that have occurred in recent months. These events are deeply distressing for a wide range of individuals, including clients and their families and friends, and also for departmental and service provider staff who have been involved in the case management and care of the people affected. We draw on a model that seeks to positively engage people from the time at which they first enter immigration detention. This approach includes assessing risks as soon as possible and promoting practices that will minimise factors leading to deterioration of mental health, including prompt referral for appropriate treatment. This approach has been developed with reference to broader mental health policies that emphasise promotion, prevention and early intervention. We will continue to focus very strongly on these prevention strategies.

As committee members would be aware, in March and April this year major incidents occurred at the Christmas Island and Villawood immigration detention centres. Both incidents involved contumacious behaviour from some people in immigration detention, including the destruction of Commonwealth property. Protest actions by some detainees risked their own health and safety and that of other detainees, staff and emergency services personnel. In considering options for managing such major incidents, including moving a person from a dangerous situation such as a rooftop, all elements need to be carefully considered. This includes the safety of the authorities physically undertaking the task as well as the safety of the protester or protesters. It is important to note that the department has no direct role in removing a person from such a situation, but relies on the relative authorities with expertise in these matters to assess the situation, develop appropriate strategies, and then put these responses safely into effect. To this end, suggestions from various quarters that the government should just take the people down off the roof are simplistic and ignore the realities at play in such situations.

To assist in deterring such situations from eventuating, the government introduced amendments to the Migration Act 1958 in April, including a new provision to toughen the character test. Under the changes the Migration Act is proposed to be amended so that a person will fail the character test should they be convicted of any offence committed while in immigration detention. Immigration detainees, including asylum seekers, have access to Australian systems, including advocates, merits review, legal assistance, the courts and public complaint handling and scrutiny bodies. Their claims are considered in context in accordance with Australia's international protection obligations, and in the context of Australian constitutional and statutory frameworks. There is a clear, proper and well-known legal framework for dealing with any complaints they may have about the circumstances of their detention or their immigration status.

Within this context the department is committed to ensuring rigorous decision making for refugee status determinations. All claims are tested and assessed on an individual basis against the criteria contained in the Refugees Convention by Commonwealth public servants thoroughly trained in refugee law, using relevant, up-to-date country information.

Let me briefly now turn to our migration program. It is my view, and that of many others, that Australia has been extremely well served by its migration programs, both permanent and

temporary. Migrants come to succeed, not to fail, and generally have a strong work ethic. They fill jobs where there are shortages of skilled labour, they boost workforce participation, and they are net contributors to the Commonwealth budget's fiscal balance. These orderly and well-managed programs, week after week, bring doctors and nurses to regional areas, engineers and construction trade workers to new resource projects, IT workers to major financial centres and help reunite families.

This year's budget contained an increase in the size of the permanent migration program up to 185,000 places in 2011-12, and a number of new migration measures. These measures are designed to complement initiatives in other portfolios, particularly around welfare reform, workforce participation and skills, regional development and a sustainable population to ensure that Australia is well placed to harness the benefits of the resources boom, prompted by the rapid industrialisation of China and India.

Significantly, the program has 125,850 skill stream places allocated, of which 16,000 are specifically allocated to the Regional Sponsored Migration Scheme to address critical skill needs in regional areas. For my department that means delivering on new enterprise migration agreements to assist major resource projects, and implementing new, regional migration agreements to direct migrants to those parts of the country most in need. To efficiently deliver those programs, the department remains committed to our ongoing transformation process, which continues to provide significant improvements in the way we deliver our services to clients. This will continue to be done by the substantial effort of our hard working and highly professional staff in our operational network.

There have been changes to our senior leadership groups since the last Senate estimates hearings in February. Most significant of these were at the deputy secretary level, following the retirement of Mr Bob Correll, PSM, who served with the department for nearly six years as a deputy secretary; Ms Jackie Wilson has transferred to the role of Deputy Secretary of the Business Services Group; Mr John Moorhouse has been promoted to Deputy Secretary of the Immigration Detention Services Group; and Mr Peter Vardos, PSM, has been promoted to the position of Deputy Secretary for the department's Client Services Group.

Finally, since the last committee hearings there have been several calamitous events in other countries, prompting the department's involvement in Australia's emergency response. Besides the civil unrest in the Middle East, there was the Christchurch earthquake, followed by the earthquake, tsunami and radiation fallout in Japan. Australia's responses to those events involved a significant number of officers from across my department. Our officers, once again, demonstrated tremendous resourcefulness in providing logistical and operational support in rapidly changing environments which affected clients, staff and concerned family and friends in Australia. I would like to sincerely acknowledge and thank the efforts of all departmental officers involved in our ongoing work in serving the Australian community and our millions of clients. I would also like to thank our many advisory groups and stakeholders for their ongoing commitment and positive engagement on our many issues. Thank you.

**CHAIR:** Thanks, Mr Metcalfe. On behalf of the committee, I welcome those people who have been newly appointed into those positions. Ms Wilson, congratulations as well on your appointment.

**Senator BARNETT:** Chair, will we have that tabled, please?

**CHAIR:** It is here. You have it.

**Senator BARNETT:** That is not the opening statement.

**Mr Metcalfe:** I am happy to table that. What you have might be the Bali process documents.

**CHAIR:** Correct—it is the Bali documents. Now that Mr Metcalfe has finished, he is organising for that to be tabled as well. We will go to questions of the department's cross-portfolio area.

**Senator CASH:** Thank you. I have one question, Mr Metcalfe. Who actually prepared the opening statement?

**Mr Metcalfe:** I did, with consultation with a number of senior colleagues, which is the usual way these things are put together.

**Senator CASH:** Was there any input from the minister's office in the preparation of the opening statement?

**Mr Metcalfe:** I always show the proposed opening statement to the minister's office, and would normally discuss it with the minister's office as part of the usual process.

**Senator CASH:** Did the minister or his office make any changes to the opening statement that you provided?

**Mr Metcalfe:** The only suggestion was that I should specifically refer to the 16,000 places for migrants going to regional areas, to draw out that particular detail. Apart from that, no changes whatsoever.

**Senator CASH:** Thank you. I will defer to Senator Abetz.

**Senator ABETZ:** I do not know if anybody can help me, but we have had advice provided to us about enterprise migration awards as a result of the Prime Minister's visit to China. Has the department been tasked to undertake any work in relation to that prospect?

**Mr Metcalfe:** Awards or agreements?

**Senator ABETZ:** Awards or agreements—same difference. Enterprise migration awards or agreements, which as you would understand, Mr Metcalfe, are designed to get workers from other countries to Australia for a particular project. This was floated in the context of the Prime Minister's visit to China to assist us build infrastructure projects.

**Mr Metcalfe:** The short answer is: yes, we are involved in that. By way of clarification, that is an issue that would normally come up under outcome 1. We are in general questions, so I am happy to answer it at your disposal.

**Senator ABETZ:** Best endeavours were made, I understand, by my office, and we were told this was the place to ask. I do not intend to delay here for long. How much have you got to tell us, Mr Metcalfe?

**Mr Metcalfe:** I will have to get the relevant expert to the table, but he is here so we are very happy to provide advice. The reason I was seeking clarification is that you used the word 'awards', and I am just not sure whether you were referring to some possible scholarship scheme or something like that.

**Senator ABETZ:** No.

**Mr Metcalfe:** I think we are agreed that we are about agreements in relation to resources.

**Senator ABETZ:** I am here with my employment and workplace relations hat on, so by 'awards' I mean industrial awards, not the giving of prizes, although some people see them as such.

**Mr Metcalfe:** I will ask Mr Kukoc, the head of our Migration and Visa Policy Division, to respond.

**Mr Kukoc:** Enterprise migration agreements is one of the budget initiatives announced in 2011-12. The initiative has come as the government's response to the National Resources Sector Employment Taskforce recommendations in July 2010, where this idea was raised initially. The government has agreed to implement the enterprise migration agreements to help the national resources sector, and to address the emerging labour needs in this sector. Enterprise migration agreements is a new initiative which is a form of labour agreement that is specifically tailored to the needs of large resource projects. It is custom designed to cover the project-wide recruitment needs of skilled labour rather than going with individual labour agreements for each of the contractors and subcontractors that have contributed to the large project. The eligibility requirements for the enterprise migration agreements will be that it will only be available to so-called megaprojects.

**Senator ABETZ:** Is there a definition of what a megaproject is at this stage?

**Mr Kukoc:** Yes, it is a requirement that it requires at least \$2 billion worth of capital expenditure and a 1,500 peak workforce contracted on the project. That is the threshold.

**Senator ABETZ:** Who determined those thresholds? Was that in your department or the Department of Education, Employment and Workplace Relations or did the Department of the Prime Minister and Cabinet determine those threshold figures?

**Mr Kukoc:** The thresholds were determined after significant consultation with the business sector.

**Senator ABETZ:** By your department?

**Mr Kukoc:** It was in consultation between our department and the Department of Education, Employment and Workplace Relations, and in the end it was the government's decision.

**Senator ABETZ:** Is there is a working group between the two departments of Education, Employment and Workplace Relations and Immigration and Citizenship?

**Mr Kukoc:** We work closely with our DEEWR colleagues.

**Senator ABETZ:** Yes, but is there a working party?

**Mr Kukoc:** There was a task force, the National Resources Sector Employment Taskforce, and there was a secretariat particularly led by the Department of Employment, Education and Workplace Relations, of which our department was part.

**Senator ABETZ:** Since then has there been a particular task force between the two departments to try to work this out further?

**Mr Kukoc:** No, this particular recommendation of the National Resources Sector Employment Taskforce was—

**Senator ABETZ:** I know the recommendation but to implement the recommendation, is there an implementation task force between the two departments?



**Mr Kukoc:** The implementation fell in the Department of Immigration and Citizenship portfolio domain. As such, the department of immigration had the lead in the consultation process with the business group, but we have done this in close consultation with the Department of Education, Employment and Workplace Relations, and we regularly inform the secretariat for the National Resources Sector Employment Taskforce.

**Senator ABETZ:** Is there any speculation as to how many of these agreements may be entered into over the next five years or decade?

**Mr Kukoc:** We already have around 13 projects that are likely to qualify at the moment. We also have an additional 21 projects that are currently in the feasibility study stage or are still yet to be approved which may also qualify.

**Senator ABETZ:** What are the qualifying factors? Are you able, possibly on notice, to provide us with a checklist of what factors need to be ticked off to be able to qualify for an enterprise migration agreement?

**Mr Kukoc:** I mentioned that the initial threshold is \$2 billion worth of capital expenditure, and a 1,500 peak workforce. These are the two key requirements.

**Senator ABETZ:** Are they the only two thresholds?

**Mr Kukoc:** They are the only two thresholds to qualify to enter into the negotiating stage with the government around the enterprise migration agreement. Other elements, in terms of the training requirement, the range of occupations that will be required, the number of workers and whether it is skilled or semi-skilled will be determined during the negotiations.

**Senator ABETZ:** Who would be undertaking those negotiations? Would it be your department or Education, Employment and Workplace Relations?

**Mr Kukoc:** It will be my department, the Department of Immigration and Citizenship, in close consultation with the Department of Employment, Education and Workplace Relations.

**Senator ABETZ:** You are the main agency?

**Mr Kukoc:** Yes, we are.

**Senator CASH:** In response to question on notice 118 from the February additional estimates in relation to the report being prepared by Professor John McMillan, the department advised that as at 21 March 2011 it had not been finalised and was expected in the near future. Has the department received a copy of the report?

**Mr Metcalfe:** Yes, we have.

**Senator CASH:** When did the department receive a copy of the report?

**Mr Metcalfe:** Professor McMillan formally submitted his review to the government on Tuesday, 17 May.

**Senator CASH:** What reasons did Professor McMillan give for requesting additional time in which to prepare his report?

**Mr Metcalfe:** I think he is a busy man. As you know, he also holds the position of FOI and Information Commissioner. He readily accepted the task but found that he needed a little bit more time to complete his recommendations, and an extension was granted.

**Senator CASH:** Is that a public report?

**Mr Metcalfe:** It is currently with the government. It is an issue for the minister as to whether or not it will be made public.

**Senator CASH:** Are you able to provide a copy to the Senate committee?

**Mr Metcalfe:** It is currently with the government. I will take on notice whether or not a copy can be provided.

**Senator CASH:** Thank you very much. The actual answer to question on notice 118 was received by members of this committee on 18 May 2011, the day after the report was actually given to the government or received by the department. Can you or the department confirm on what date the answer to this question was drafted, given to the minister and again given to the secretary for distribution to the committee?

**Mr Metcalfe:** I will have to take that on notice. There would obviously have been no intention to mislead. The preparation would have occurred while the report was still to come to us. I suspect that there was a slight disjunction between answering it and it coming.

**Senator CASH:** It was eight-week disjunction.

**Mr Metcalfe:** No; I think you are talking about 18 May and 17 May, are you not?

**Senator CASH:** No, the answer that we have been provided states 'as at 21 March' and we did not receive the answer until 18 May.

**Mr Metcalfe:** I will have to check into that.

**Senator CASH:** I would appreciate knowing exactly when that—

**Mr Metcalfe:** I will check into that.

**Senator CASH:** Thank you very much. What is the total number of staff, both full-time and part-time, employed by the department?

**Mr Metcalfe:** Ms Wilson might be able to provide some assistance on this.

**Senator CASH:** On notice, are you able to provide the committee with a breakdown of their salary bands?

**Ms Wilson:** Yes, we can do that.

**Senator CASH:** Thank you.

**Ms Wilson:** As at 31 March, the department employed 7,709 ongoing and non-ongoing staff. I can break that down between national offices and state and territory offices if you would like?

**Senator CASH:** Thank you.

**Ms Wilson:** There are 3,002 staff located in the national office, 4,547 located in state and territory offices and 160 staff providing services offshore.

**Senator CASH:** You will take on notice to provide us what their salary bands are?

**Ms Wilson:** I can do that.

**Senator BARNETT:** Also, can you take on notice and advise how many are in each state and territory and where offshore the officers are located?

**Ms Wilson:** Yes, we can provide that.

**Mr Metcalfe:** Just so we are quite clear: you are asking for numbers of staff in states and territories and in our overseas posts by post?

**Senator BARNETT:** Yes.

**Mr Metcalfe:** So, you are after detailed information?

**Senator BARNETT:** Yes.

**Senator CASH:** What is the total number of staff employed in the media and communications unit within the department? Who is actually the head of the media and communications unit within the department?

**Mr Metcalfe:** Mr Sandi Logan is the head of that branch.

**Ms Wilson:** Sorry, Senator, I am just trying to find that number for you.

**Senator CASH:** I will also ask you to take on notice to provide a breakdown of the salary bands of people working within the media and communications unit.

**Ms Wilson:** I can do that.

**Senator CASH:** While you are doing that, perhaps I can direct some questions to you, Mr Metcalfe. What are the protocols in place for DIAC spokespersons to comment on government policy or incidents within the DIAC portfolio?

**Mr Metcalfe:** The departmental spokesperson operates in a way that has operated for many years now, and it is not dissimilar to spokespersons in other portfolios. Essentially, we will provide comment on operational matters and issues relating to policy but, if there is a political contest about an issue, it is a matter for the minister or the minister's spokesperson. That is the broad delineation. We receive thousands of media requests every year. One or two newspapers in particular are in very regular contact with us, and we believe it is appropriate to try and provide a reasonable service to that request for public information. Part of the role of the communications branch is associated with those public media inquiries. If there is an issue that may span an operational or policy issue, there would normally be a discussion with the minister's office as to the appropriate handling of that.

**Senator CASH:** In terms of DIAC spokespersons commenting on government policy or incidents, does that also include comments on Twitter?

**Mr Metcalfe:** I understand that Mr Logan does use Twitter. Your question implies that he is commenting on policy. My understanding is that his media role relates to operational matters.

**Senator CASH:** Is there a policy surrounding Mr Logan, or somebody in his role, actually Tweeting on operational matters?

**Mr Metcalfe:** I am not a Twitter subscriber myself, but it is my understanding that he uses that particular facility, given that it has such widespread use in the media and by people commenting on our issues, to clarify mistakes or misunderstandings that may have occurred. That can somehow be a very quick and effective way of correcting misapprehensions of the sorts that I described in my opening statement earlier.

**Senator CASH:** Do you have an actual written protocol in relation to what spokespersons are to comment on?

**Mr Metcalfe:** We have a broad protocol in relation to the use of social media by departmental officers, but the specific issue of the use of social media by the department in a

public affairs sense is something that is the basis of understandings and agreements between the head of public affairs, the deputy secretary and myself.

**Senator CASH:** Are you able to provide the committee with a copy of the broad protocols?

**Mr Metcalfe:** Yes, I am happy to.

**Ms Wilson:** Can I respond to your previous question?

**Senator CASH:** Thank you, Ms Wilson.

**Ms Wilson:** It was 30.8 in the national communications branch.

**Senator CASH:** Thank you very much. Since November 2007, on how many occasions has the relevant minister's office instructed DIAC spokespersons to make public comments, on what occasions, who were the people instructed, on what topics and what did they do? Do you actually have information surrounding that?

**Mr Metcalfe:** I suspect that it would be hard to collate that in a form that would allow an easy response. I can check, and I will take it notice if I can add anything to this. My understanding is that there are not collated statistics of that daily interplay that would occur. As I have said, we receive thousands of media inquiries a year, as does the immigration minister. It is one of the more newsworthy aspects of government activity. I imagine that there would be literally large numbers of individual notations spread across various media. There would not be a sort of file saying that we talked this time, we talked that time, and we talked that time. If we can provide anything to you we will, but I suspect that it would be virtually impossible to collate that sort of material.

**Senator CASH:** Are departmental credit cards provided to members of the media and communications unit?

**Mr Metcalfe:** I would have to check on that. My expectation would be that some of those officers would have a departmental credit card to assist in their travel. They frequently travel around Australia and they would be used to assist in any small purchases that might be appropriate.

**Senator BARNETT:** Regarding Mr Logan's use of Twitter, when did that first commence? I did not catch that.

**Mr Metcalfe:** I did not say that, Senator. I did not answer that.

**Senator BARNETT:** Do you know?

**Ms Wilson:** Early 2011.

**Senator BARNETT:** Can you confirm that on notice?

**Mr Metcalfe:** We can probably provide you with a precise date. We will take that on notice.

**Senator BARNETT:** Does Mr Logan use Facebook?

**Ms Wilson:** We opened both a Twitter account and a Facebook account on behalf of DIAC at the same time.

**Senator BARNETT:** Are there any other government departments that use this type of social networking for discussing operational matters?

**Mr Metcalfe:** We would have to check with those departments. It is not something that I have studied closely.

**Senator BARNETT:** You are not aware of any?

**Mr Metcalfe:** I suspect that, as part of the broader government web 2.0 strategy, social media is used by a number of departments as part of communication campaigns. We certainly see that we should use all available media to communicate our messages to our audience.

**Senator BARNETT:** Do other members of the media team use Twitter and Facebook or is Mr Logan the point person for that section of your department?

**Ms Wilson:** It is Mr Logan.

**Senator BARNETT:** How many Facebook followers does he have?

**Ms Wilson:** He has 1,400 followers.

**Senator BARNETT:** It has been since early 2011, but you are not sure if it was January or February.

**Ms Wilson:** I can clarify the timing for you.

**Senator BARNETT:** How often does he use Twitter?

**Ms Wilson:** I think he keeps up with issues and with discussions going on on Twitter. I am not sure if you are asking how often he actually puts in an entry.. I would have to check that for you.

**Senator CASH:** If you could, that would be appreciated.

**Senator BARNETT:** Yes, if you could let us know that would be good. Thanks again.

**Senator CASH:** Returning to the issue of departmental credit cards, would the expectation be that Mr Logan, as head of the media and communications unit, would have been issued with a departmental credit card?

**Mr Metcalfe:** It would be my expectation, but I will have to check on that.

**Senator CASH:** Could you also take on notice who within the media and communications unit have credit cards, what their expenditure limit is, what expenses are placed on those credit cards and who authorises the expenditure once it is actually incurred?

**Mr Metcalfe:** I will take that on notice.

**Senator CASH:** Could you also take on notice to provide a summary of expenditure items on those cards for the 2009-10 financial year and the 2010-11 year to date, and what is estimated by way of departmental credit card expenditure for 2011-12?

**Mr Metcalfe:** Is that confined to that unit or are you talking about the entire usage across the department?

**Senator CASH:** The entire, please.

**Mr Metcalfe:** I will definitely have to take that on notice.

**Senator CASH:** There are some additional questions which I will place on notice. I will now turn to the Serco Australia Ltd contract.

**Mr Metcalfe:** That takes us way out to program 4. I thought we were somewhere between general questions and outcome 1?

**CHAIR:** Yes, that is right.

**Mr Metcalfe:** Immigration detention issues are collectively under 4.2 and 4.3.

**Senator CASH:** I will leave those questions there. In relation to litigation costs, what is the total amount of litigation costs accrued by the department in 2010-11 to date?

**Mr Metcalfe:** I will ask our chief lawyer to the witness table.

**Ms Hardy:** The total amount that has been spent on external legal services to 31 March 2011 has been \$13.381 million.

**Senator CASH:** You said that has been spent; is there a difference in the amount that has been accrued to the department in that time?

**Ms Hardy:** Yes, there would be, but I would have to take that question on notice.

**Senator CASH:** What has the department budgeted for in litigation costs for the 2010-11 period?

**Ms Hardy:** Again, I will have to take that on notice.

**Senator CASH:** What has the department budgeted for in litigation costs for the 2011-12 period?

**Ms Hardy:** Again, I will take that on notice.

**Senator CASH:** Is there a reason you need to take these on notice? This is budget estimates.

**Ms Hardy:** I am aware of that. I will take those on notice.

**Senator CASH:** Why have you not come prepared with these figures?

**Senator Carr:** I think it is unreasonable for you to put that question, particularly in that tone. The officer is trying to help you.

**Senator CASH:** The officer is not trying to help.

**Senator Carr:** She is trying to help you.

**Senator CASH:** There is no information to be made available to the committee.

**CHAIR:** Senator Cash, just let the minister give you an explanation and then you will have an opportunity to respond.

**Senator Carr:** I do think that you could be a little more polite to the officer.

**Senator BARNETT:** That is not an answer.

**Mr Metcalfe:** Perhaps I can help, Chair. We can certainly seek to provide an answer through the course of this morning.

**Senator CASH:** That would be greatly appreciated.

**Mr Metcalfe:** The chief financial officer will also be of assistance to us in this regard. Perhaps over the morning tea break we can see if we can provide some more details for you.

**Senator CASH:** I will hold off on all of my questions on litigation.

**CHAIR:** Mr Metcalfe, maybe you could clarify something for us. In respect of the amount of money that has been spent on litigation, is that more in your financial services area rather than the legal area?

**Mr Metcalfe:** Essentially the expertise in relation to budgeting and financial matters lies with our financial services area. I expect the chief lawyer to be a very good chief lawyer and

to be assisting our financial people in putting budgets together but the details are with our financial people. Now that we have that question from the senator we can certainly endeavour to provide that advice.

**CHAIR:** Are your financial people here?

**Mr Metcalfe:** They are not far away.

**Senator CASH:** I will hold off on all those questions until the appropriate people arrive.

**Mr Metcalfe:** Are there any more that might assist us in quick preparation?

**CHAIR:** Senator Cash, could you perhaps run through those questions and then those officers responsible, who I am sure will be listening, will provide us with those answers as soon as possible? Can you give us a bit of a heads-up on what they are?

**Senator CASH:** I will just run through them all. What is the total amount of litigation costs accrued by the department in 2010-11 to date? What has been paid out by the department in litigation costs for the same period? What has the department budgeted for in litigation costs for the 2010-11 period? What has the department budgeted for in litigation costs for the 2011-12 period? What is the total amount of legal costs accrued by the department in 2010-11 to date? What has been paid out by the department in legal costs for the same period? What did the department budget for in legal costs for the 2010-11 period? What has the department budgeted for in legal costs for the 2011-12 period?

**Mr Metcalfe:** We will endeavour to come back with more information on that as soon as we can.

**Senator CASH:** Thank you.

**CHAIR:** Ms Hardy, you do not have any of those figures with you at this stage?

**Ms Hardy:** Yes, I do.

**CHAIR:** You were looking like you might have had a few.

**Ms Hardy:** Yes, I do. I have already provided the senator with information on the amount spent to date, to 31 March 2011, and I will undertake to provide those figures which have been budgeted for the entire year. In terms of legal costs, I would appreciate some clarification around whether it is expenditure on litigation particularly that you are looking for?

**Senator CASH:** No, and that is why I used the term 'legal costs'. I would like to include absolutely everything that the department would consider to be a legal cost. That is actually quite separate to my question on litigation costs.

**Ms Hardy:** Can I emphasise that the legal expenditure for the last two financial years has actually been decreasing and in fact it is expected that the final figure for this financial year will also be lower than the figure for the last financial year. The litigation costs have in fact been decreasing.

**Senator CASH:** You will be providing us with those?

**Ms Hardy:** I will.

**Senator CASH:** Thank you very much. Is this the place to ask about incidents of abuse against Serco staff or DIAC staff?

**Mr Metcalfe:** I think that is at outcome 4.2.

**Senator CASH:** Internal product?

**Mr Metcalfe:** That is where we are.

**Senator CASH:** How many staff from DIAC will be involved in processing IMAs, irregular maritime arrivals, at the various locations in 2011-12? Have you got a comparison of how these staffing numbers have changed from 2010-11 to date and 2009-10?

**Mr Metcalfe:** Those comparative issues we will need to take on notice. We may well have provided those answers on notice in the past but we will need to get that out. What I can tell you is about our current staffing activity and if you have requests for details into the future then we might have to take that on notice as well. As at 30 April, we had a total of 939 full-time equivalent staff undertaking the IMA case load within outcome 4.3, the offshore asylum seeker management.

**Senator CASH:** Thank you. You will take on notice to provide the comparisons?

**Mr Metcalfe:** Yes. You have asked for comparisons for, I think, the previous two financial years and you have asked for an estimate as to next year?

**Senator CASH:** Correct.

**Mr Metcalfe:** We can seek to try and provide that if we can through the course of today; otherwise we will take it on notice.

**Senator CASH:** Do you have the approved staffing establishment for each of the departmental outcomes?

**Mr Metcalfe:** Yes. I suspect that would probably be in the portfolio budget statements. Let me just look and get some clarification here.

**Mr Sheehan:** From the PBS 2011-12. You wanted to know the estimated?

**Senator CASH:** What is the approved staffing establishment for the outcomes?

**Mr Sheehan:** For 2010-11 or 2011-12?

**Senator CASH:** For 2011-12, please.

**Mr Sheehan:** The number in total is 8,191.

**Senator CASH:** Can you break it down across the outcomes?

**Mr Sheehan:** I can. Outcome 1 is 3,685, outcome 2 is 432, outcome 3 is 758, outcome 4 is 2,444, outcome 5 is 400 and outcome 6 is 472.

**Senator CASH:** Are you able to compare that to actual staff numbers as at 23 May 2011? What are actual numbers as at 23 May 2011? I know that I have asked for 2011-12.

**Mr Sheehan:** So this is the average staffing level across the whole year?

**Senator CASH:** Correct. I want to know the actual number of staff in each department as at today's date in each outcome.

**Mr Sheehan:** Is that head count as in physical people?

**Senator CASH:** The exact comparison for the numbers you have just given me.

**Mr Sheehan:** Average staffing levels are calculated across a full year. I could find it for the end of April or the end of March but not on a particular day.

**Senator CASH:** That is fine.



**Mr Sheehan:** Do you know what I mean?

**Senator CASH:** Absolutely; I appreciate that.

**Mr Sheehan:** It is very difficult in terms of systems.

**Senator CASH:** The end of April?

**Mr Sheehan:** I will check and see if we can get you something over morning tea.

**Senator CASH:** That is very kind of you; thank you.

**Mr Sheehan:** We have got the numbers at the end of March here, Senator.

**Senator CASH:** You do have them? Thank you.

**Ms Wilson:** At the end of March, it is 3,765.4 for outcome 1.

**Mr Sheehan:** I think you will find that that is the full-time equivalent for the month. The year-to-date would be 3,650. That is the average.

**Ms Wilson:** So are you after the average year to date or just the March figure?

**Senator CASH:** I will take the March figure for now.

**Ms Wilson:** The March figure is the one I gave you for outcome 1—that is 3,765.4. Outcome 2 is 460.53, outcome 3 is 834.3, outcome 4 is 2,123.26, outcome 5 is 432.62 and outcome 6 is 512.04.

**Senator CASH:** Thank you very much for that. Because of time, I will turn very quickly to contracts.

**CHAIR:** You can come back to that this afternoon.

**Proceedings suspended from 10:30 to 10:46**

**CHAIR:** Let us resume. We have still got general questions to the department in this portfolio area?

**Senator CASH:** I will go back to a question in relation to internal product. It is in relation to an answer that I received to QON 32 at the February estimates hearing, in which I asked:

What has the department budgeted for legal fees in 2010-2011 following the November 2010 High Court decision re: plaintiffs M61 and M69?

The answer I received was:

The department plans to fund any additional legal costs in 2010-11 from within DIAC's existing budget appropriations.

Now I see an appropriation in the 2011-12 budget of \$107.7 million over four years:

... to support the new process for determination of refugee status for offshore entry persons. This measure is part of the commitment made by the Government in response to the High Court decision that confirmed the availability of judicial review for offshore entry persons.

Why is there that appropriation given the answer that we received?

**Mr Metcalfe:** I think we are talking about slightly different things. I will stand corrected but I think I am correct in saying that that particular line item in the budget relates to the merits review process as opposed to the judicial review process. You will recall that one of the announcements made by the government following the High Court's decision was to create a new streamlined protection obligations consideration process which involves primary decision making and then referral straight through to the review process. That is that

particular process being identified within the budget papers. It is quite separate to litigation costs that may occur with any appeals on the law, subsequent to that merit review process.

**Senator CASH:** Basically, they are two entirely separate figure sets?

**Mr Metcalfe:** I will just get a nod from Mr Sheehan. Am I right, Mr Sheehan?

**Mr Sheehan:** Yes.

**Mr Metcalfe:** The answer is that in answering QON 32 we were talking about litigation costs, court costs, but that particular item that you have identified in the budget is in relation to the merits process associated with asylum claims.

**Senator CASH:** It says:

The measure will provide:

- \$26.1 million over two years to the Department of Immigration and Citizenship for internal and external legal expenses associated with anticipated judicial review of refugee status determinations ...

**Mr Metcalfe:** Maybe I have misled you. I will get Mr Sheehan to respond.

**Senator CASH:** Thank you.

**Mr Sheehan:** Can you ask the question again, please.

**Senator CASH:** Yes, absolutely. I asked a question in February:

What has the department budgeted for legal fees in 2010-2011 following the November 2010 High Court decision re: plaintiffs M61 and M69?

The response that we were given on notice was:

The department plans to fund any additional legal costs in 2010-11 from within DIAC's existing budget appropriations.

If you then turn to the budget papers, there is an appropriation of \$107.7 million over four years and it states:

This measure is part of the commitment made by the Government in response to the High Court decision that confirmed the availability of judicial review for offshore entry persons.

Then it says how it is going to be broken up and it says:

- \$26.1 million over two years to the Department of Immigration and Citizenship for internal and external legal expenses associated with anticipated judicial review of refugee status determinations ...

Is the answer that we received on notice correct?

**Mr Sheehan:** It is correct for the current financial year.

**Senator CASH:** Does the department expect that any money will be expended in the next 30 to 40 days in relation to the High Court decision?

**Mr Sheehan:** I will ask the chief lawyer.

**Mr Metcalfe:** My apologies, Senator, for getting confused myself. I think the short answer is that we do have a number of cases in court.

**Senator CASH:** Currently?

**Mr Metcalfe:** Currently in the Federal Magistrates Court associated with applications from persons who are refused as refugees following the merit process.

**Senator CASH:** The High Court decision?

**Mr Metcalfe:** A number of those matters and costs are being incurred. I will see if Ms Hardy can provide any greater advice.

**Ms Hardy:** There are actually 60 applications currently in the Federal Magistrates Court which relate to judicial review of IMA matters following the High Court case in November last year. We have had two matters that have been heard and both have been reserved at this point.

**Senator CASH:** Two matters have been heard.

**Ms Hardy:** There have been costs incurred but at this stage they are being absorbed within our current budget for 2010-11.

**Senator CASH:** Can you provide me with a figure as to what are the costs that have been incurred to date in terms of legal fees following the November 2010 High Court decision?

**Ms Hardy:** They will be for the two matters that have actually been heard in the Federal Magistrates Court but I can take that on notice and get back to you.

**Senator CASH:** There are 60 applications for judicial review. Two have been to the Federal Magistrates Court. Have any costs been incurred in relation to the other 58?

**Ms Hardy:** Not at this stage, no.

**Senator CASH:** Are any costs anticipated to be incurred between now and June 30 in relation to any of those 60 cases?

**Ms Hardy:** Yes, there will be some costs incurred between now and then and, as I said, they will be absorbed in our current budget for 2010-11.

**Senator CASH:** So there is no expectation that there will need to be additional money?

**Ms Hardy:** Not for this financial year.

**Senator CASH:** Not for this financial year—however, the \$170.7 million that is being budgeted in relation to some of these cases?

**Ms Hardy:** I understand that that includes the whole amount for all expenses related to IMAs. It is \$26.1 million that has been allocated for legal expenses over two years.

**Senator CASH:** That is in relation to, so far, 60 applications other than the two matters that have actually been heard?

**Ms Hardy:** No, it will be in relation to expectation that there will be a range of other matters lodged as well.

**Senator CASH:** So the 60 will actually fall within the \$26.1 million?

**Ms Hardy:** Yes, it is expected that most of those will be heard in the next financial year.

**Senator CASH:** How do you work out that \$26.1 million over two years is actually going to be sufficient to fund these challenges?

**Ms Hardy:** It is difficult to know how many matters are going to be lodged. We have made our best estimates in terms of what the current refusal rates are; that is all we can really do.

**Senator CASH:** When you talk about best estimates, what are the best estimates then? How did you get to \$26.1 million?

**Ms Hardy:** I can take that on notice and provide you with more details.

**Senator CASH:** Could you also then take on notice to provide the detail surrounding how the figure of \$8.2 million over the next four years to the Federal Magistrates Court was arrived at, and likewise for the \$73.4 million over two years for the IPAO office, in terms of how you actually got to those figures.

**Mr Metcalfe:** We will assist if we can but of course those bodies fall within the Attorney-General's portfolio and no doubt you will ask a question of them as to the estimations. If we can provide any general assistance of course we will.

**Senator CASH:** I will now turn to contracts. Of all the contracts issued by the department for capital works in 2010-11 to date, how many have included confidentiality provisions? That is bringing us up to speed with what has occurred to date?

**Mr Sheehan:** I do not have that number with me. I can tell you that as per the Murray motion, which was lodged at 31 December, there were 104 contracts in total. I could get some analysis done on which ones are construction related as opposed to others. Is that what you want?

**Senator CASH:** Yes, please. I am specifically looking for which ones include confidentiality provisions.

**Mr Sheehan:** For the detention?

**Senator CASH:** Issued by the department for capital works.

**Mr Sheehan:** That is mainly in the detention related area. There would be a couple for office fit-out and that sort of thing but the majority of them would be detention related. You would like to know how many—

**Senator CASH:** Had confidentiality provisions. I would also like to know what the confidentiality provisions relate to. I understand the department has a standard confidentiality provision?

**Mr Sheehan:** We do.

**Senator CASH:** Was it the standard confidentiality provision? If not, why not? What were the reasons behind going outside the department's standard confidentiality provisions? What is the public policy underpinning the decision to include confidentiality provisions in these contracts? Perhaps, Mr Metcalfe, you might be able to answer this one now: are staff of the department or any of its agencies or contractors required to sign confidentiality agreements?

**Mr Metcalfe:** To be safe I will take that on notice. I am just winging it a little bit here, but my understanding is that some contractors require of subcontractors a confidentiality agreement to give effect to the confidentiality clause in the head contract. But I will take that on notice and correct myself if I am wrong.

**Senator CASH:** Following that question, is this standard practice that those particular people have to sign those?

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

**Senator CASH:** If so, why is it standard practice? Please also provide a copy of the most recent confidentiality agreement.

**Mr Metcalfe:** We will take all that on notice.

**Senator CASH:** I have a question in relation to Serco and its contracts.

**Mr Metcalfe:** All of the detention stuff fits in programs 4.2 and 4.3.

**Senator CASH:** Do you have any information in relation to the legal costs that I asked about, the litigation costs?

**Ms Hardy:** Not at this point; it is still coming.

**Senator CASH:** Do you have figures in terms of how many contractors Serco engages across the detention centre network?

**Mr Metcalfe:** I imagine we would have that. Again I would request you to ask it at 4.2. Now that you have flagged that question, we will endeavour to have the answer for when you get there.

**Senator CASH:** I just have a few final questions then that should fit into this particular outcome or cross-portfolio area. Which items in the 2009-10 budget exceeded the budgeted amount shown in the budget papers? I am interested in what was handed down on budget night.

**Mr Metcalfe:** I will see if Mr Sheehan can help.

**Mr Sheehan:** Is that for each subprogram?

**Senator CASH:** Yes.

**Mr Sheehan:** I can get you that information; I do not have it with me. You want information for each subprogram in the 2009-10 original estimated budget, so the number we were looking at this time last year and where we are now?

**Senator CASH:** Correct. For each item, I want to know by how much it has been exceeded in a dollar figure.

**Mr Sheehan:** We can do that. There are revised budget estimates, obviously, for 2010-11 in the current book.

**Senator CASH:** I completely understand that. I want to go right back to what the original item was so I can do an analysis.

**Mr Metcalfe:** In providing that advice, of course, we are not at the end of the financial year yet.

**Senator CASH:** That is 2009-10.

**Mr Metcalfe:** So we are looking at 2009-10?

**Senator CASH:** I am now going to get on to 2010-11.

**Mr Metcalfe:** Yes, and I am just anticipating that we can provide up to date information, but some of it may not be complete at this stage.

**Mr Sheehan:** You want to know the actual budget?

**Senator CASH:** On budget night when I flipped open the budget paper, I want to know what was the figure that I saw, and then for 2009-10, I want to know the actual amount.

**Mr Sheehan:** And then you want to compare that to what?

**Senator CASH:** I want to compare it to 2010-11, on budget night last year, what the figures were, and what are they to date by outcome.

**Mr Sheehan:** In accrual accounting terms?

**Senator CASH:** Yes.

**Mr Sheehan:** I just want to be very clear, because that is quite a complicated question.

**Senator CASH:** I appreciate that.

**Mr Sheehan:** It will take us a bit of time to put all of that together.

**Mr Metcalfe:** Would we have a to date figure available, or would we have to go back to the end of the last month?

**Mr Sheehan:** It is monthly in terms of the accounting. We will get you the number at the end of April; I think that would probably be the best answer.

**Senator CASH:** That is fine. So it would be the end of April. In terms of items that perhaps have not yet exceeded the figure as at budget night last year, are any anticipated to exceed the budgeted amount shown in the budget papers between now and 30 June?

**Mr Sheehan:** We would need to take into account the additional estimates process, of course. I will get you a column that has the original amount and then the amount—

**Senator CASH:** The original and each appropriation since then, so we will get the original versus what it actually is.

**Mr Sheehan:** That might take a bit of time. I know exactly what you want, and we will work on that for you.

**Senator CASH:** You may need to take this analysis on notice. For the 2011-12 budget, in relation to the items to which we have been referring, has its budget increased or decreased, and if so, by how much?

**Mr Sheehan:** We will just put that on one big spreadsheet.

**Senator CASH:** A spreadsheet would be fantastic.

**Mr Sheehan:** We will put it on an A3 page, and then where there are variations, we will even put in the explanation, because it could be related to additional estimates increases or activity increases as well for different visa classes or whatever. Obviously, in the IMA space, there is a range of reasons.

**Senator CASH:** Thank you, Mr Sheehan.

**Mr Sheehan:** We will take all of that on notice.

**Senator CASH:** Mr Metcalfe, what is the DIAC policy in relation to your department on the appointment of an acting secretary?

**Mr Metcalfe:** Ordinarily, if I am absent on leave or overseas, one of the deputy secretaries is appointed to act as secretary. That usually is a person selected by me depending upon their availability and work commitments at the particular time.

**Senator CASH:** Since your appointment as secretary of the department, on which occasions and for how many days in each year has an acting secretary of DIAC been appointed?

**Mr Metcalfe:** I would have to go back and check that. It is six years now, but it would basically be the several times a year that I am travelling overseas on official business or the infrequent holidays that I have.

**Senator CASH:** In each case, please advise what the reason was for the appointment, for example, if you were overseas, in which country you were overseas?

**Mr Metcalfe:** You have now asked for details of which countries I was in?

**Senator CASH:** Correct. When you appoint an acting secretary, is there a need for the appointment to be published in the *Gazette*?

**Mr Metcalfe:** It is not my understanding. The appointments by the minister are published, and there is a formal instrument signed under the Public Service Act by the minister, but I think the requirement for it to be published in the *Gazette* disappeared many, many years ago from recollection.

**Senator CASH:** Could you just confirm the procedure surrounding the official appointment of an acting secretary?

**Mr Metcalfe:** Yes. I will just check on that. Essentially the process that we follow in my department and elsewhere, and it was my experience when I was a deputy secretary being appointed as secretary in either my department or in the Prime Minister's department on occasion when I was there, is that it is an authorisation from the portfolio minister, and that the instrument is just kept within the department. For legal purposes, if it becomes necessary for a particular decision to be taken by the secretary acting alone, then it is quite clear who the secretary is. Just to be clear, we normally appoint an acting secretary when I am travelling overseas from around the time of my anticipated departure from Australia until just after my anticipated return so that it is covered if I am delayed by aircraft or whatever. Similarly if I go on leave, usually it is from close of business on the day that I would commence the leave to the opening of business on the day that I would return.

**Senator CASH:** Can you also provide to us, since your appointment as the secretary of the department, on how many occasions and for how many days on each occasion have you travelled interstate? I am happy for you to take that on notice.

**Mr Metcalfe:** I will have to check. I imagine we could do that. I will just see whether that is a reasonable request.

**Senator CASH:** And obviously what was the purpose of each visit?

**Mr Metcalfe:** Can I say first that every day I travel interstate, because I live in New South Wales?

**Senator CASH:** Interstate for official purposes?

**Mr Metcalfe:** Yes, other than coming to work.

**CHAIR:** Since Mr Metcalfe started in the job.

**Mr Metcalfe:** We are talking six years, from 18 July 2005.

**Senator Carr:** More than six years of his travel arrangements; do you think that is reasonable?

**Senator CASH:** Yes, I do.

**Mr Metcalfe:** I will have to see if those records still remain in place.

**Senator CASH:** If you are unable to provide the last six years, perhaps from November 2007?

**Mr Metcalfe:** I will see what I can do.

**Senator CASH:** Thank you. In relation to where you have travelled overseas on official business, so not when you have been on personal leave, what expenditure was incurred on each of these occasions?

**Mr Metcalfe:** I will see if we have those records available over the last six years.

**Senator CASH:** I would hope that we have those records available. I am happy to have it, again, from November 2007 if that assists.

**Mr Metcalfe:** Since the change of government?

**Senator CASH:** Yes.

**Mr Metcalfe:** Okay.

**Senator CASH:** That is all that I have related to this outcome at the moment.

**CHAIR:** It is cross-portfolio area, so we are finished there. If that is the case, we will move to outcome 1.

**Senator FURNER:** I have some questions on 457 visas and the EMAs. Subsequent to the Queensland natural disasters, the government made an announcement of fast-tracking 457 visas. Would you be able to give me some idea of how much the demand was on those and also how quickly you processed those applications?

**Dr Southern:** The department has approved 23 visas in relation to flood reconstruction work. Once we have a complete application and following endorsement from the Queensland government, the mean processing time is one and a half days.

**Senator FURNER:** Twenty-three is a small amount. Is there any reason why the demand has been so low?

**Dr Southern:** We understand that processing times generally across the 457 visa program are at historically low levels. Some employers have simply continued to use the standard processing arrangements to bring workers on board on 457 visas. We also understand that there have been delays to some of the commercial reconstruction projects that would contribute to this as well.

**Senator FURNER:** So what you are indicating is reflected on the position in general?

**Dr Southern:** This is in relation to Queensland post flood reconstruction.

**Senator FURNER:** How do recent application rates compare with previous years? What are some of the growth occupations or industries in this area?

**Mr Kukoc:** We have seen a significant increase in visa lodgements for 457s. For the current program year to 31 March 2011, 457 visa lodgements were 41 per cent higher than for the same period last program year. This reflects a very strong pick up in the economy and a demand across occupations from employers for genuine skill vacancies.

We do publish a quarterly 457 report, and there is a range of statistics in terms of which occupations are particularly in high demand. In general, it is professionals and managers, but there is also a strong pick up in tradespersons.

**Senator FURNER:** What are some of the factors impacting on the current 457 visa application rates?

**Mr Kukoc:** I mentioned that obviously the very high terms of trade and a very strong pick-up in the economy, particularly in the resource rich states, have contributed to the strong



labour market demand for skilled workers. We do have a very strong synergy or interaction between two factors that are contributing to the increase in skilled vacancies. One is, of course, the high terms of trade and the economic pick-up that has happened quite fast and strong after the global financial crisis. The other is broad demographic factors with the ageing population factor where effectively our labour force growth coming from domestic sources is already declining, and will significantly decline over the next decade. Despite very strong and active policies in the participation area of policies and welfare reforms, there is still need for overseas skilled labour to top up this gap between our labour force growth from domestic sources and the demanded or needed labour force growth by businesses.

**Senator FURNER:** It has been several years since we have seen major reforms in 457 visas in this area. Can you give me a sense of how these changes are working?

**Mr Kukoc:** Most importantly, while these changes have strengthened the integrity of the program and improved protections of foreign workers, and have also worked to protect the terms and conditions of employment of Australian workers, we have also seen that 457s remain very responsive to the labour market needs. This visa category was always responsive to the economic cycle, and we have seen this happening throughout this quick change in the economic conditions that we have seen over the last few years. We saw a very strong economic pick-up in 2007 before the global financial crisis, and then again we are seeing the pick-up in economic conditions. Throughout this quick change in the cycle, 457s have shown incredible responsiveness. While the application and grant rates dropped quite significantly during the global financial crisis, they have picked up quite significantly since we have gone through this trough in the business cycle and they are again on the upward trajectory. There is a very nice chart that we use in all of our public documents and in our speeches which shows a clear correlation between ANZ job advertisement series and subclass 457 primary applications lodged. There is an incredible correlation which just shows that, despite all of those raised integrity bar and protection measures that we introduced over the last few years, this was in no way an impediment to the 457 continuing to be very responsive to the business needs.

**Senator FURNER:** Could you tell me what the current processing time is for 457 visas and how that compares with previous processing times?

**Mr Kukoc:** The current median processing time for 457 visa applications is around 22 calendar days. This represents a 30 per cent improvement from five years ago in 2006-07. The government has also committed in the 2011-12 budget to invest further resources to further improve this processing time and actually halve the processing time to around 10 days for completed visa applications.

**Senator FURNER:** I understand that the department will start processing 457 visas in Brisbane as well. When do you expect this to commence?

**Mr Kukoc:** This is commencing as we speak, practically. We will establish another business centre of excellence for 457 visa applications in Brisbane involving a number of staff with expertise in 457s which will quite substantially improve the processing time from already a very quick processing time. It will be implemented over the next few months, and it is starting as we speak.

**Senator FURNER:** Can you inform us how many people will be employed in that new centre?

**Mr Kukoc:** We expect around 15 to 20 additional experts on 457s to be located in the business processing centre. Perhaps Peter Vardos, our deputy secretary in client services, will talk more about this. We expect 15 to 20 staff in the first year to establish this measure. This will practically kick off within the next few months with the business centre of excellence in Brisbane.

**Senator FURNER:** What sorts of results will that provide in terms of processing times?

**Mr Kukoc:** Obviously the government's commitment in the budget is to halve the median processing time to 10 days, and this is what we have to achieve.

**Senator FURNER:** I will now move to EMAs. We started the discussion earlier in cross-portfolio discussions, and you did go to some length to explain the eligibility in terms of who is entitled to access those. I want to ask some additional questions in respect of those particular areas. First, will both skilled and semiskilled occupations be eligible in this area? If so, will they be treated under the same measures in the program?

**Mr Kukoc:** Yes. The enterprise migration agreements will cover both skilled and semiskilled occupations. Skilled occupations are already available under the standard 457 processing and visa application rules, so businesses can continue to access 457s for skilled occupations, even without accessing the EMAs. But within EMAs, of course, businesses can opt for a range of occupations and a range of skills, both skilled and semiskilled. EMAs will be subject to negotiations. As I mentioned to Senator Abetz earlier, the two key criteria for entering into the negotiations with the Commonwealth were that the total capital expenditure on the project should be a minimum of \$2 billion, and 1,500 should be the peak workforce. I am afraid I failed to mention that it was implicitly assumed that the project also needs to be approved by the state government as a project. That is why I mentioned that, so my apologies to Senator Abetz if I failed to mention that at that time.

The most important things are the \$2 billion capital works expenditure and 1,500 peak workforce, and of course the project needs to be approved as an approved project by the state government authorities. That is why we believe that around 13 projects that are already approved by the state government authorities will likely qualify, and there are 21 in the pipeline through feasibility studies and yet to be approved that are also likely to be approved. The negotiations will start around the deed of agreement between the Commonwealth and the project owner. That deed of agreement will set the environment and terms and conditions of the overall engagement of foreign skilled and semiskilled workers on this project. That deed of agreement will also set the labour market needs, the broad training requirements, occupations that will be demanded, the number of workers, and once this broader framework is set we will develop template agreements which the contractors under that project will be using to enter into the specific labour agreement with the Commonwealth, which will automatically trigger the workers protection act obligations.

Skilled workers on 457s will not be capped. This is currently not capped provided that all 457 sponsors meet their obligations and they are employed under the same terms and conditions of employment as Australian skilled workers. They can engage them normally. For semiskilled workers, there will be a cap, but that will be subject to the negotiations and the

real needs of a particular project. There are very strong training and upskilling requirements for the domestic workforce. For both the project owner and contractors under that project, there will be a carefully developed training plan where they will need to commit to training in occupations of known or anticipated shortage and commit to reducing reliance on overseas labour over time. This will be particularly focused on semiskilled labour, which will be approved under EMAs. They will also need to demonstrate that training strategies are commensurate with the size of the overseas workforce utilised on a project. They will also need to demonstrate how training targets will be enforced through its contracting model, and measured and monitored over the terms of the EMA.

In addition to those broader training requirements that would be set in the deed of agreement with the project owner, each individual subcontractor in the template labour agreement would need to meet the standard training benchmarks associated with the 457 program. Of course, overseas workers will continue to be protected by and subject to the workers protection act.

**Senator FURNER:** You mentioned the requirement or need to consult with state governments. Are there any other stakeholders involved in that consultative process, such as trade unions?

**Mr Kukoc:** Yes. Even during the development of the enterprise migration concept, before the government fully agreed to the EMA, we did engage in a range of consultations with key union bodies, key business bodies and state governments. This final design of EMAs is the result of these negotiations. Of course, in the particular negotiations around the EMAs, we will continue to engage all key stakeholders—business, unions and state governments.

**Senator FURNER:** You went to the subject of protection. Many years ago when 457 visas were first introduced, there was quite a substantial uproar about the exploitation of workers in general being paid in some cases below agreement rates, award rates, and so on. What protections are in place to ensure these workers are not further exploited as they were many years ago?

**Mr Kukoc:** As I mentioned, all overseas workers sponsored under the EMA will hold a 457 visa and as such will automatically be subject to the workers protection act and all the new powers that the department has under this workers protection act, including inspection powers, powers to issue infringement notices and powers to take to the courts those who do not comply with sponsorship obligations. A full spectrum of protection that is currently available to 457 visa holders will be applied to all EMAs because the key product under this EMA is the 457 visa for skilled vacancies.

**Senator FURNER:** Does the responsibility of that protection rest with the project owner or with someone else?

**Mr Kukoc:** The direct contractual obligation, which will become subject to the workers protection act, will rest with the direct employer, which is the contractor. However, there is some obligation for the EMA project owner under the deed of agreement because that project owner carries the responsibility for the proper behaviour of the contractors under the EMA deed of agreement. For example, if we see widespread abuse or non-compliance of individual contractors under the EMA, this may trigger a renegotiation or a review of the EMA with the project owner.

**Senator FURNER:** Finally, what stakeholder consultation did the government enter into before deciding the final policy on its design?

**Mr Kukoc:** Ever since the National Resources Sector Employment Taskforce report in June-July, we entered into very close consultation with the key business groups, unions and state governments. We did direct consultation with the relevant stakeholders. We consulted stakeholders at the meetings where we presented the concept, but we also went through the standard of our ongoing consultative skilled migration panel that is an independent advisory body to the government which involves four key union bodies, four key business groups and five states. We have done a significant consultation before we provided final advice to the government which then resulted in the government decision announced in the budget.

**Senator BOB BROWN:** I wanted to ask about the 37 457 visas which have been granted in Tasmania to Ta Ann, a wood processing firm from Malaysia which has established in southern Tasmania. Regarding the 27 visas that have been granted there for up to four years, what is the situation regarding the unavailability of the Tasmanian economy, for example, to provide for wood machinists out of the state with one of the higher unemployment rates in Australia that justified the granting of those visas?

**Mr Kukoc:** I am not particularly across the detail of these workers in Tasmania in that company. I can certainly take the question on notice and provide you with the full details. My understanding is that these 457 visa holders are subject to the workers protection act as are all other 457 visa holders and sponsors. The new policy which requires that employers engage workers on 457s under the same terms and conditions as Australian skilled workers in the same position and the same location means that, by its very nature, employers will always opt for the domestic source of labour if that source of labour is available. Not only do employers tend to source labour initially first from the domestic market and the local labour market, but with equalising the terms and conditions, and keeping in mind that overseas recruitment costs and bringing overseas workers on shore adds another expenditure to employers, there is absolutely no economic reason for an employer to opt for a foreign 457 skilled worker if there is a skilled worker available locally. This is a very powerful protection in the policy and the legislation. I will just confer briefly with a colleague. We would need to take this question on notice on the particular situation of these workers in Tasmania and that company.

**Senator BOB BROWN:** I understand that there were 27 such visas given for mechanical engineering technicians. Were those not available in Australia?

**Mr Kukoc:** Are you asking whether they were available in Tasmania or Australia?

**Senator BOB BROWN:** Australia, including Tasmania, of course.

**Mr Kukoc:** There is absolutely no economic incentive for an employer to opt for a foreign skilled worker if these workers are available in Australia.

**Senator BOB BROWN:** I disagree with you on that; that is a value judgment. Let us say that is the case. Nevertheless, what would have been required of Ta Ann to show that it had done due diligence in finding four wood machinists, 27 mechanical engineering technicians and three production managers in manufacturing?

**Mr Kukoc:** For 457 visa skilled workers, the legislation does not require formal labour market testing. As such, we do not require employers to go through formalised advertisements and labour market testing before they can opt for 457 skilled workers. The key concept in the

new legislation and the policy framework for 457 visa holders is the concept of market rates and the equalised terms and conditions of employment. We need to be assured that these workers from overseas will be employed under the same terms and conditions of employment as Australian skilled workers in the same location and the same company. If we are assured of that, we know for a fact that there is no economic incentive for these employers to engage overseas workers if local skilled workers in the same occupation are readily available.

**Senator BOB BROWN:** Not even if those employers were to consider that workers from overseas might work harder and for longer hours and be less distracted by having families, community, entertainment, cultural wherewithal and familiarity as part of the environment?

**Mr Kukoc:** That is a matter for the employer and their key business decisions around the productivity in their company.

**Senator BOB BROWN:** Has the department kept a watch on the housing arrangements for the Malaysian workers brought to Ta Ann in Tasmania and the ability of those workers to take part in the wider community? Are there any requirements of those workers insofar as their interrelationship with the community or of the employers to ensure that the welfare of the workers in that regard is looked after?

**Mr Kukoc:** The key obligation for the employer is to ensure the same terms and conditions of employment as for Australian workers. Another key condition is that, even if these terms and conditions of employment are similar or equal to those for the Australian worker, if the level of salary or total remuneration is lower than the temporary skilled migration income threshold, then that worker would not be granted a 457 visa. In a sense, that takes this difference between the domestic worker's access to family support and broader community support, and foreign workers' lack of access to a similar level of support. This is why they need to meet the TSMIT, Temporary Skilled Migration Income Threshold, level, even where the market rate or terms and conditions for an equivalent worker in Australia are being paid.

**Senator BOB BROWN:** What studies have you or the department done to assess whether immigrant workers who do not have their families with them and have other factors at play are more prepared to work longer hours and longer shifts than local workers?

**Mr Kukoc:** The new policy framework has also ensured that foreign skilled workers, once on shore, once granted a 457 visa, are able to change employers without applying for another visa, provided that another employer is prepared to sponsor them for their business. In that sense, we have introduced the market based mechanism for these workers to make sure that they are not being exploited or bonded to a particular employer if that employer does not provide the level of support, income and remuneration that they could earn in the regular marketplace.

**Senator BOB BROWN:** What due diligence or study of the ethics of Ta Ann in its home country, particularly Sarawak, in Malaysia, was undertaken by the department before the visas were issued?

**Mr Kukoc:** I would need to take that question on notice because I am not across the detail about this particular group of 457 visa holders.

**Senator BOB BROWN:** Does the department do any assessment of an offshore company that applies for visas on the way in which their workers are treated back in their home country?

**Mr Kukoc:** We provide assessment and regular monitoring of the employer, the 457 sponsors as registered in Australia, and their treatment of workers in Australia. The 457 visa holder sponsors can only be an Australian business or a business registered for operation in Australia.

**Senator BOB BROWN:** Do you know whether or not Ta Ann has been part of a very large industry in Malaysia that imports workers from Indonesia because they are cheaper and, for reasons of being dispossessed from their local circumstances, are prepared to have working conditions that local people may not?

**Mr Kukoc:** I am not aware of the particular circumstances of that company in Malaysia or its relationship with Indonesia and the workers with Indonesia. What I said earlier is that we have effective protection mechanisms that ensure that workers in Australia are paid in accordance with the terms and conditions available to an equivalent Australian worker with the same skills and in the same occupation and location.

**Senator BOB BROWN:** There was a very contentious public meeting in the Huonville Town Hall on Saturday night which discussed the issue of future logging in Tasmania. I am told that a number of the Malaysian workers were at that meeting. Do you know whether or not that was of their own free will and whether they were acquainted with the circumstances of that meeting—ostensibly, to be there as a presence for Ta Ann?

**Mr Kukoc:** No, I do not have that information with me. I will take it on notice and provide the answer to you.

**Senator BOB BROWN:** Thank you. Finally, just going to the proposal for 457 visas in the future to have an extra requirement of \$5,000 per worker to help skill Australian workers, do you know what contribution Ta Ann has made to skilling a local workforce—which is obviously short of the skills that I outlined—that required these workers to be brought in from overseas?

**Mr Kukoc:** I am not aware of any \$5,000 training requirement under the 457 visa rules or legislation. There are standard training requirements for all 457 registered sponsors which request the 457 sponsors to invest a certain proportion of their payroll—

**Senator BOB BROWN:** It is one or two per cent, is it not?

**Mr Kukoc:** Two per cent if the contribution is to the industry-wide training fund, and one per cent if it is the direct training of the workforce in that company.

**Senator BOB BROWN:** Who decides which of those two options it will be?

**Mr Kukoc:** It is the choice of the 457 sponsor.

**Senator BOB BROWN:** You said that you were not aware of the proposal for a five per cent levy on incoming workers to help skill Australian workers; is that so?

**Mr Kukoc:** I apologise. I did not say that I was not aware of the proposal; I said that I was not aware of any requirement for \$5,000. During some early deliberations and consultations on the training requirements under the Enterprise Migration Agreement, there was an option flagged with some stakeholders of the possibility to introduce the \$5,000 training requirement

for each semiskilled worker that would be employed under the EMA. In the end, following further consultation with the stakeholders, the training requirement was designed in a slightly different way that would achieve the training outcome without necessarily imposing a prescriptive requirement in dollar value.

**Senator BOB BROWN:** But it will bring in the same amount of money for reskilling Australians as the five per cent levy would have raised?

**Mr Kukoc:** The training requirement under the EMA is a particular commitment to achieve training and upskilling outcomes as defined in the EMA.

**Senator BOB BROWN:** Does it provide the same financial wherewithal to get these outcomes from the companies involved?

**Mr Kukoc:** In the end, it will result in a better training and upskilling outcome than just the prescriptive requirement for \$5,000 would. As I mentioned before, the project owner will need to commit to training in occupations of known or anticipated shortage; commit to reducing reliance on overseas labour over time, with a particular focus on semiskilled labour where this is approved; demonstrate that the training strategies are commensurate with the size of the overseas workforce utilised on a project; and demonstrate how training targets will be enforced with the contracting model, and measured and monitored over the term of the EMA. I think these are very significant training requirements and outcomes that will be requested from all project owners under the EMA.

**Senator BOB BROWN:** I go back to the Ta Ann case in Tasmania. Could you find out how many local people have benefited from that training for the positions of wood machinists, mechanical engineering technicians and production managers, and whether or not that training has led to the ability to repatriate the immigrant semiskilled workers or skilled workers; and, if not, why not?

**Mr Kukoc:** I will get that information for you and provide you with the response on notice, particularly the training requirement for the company that you mentioned and other circumstances around the engagement of 457 workers for that company.

**Senator BOB BROWN:** Would you also look at the housing arrangements provided for those workers currently working for Ta Ann—I did mention this earlier—the community extension that those workers are involved in, and the length of stay that they will have in Tasmania as part of the arrangement with Ta Ann and the government?

**Mr Kukoc:** We will include that information in our response on notice.

**Senator BOB BROWN:** Thank you.

**CHAIR:** Senator Barnett has some follow-up questions about the matter you have raised, Senator Brown, so we will go to Senator Barnett.

**Senator BARNETT:** Mr Kukoc, thanks very much for your feedback. Senator Brown referred to a public meeting last week in the Huon. You may not be aware of the details of that, but he asked questions about employees of Ta Ann attending that meeting. That meeting was attended by many people, and employees of Ta Ann were there no doubt for a range of reasons but including the fact that their jobs are being threatened by policies that are currently being implemented in Tasmania, particularly Green policies. Can you understand that it would be entirely reasonable and fair for them to attend a meeting regarding the future of the

forest industry in the Huon and the future of their own company, which is being threatened by Green policies? Does that make sense to you?

**Mr Metcalfe:** I do not think it is appropriate for us to get into—

**Senator BARNETT:** Senator Brown has asked a whole range of questions very similar to that, and I have some further questions. I will rephrase them in light of your response, Mr Metcalfe.

**CHAIR:** It is not appropriate to ask officers questions to do with policy. If you have questions about facts or figures or numbers attending the meeting, that is fine.

**Mr Metcalfe:** The question as it has been framed by Senator Barnett goes to the motivation of the person to be a in a particular place, and we do not have that information.

**Senator BARNETT:** Senator Brown asked that same question about the employees of Ta Ann.

**Senator BOB BROWN:** I was asking whether Ta Ann had required them to go. That is a different question.

**Senator BARNETT:** Mr Kukoc said he would take it on notice. I could rephrase the question.

**Senator BOB BROWN:** I can help you formulate your questions later, if you like!

**Senator BARNETT:** Let me rephrase the question.

**CHAIR:** I will just have one at a time. Senator Brown, did you want to finish your comment?

**Senator BOB BROWN:** No, I was just offering some help to Senator Barnett.

**Senator BARNETT:** Senator Brown has had, I think, a good 15 minutes or half an hour of asking questions in regard to Ta Ann, which is a very important company providing, importantly, much needed jobs in a very important industry called the forest industry in Tasmania, and you have been responding to those questions. Now I am asking a few questions. Do you know how many employees they have, Mr Kukoc?

**Mr Kukoc:** No, I do not. That is why I said to Senator Brown that I would need to take this question on notice. I am not privy to the detail of that company.

**Senator BARNETT:** Are you aware of the importance of that company to the Huon in terms of jobs, growth and development in the Huon?

**Mr Kukoc:** I have heard about the company and its operations, but I do not have any facts or figures.

**Senator BARNETT:** What have you heard about it? Have you heard of the important contribution it makes to the Tasmanian economy? What have you heard about the company?

**Mr Kukoc:** I do not have the facts and figures about the importance of that company in Tasmania.

**Mr Metcalfe:** If I could just clarify, we approved in the current program year to 31 March around 38,000 visa applications under this subprogram. We are talking about a group of 30 or 40 people, I think, that Senator Brown raised. I apologise that we do not have detailed information with us here today about each and every one of those 40,000 or 38,000 people. Any comment that we would make here has to be in our official capacity. While we are



probably familiar with the company, it is through media reporting or other material; it is not first-hand, direct knowledge. Senator Brown has properly raised some questions about the circumstances of visa holders and, to the extent that through official processes we can obtain that information, of course we will. We are very happy to assist Senator Brown and Senator Barnett.

**Senator BARNETT:** Thank you very much. Mr Kukoc, are you aware that this company actually performs a great deal of value-adding to the Tasmanian forest industry and provides much needed downstream processing, so the need for skilled labour in many respects is entirely understandable and the reason for obtaining those 457 visas is also understandable; does that make sense? Without providing an opinion, is that understandable?

**Mr Kukoc:** I do not have with me any facts or figures that would talk about the contribution of that company to the Tasmanian or the Australian economy. As such, I would not be able to form any opinions.

**Senator BARNETT:** Are you aware that this company's ability to make applications for 457 visas may in fact be in jeopardy in light of Green and other policies to kill off the forest industry in Tasmania?

**Senator Carr:** The officers have been very patient here, but you are asking the officers to now cast judgment as a matter of political opinion, and I do not think it is reasonable for you to put that to them.

**Senator BARNETT:** I take that point. It is a fair comment, Minister. I will ask a final question and thank Mr Kukoc for being willing to answer questions about Ta Ann, which is a very important contributor to our timber industry in Tasmania. He has been asked about the housing situation for those employees affected. Senator Brown asked about whether they have families or not. Do you think that whether or not they have families in tow is relevant to the provision of a 457 visa? Is that relevant?

**Mr Kukoc:** I cannot respond to the question about whether families are relevant in this particular case. What I can say is that, on average, 457 primary visa applicants have another family member or visa holder with them. For example, we might grant around 70,000 primary 457 visa applications; that leads to a 457 population of probably 140,000 or 150,000. That means that, on average, a family unit for 457 visa holders is the 457 visa holder and their spouse.

**Senator BARNETT:** Finally, are you aware that in 1990 the former state Labor-Green government provided millions of dollars in taxpayers' money to close down the former Huon Forest Products company? I think that is out of your purview, so you may not be able to answer that question. Thank you.

**CHAIR:** Let us keep going with outcome 1. Senator Cash.

**Senator CASH:** Is the department aware of any cases where the domestic violence provisions which allow foreign spouses to remain in Australia if they have been victims of domestic violence have actually been abused?

**Mr Metcalfe:** The provisions have been abused? The provision that allows a person to make an allegation of domestic violence and obtain a concession associated with that—has that process been abused?

**Senator CASH:** Correct. Are you aware of instances?

**Mr Kukoc:** I will definitely need to take this question on notice. I am not aware of any particular case. There may have been some. Our understanding is that the operation of these provisions provides adequate protection to the victims of domestic violence without undermining the integrity of our program. The fact is that we have seen only a small number of partner visa applicants using those provisions, less than 200, compared to the total number of partner visa applicants, which is more than 50,000.

**Senator CASH:** That is my next question. How many permanent visas have been provided in those circumstances?

**Mr Kukoc:** I will need to take this question on notice. We do have the number—and I must apologise to the senator, because I saw that number just a couple of days ago but it has slipped my mind.

**Mr Metcalfe:** We will see if we can come back to you in the course of the day.

**Mr Kukoc:** It is less than 200. It is between 100 and 200, but I will get back to you.

**Senator CASH:** In the event that issues of potential abuse of this provision are raised, does the department take steps to investigate whether or not abuses are occurring?

**Mr Kukoc:** We have a standard process. It is really a complicated area of our law, particularly the interaction of our migration law with other laws of the Commonwealth. We do have very strong cooperation with other agencies, such as Attorney-General's and, in particular, Centrelink. Effectively, as soon as a case of domestic violence is reported to us by the partner visa applicant or someone else, we pass that case immediately on to the competent person, who is usually a social worker or a person who actually manages the case in terms of the domestic violence. Through that competent person, we obtain a range of evidence on whether that violence has occurred and the situation of the particular applicant, which then triggers the visa arrangements for that visa applicant. It is, as I mentioned, a very complicated area of the law. I am happy to provide an outline, if I take this question on notice, of how these provisions operate at the moment, the number of cases we have seen over the last year, and whether there have been any actual instances of abuse of the process or the provision.

**Senator CASH:** Turning to the parent visa, what is the cost of doubling the number of non-contributory parent visas in the current program estimates for 2011-12? It has increased from 1,000 to 2,000.

**Mr Kukoc:** I will need to take this question on notice. We do have costings that were provided in the development of next year's migration program. I know the total outcome, where the increase in the permanent migration program has led to the estimated over \$150 million fiscal benefit to the budget over the forward estimates. Predominately, this is the result of the positive fiscal impact of the skilled migration increase. Even partners in the family program lead to a positive outcome in the forward estimates, but parents have a negative impact on the budget. It is definitely much lower than the overall positive benefit that increases in other categories will have on the budget. I will take that question on notice and provide the information to you.

**Senator CASH:** What was the reason for reducing the number of contributory parent visas by 1,000 places, and then, obviously, increasing the number of contributing parent visas by 1,000 places?

**Mr Kukoc:** A range of factors contributed to that decision. One, certainly, is that demand was not as high as in the other visa categories. So the demand for contributory parent visas, given the significant second visa application charge, was not significant.

**Senator CASH:** That was the contributing parent visa?

**Mr Kukoc:** Yes. Even in the delivery of this year's migration program 2010-11, we are struggling to fill all of the places in the contributory parent visa category. When it comes to the second stage visa charge of around \$37,000, which is quite significant for a person, people do struggle to find the money to pay that second visa application charge. So the change reflects the respective demand in the two visa categories. The other factor is client services, obviously. With the allocation of only 1,000 places in the non-contributory parent category, parents in the queue will likely be waiting for around 30 years before they could be granted a visa, which practically makes the whole program questionable. Why would we even have such a program if people need to wait for 30 years before the visa can be granted? The very small increase of 1,000 to 2,000 will reduce that waiting period from 30 years to 15 years. It is still significant. It reflects the cost to the budget and the community, but it is a small increase, and it was delivered from within another parent category where we are actually struggling to fill the program places.

**Senator CASH:** I turn now to the employer nominated skilled visa section. What is the reasoning behind the reduction in employer nominated skilled visas in the 2011-12 budget, and the reduction in the number of business visas? If I look again at the statistics, they have decreased.

**Mr Kukoc:** We need to keep in mind that the RSMS, Regional Sponsored Migration Scheme, is also an employer sponsored visa; so, when you take the regional employer sponsored visas and ENS together, there has been an increase in employer sponsored visas for the next year. The reason why we had a slight decrease in the ENS outside the RSMS in the program planning was that ENS places are normally filled through former 457 visa holders transiting into the ENS. As we saw through the global financial crisis, the number of people on 457 visas in the country has reduced quite significantly. That made this flow-on effect on ENS less demanding in terms of the number of places. That also means that, without undermining the employers' needs for skilled labour, we could allocate more places to regional sponsored migration from the overall ENS category. In total, the employer sponsored category, ENS plus RSMS, has been increased in the budget.

**Senator CASH:** Thank you. I note the increase of 10,150 places in the independent skilled visas for this budget period. What is the reason behind the increase in that particular visa category?

**Mr Kukoc:** The key reason for that is that we have gone through some significant reforms of the independent skilled migration program with the introduction of the new skilled occupational list that replaced the old MODL and with the introduction of the new points test from 1 July. There was also a recent announcement in the budget of the new skilled selection model for skilled migration. I think we have quite significantly improved the integrity in the independent skilled migration program. Given the need of business and our economy over the medium term for additional skilled workers arising from this economic boom and the demographic impact of our ageing population, it was important to bring the new skilled workers from offshore into the labour market, noting that the employer sponsored category is

predominately filled from the existing 457 cohort onshore. There was a need for an increased injection of offshore skilled workers into the labour market, and particularly in the skilled occupations which Skills Australia say will be needed in the Australian labour market over the medium term.

**Senator CASH:** My understanding was that previously the government had made a virtue of the fact that the employer nominated scheme was their preferred channel for skills migration. Yet we have seen the increase in the independent skills versus the decrease in the employer nominated skilled visas. How does that reconcile itself in light of the government's previous statements?

**Mr Kukoc:** In the last few years there has been a quite significant increase in the employer sponsored visa category as part of the total skilled migration intake. While this employer sponsored category used to contribute only 15 to 20 per cent of the overall skilled intake, it contributes more than 50 per cent these days. The increase has already happened in that category. It is now the most important category of the skilled migration program. The government has also further increased the employer sponsored program by allocating a large increase into the RSMS. Overall, the employer sponsored program has retained a very large proportion of the total skilled migration program. The fact is that many employer sponsored visa applicants are applicants who are already onshore and are on 457s. The main entry point from offshore for this category is the 457 entry. As the 457 picks up over the next year or so, there will be a larger pool of 457 visa holders that will be available to transition into the ENS. The ENS will then naturally pick up again. So ENS is largely a demand driven category by employers. We just need to operate within the real demand from the employers in that space, noting that there has been a very significant increase in the proportion of the employer sponsored category in the skilled migration program in recent years. The government has continued with that policy by further increasing the employer sponsored category, if you take into account RSMS in the skilled migration program.

**Senator CASH:** I turn now to the 456 visa. What are the compliance and monitoring arrangements surrounding the 456 visa?

**Mr Kukoc:** The 456 visa is our business visit visa. It is largely classed as a visitor visa. People use that visa for a business visit to attend a business function. In a large number of cases, people also use this visa to transit Australia and go to an offshore maritime operation outside Australian territorial waters. In a sense it is a business visitor or business transit visa; it is not a work visa as such. Because of the design of this visa, which is a standard visitor's visa, we do not have an active compliance regime for the 456 visa, because 456 visas are a visitor visa as such and are subject to standard compliance requirements as any other visitor visa. If a person engaged in work that is not allowed under that visa, that person will automatically come under the scope of our general compliance provisions. It may also be reported to the Fair Work Ombudsman if there are issues in terms of the employment of these people. We normally grant over 170,000 business visitor visas every year. As I mentioned, it is a business visit visa; it is not a work visa. That is why we do not have a specifically dedicated compliance program for 456.

**Senator CASH:** That does lead to my next question. How many 456 visa applicants has the department monitored in each of the last three years, and in the year to date, specifically in relation to immigration condition 8112, which states, 'the holder must not engage in work in

Australia that might otherwise be carried out by an Australian citizen or an Australian permanent resident'?

**Mr Metcalfe:** That takes you across into program 4.1. As Mr Kukoc just said, unlike the 457 visa, which is more specifically associated with skill needs in a particular business, this is a more general type of visa, and our general visa compliance programs are applicable to it. We would be very happy to talk at 4.1 about the arrangements and in response to the question you just asked.

**Senator CASH:** So 4.1?

**Mr Metcalfe:** Yes, 4.1 deals with visa compliance and status resolution. The issue of whether people are using a visitor visa or a 456 visa to work and potentially displacing Australians from a job is very much associated with 4.1.

**Senator CASH:** Is the department aware of any systematic abuse of condition 8112 on the subclass 456 visa, or, indeed, have there been any allegations of abuse of this particular subclass?

**Mr Metcalfe:** We will come back to that at 4.1.

**Senator CASH:** Why are there no sponsorship obligations for the 456 visa?

**Mr Metcalfe:** For the reasons that Mr Kukoc has outlined. The 456 visa has been in existence for many, many years, and essentially it is a visa that permits incidental employment or business activity, or, as he indicates, in the transit of Australia to undertake work on offshore installations or whatever. It is quite deliberately designed not to require that type of much more detailed analysis. It is a visa that can be obtained in many countries by electronic application. It is more akin to a visitor visa, but you are quite correct in asking if there are issues about people abusing that. Of course, some of our resources in our compliance programs go to that very point and we are happy to talk about that.

**Senator CASH:** We will talk about that in 4.1?

**Mr Metcalfe:** Yes.

**Senator CASH:** Has the department considered collapsing the subclass 456 visa and extending 457 validity periods from one day to four years in order to enact a sponsorship regime, including compliance for this visa subclass?

**Mr Metcalfe:** Mr Kukoc will probably talk in more detail, but that takes us to some work that we have been undertaking for some time now, which is whether or not we can actually simplify the visa structure. As you know, we have somewhere well over 100, closer to 150, different subclasses of visas; some are used in the millions, some are used in the handfults. Also we have many hundreds of different business rules that are applicable to those visas. For some years now, we have been undertaking work as to how we might simplify, streamline and make that a more transparent process for applicants and, indeed, for administrators. On the specific issue of consideration within the 456 visa, I will ask Mr Kukoc to comment.

**Mr Kukoc:** There have been a number of considerations of various options to address the issue. First of all, it is important to balance the two things. One is to have a very fast-tracking, speedy process for approving the 456 business visitor visa so that we do not create unnecessary impediment or red tape on business. On the other hand, it is important to address any issues arising from noncompliance with the work rights available under 456. The

difficulty of marrying the two, 456 and 457, was that 457 is subject to very stringent sponsorship obligations, assessments and monitoring. This may not be necessary and it is quite unnecessary for a proper business visitor visa because of the different objectives that these two visas are aimed to achieve. On the other hand, there have been instances in the past where 456 visas were used for unauthorised work. It is a difficult question of balance, not to increase the impediments or red tape on business, and on the other hand to improve the protections under the 456. A range of options was considered at the time.

Secretary Metcalfe mentioned that the department is now doing the visa simplification project in which there was a proposal to actually leave the visitor visa only for genuine visits, remove the work rights from the visitor visa completely and create a so-called short stay activity visa which would provide a bit more protection, and will clearly direct applicants who intend to work in Australia or perform any activity in Australia for a short term to that short-term activity visa. This means we could concentrate the risk management activities on this short stay activity visa and effectively leave the visitor visa to the general processing requirements and standard of processing applicable to the visitor visa as such.

**Senator CASH:** I turn now to the regional migration agreements. For the purpose of the regional migration agreement, what actually constitutes a region?

**Mr Kukoc:** I would like to invite a colleague, Peter Speldewinde, Assistant Secretary, Labour Market Branch, to comment. He has been involved in some initial development of this policy and is now conducting the stakeholder consultation around regional migration agreements. You may be aware that we have a different definition of region for different visa categories. That has proved to be a very difficult situation for us and for many state and territory governments. That issue has been under consideration at various Commonwealth-state meetings for a number of years. Regional migration agreements will not necessarily be tied to any specific definition. It will be localised solutions to labour market needs in the areas of fast job growth that could not be met through the domestic training and recruitment. As such, it will be driven by the demand and need in the regions of fast job growth. It will be subject to negotiations between Commonwealth, states and territories, local councils, businesses and unions. In no way would we want to impose any impediments in terms of a formalised definition of a region for the regional migration agreements.

**Senator CASH:** Following on from that, how will it be determined whether an area is considered to be a region and will therefore have access to these agreements if there is no formal definition of a region?

**Mr Speldewinde:** As Mr Kukoc has said, the idea was to deliberately take the concept of the regional migration agreement away from one of the numerous definitions of regional that currently exist. The way it is envisaged that the agreements would work is that they would be assessed on the basis of job growth in a particular locality and also on the rate of unemployment, as some of the primary criteria. It could be tackled in a number of ways. It could be tackled through negotiations with one of the 55 regional development authorities that currently exist in Australia. It could also be tackled on the basis of discussions with a group of local government areas, if need be, or a single local government area. The government's intention was to try to leave it as open as possible, but to then be able to prioritise the negotiations around a regional migration agreement on the basis of actual need and the availability of work.

**Senator CASH:** I am sorry, I am in East Timor at the moment, because it sounds like we are back there in terms of what is the definition of a region. As there is no definition of a region and a lot of it, as you have stated several times, could be tackled, could be tackled, could be tackled, depending on the particular circumstances, is there any right of appeal or review should there be a disagreement about whether an area is considered regional or not?

**Mr Speldewinde:** No. We would not see that there would be a debate about whether something was regional or not. The discussion would be around whether in fact the case for a tailored specific regional migration agreement, or migration agreement, if we would like to drop the term 'regional' for the purpose of this discussion, actually merited the consideration under the guidelines which we are currently developing.

**Senator CASH:** The guidelines are currently being developed?

**Mr Speldewinde:** Yes.

**Mr Kukoc:** We will be starting the consultative process on the regional migration agreements and the final design of these regional migration agreements, the same as we did with enterprise migration agreements, and that will happen over the next few months. A range of stakeholders will be involved. As Peter Speldewinde mentioned, the key driver of these regional migration agreements will be the demand for labour in specific regions where there is evidence of fast job growth and evidence of difficulty in sourcing that labour from the local market. The fact is that there will be a range of stakeholders involved, from business groups, from local councils, state and territory governments and unions, and I have no doubt that we will come up with a tailored solution to the specific needs in a specific geographic location.

**Senator CASH:** I take great comfort that you have no doubt that you will come up with a solution, because if we were not going to come up with a solution I think you would agree that we might have a problem. Perhaps we could look at it in the alternative as we have done with East Timor on several occasions. What is not a region? What will not be a region?

**Mr Kukoc:** Under the migration law?

**Senator CASH:** For the purposes of the regional migration agreements, what will not constitute a region?

**Mr Kukoc:** I think the regional migration agreement will be tailored to the needs of a particular geographic location, and that geographic location can cover some regions that are currently under the scope of the regional definition for various visa categories. It could include as well parts of the capital cities as they are linked in the economic development with the specific geographic location in regions close to these cities. So it is a demand driven concept. I think it will be premature and speculative to define those regions at this stage.

**Senator CASH:** Even though you have actually termed the program 'regional migration agreements' and you are looking at encouraging migration to regional Australia, we do not seem to actually know what a region will be?

**Mr Kukoc:** It will be the result of the labour market demand in a range of geographic locations across Australia and particularly regions, as we have seen the job growth in some regions, particularly resource rich states, growing much faster than in other states. The whole concept of the regional skilled migration program is demand driven. It is an employer sponsored program. The number of visas granted and the tailored solutions to the specific geographic location will largely depend on the genuine vacancies and the genuine job growth.

**Senator CASH:** Can I just confirm your evidence. You did say that a capital city could be considered a region?

**Mr Kukoc:** It is purely speculative. I did say that. But it is purely speculative at this stage because we would need to go through a proper consultation to identify the labour market needs.

**Senator CASH:** So it has really nothing to do with increasing migration in regional Australia if a capital city can possibly be defined as a region?

**Mr Metcalfe:** Remember that there was a long debate about whether Adelaide would be seen as part of regional Australia. Senators always argued that it should be, but I think we are probably getting into the realms of where the department—

**Senator CASH:** Of what is not known, I agree.

**Mr Metcalfe:** What I am saying is that there is a clear commitment; there is a process that we will work through, and we will be happy to describe the outcome of that in due course. But we need to work through those particular arrangements, and that is something that is being done. The whole policy intent is to provide a granularity in the migration program. This has been a long desire of ministers in the portfolio to essentially ensure the program is responsible to labour market needs in particular parts of Australia, and this is a continuation of that particular concept at a time where clearly, particularly in the resource rich states of Queensland and Western Australia and elsewhere, there is a very strong demand for labour.

**Senator CASH:** Are you able to explain how the new regional migration agreement will differ from the existing regional sponsorship migration scheme?

**Mr Kukoc:** The difference is similar to the difference between enterprise migration agreements and the standard 457 program. Regional migration agreements will largely use the visas granted under the RSMS program. But regional migration agreements will be custom designed for a specific geographic location, and it will be a deed of agreement that sets the framework for engaging visa applicants through RSMS and linking them to direct employers.

**Mr Speldewinde:** I will just amplify that a touch. The other thing to bear in mind, of course, is that the regional sponsored migration scheme is for permanent migration only, whereas under the regional migration agreement format, much the same as under labour agreements or the enterprise migration agreements, there is the flexibility to have a combination of both permanent and temporary entry. That is the fundamental difference.

**Senator CASH:** When does the department envisage that this first regional migration agreement will actually be up and running?

**Mr Speldewinde:** That will really depend on how quickly the negotiations go with interested areas and also with the other stakeholders, particularly with the state governments.

**Senator CASH:** Does the department have any idea of when they might be?

**Mr Kukoc:** We are planning to do the consultation during this year, by the end of this year, and we hope, depending on the outcome of these consultations, to have regional migration agreements gradually rolled out in 2012.

**Senator CASH:** Okay. I hope that this does not turn into another East Timor announcement where we spend several estimates going through the process only then to have an announcement by the government that it will never happen, but we have spent a lot of



money in the process. Can you guarantee that this process will be undertaken and we will see the rolling out of regional migration agreements, regardless of what the region might be?

**Mr Kukoc:** The department will certainly endeavour to deliver on the government's commitment. That is our job.

**Senator CASH:** But you cannot provide a guarantee that that will actually happen?

**Mr Kukoc:** I think we have always delivered.

**Senator CASH:** I may dispute that, but in a different outcome. Perth is not classified as a regional area under the existing regional sponsored migration scheme, despite actually other cities, including Adelaide, Hobart, Darwin and Canberra, being recognised under this scheme. Will Perth be able to make use of the regional migration agreements?

**Mr Kukoc:** As I mentioned at the beginning, I would not exclude anything at this stage. It is really early in the process.

**Senator CASH:** Can we exclude Antarctica as we did with East Timor?

**Mr Kukoc:** We would need a very strong case to include any capital cities in this regional labour migration.

**Senator CASH:** Despite your evidence that a capital city may well be included?

**Mr Kukoc:** We already have capital cities defined as regions under the current definitions of regions for different visa categories. I said right at the start of this negotiation process around regional migration agreements that it is not possible for me to exclude any such option. There would need to be a strong case. The key objective is to address the labour market needs in regions and geographic locations outside capital cities.

**Senator CASH:** I might move on to a different area now. We talked about enterprise migration agreements, I believe, with Senator Furner earlier this morning. Could you just take me through exactly how the government arrived at the decision to set the cap at \$2 billion and a peak workforce of 1,500 workers for major resource projects? My understanding was that the initial discussions were actually in relation to setting the cap at \$10 billion, but following some negotiations and discussions, this was eventually reduced to \$2 billion. What is the reasoning behind that?

**Mr Kukoc:** You would need to ask that question of the minister directly. I can only say it was the government's decision based on a range of factors and balancing the need to prioritise really big projects. It was largely around making sure that really big projects of significant importance to the economy were being prioritised. The threshold level was the government's decision, so I would need to pass that on to our minister.

**Senator CASH:** Minister, are you able to take that on notice?

**Senator Carr:** I can. The advice I have is that it was based on the recommendation of the taskforce that, in terms of the eligibility requirements, the enterprise migration agreements would only be available to megaprojects, and after an extensive consultation process the government has set the eligibility requirement at \$2 billion worth of capital and a 1,500 peak workforce. Those settings target those projects with major labour market impacts and, according to the current estimates, the advice I have in front of me is that 13 projects will be eligible, with another 21 projects still at feasible or approval stage that may in the future be

eligible. In essence, it is a result of extensive consultation and based on the taskforce recommendations.

**Senator CASH:** Perhaps I could ask you to take on notice what is actually the rationale behind that following on from the consultation?

**Senator Carr:** If there is anything further to add to what I have already said, I will have the matter raised with the minister.

**Senator CASH:** Was the department involved in any presentations with any stakeholders where they actually discussed the initial cap of \$10 billion and indicated that it would be reduced to \$2 billion?

**Mr Kukoc:** As a follow-up to the National Resources Sector Employment Taskforce recommendations and as soon as the caretaker period finished, we recommenced the consultation with all stakeholders around the implementation of this particular recommendation. We were asked to bring back advice to the government on that recommendation, what was involved in the implementation and what other aspects needed to be covered before the government fully responded to that recommendation. We did a lot of consultation with all the stakeholders, and we did a range of presentations in terms of what could be the thresholds and what would be the training requirements, and heard the feedback from the various stakeholders. Regarding the \$10 billion threshold, that was the initial threshold, I believe, in the National Resources Sector Employment Taskforce, but the feedback from business was that it was too high and that very few projects would qualify. The government obviously has taken into account that feedback and has reduced that threshold. My understanding is that the key rationale on deciding what the particular threshold would be is the feedback from the industry from one end and the requirement to really prioritise the most important projects. If you let all projects in, there is no priority, and it may dilute the efficiencies of processing at the expense of the key or most important projects.

**Senator CASH:** In terms of efficiencies, will there be a renewal process for the enterprise migration agreement should the worker be required to continue their stay in Australia, and if so, how will it differ from the current renewal process for the 457 visas, which is almost actually redoing the entire process?

**Mr Speldewinde:** The enterprise migration agreements are envisaged to run for a five-year period, which makes it longer than the current 457 standard approval. It is also longer than the standard labour agreement process. The prospect of renewal is still a fair way off because we do not have any EMAs in place yet, but it is envisaged that, at the time we are asked to renew an EMA, we would be looking at the circumstances of the project to see whether the circumstances are still similar to what was initially in place at the time the approval was made. A lot can happen in five years. It is really difficult to be definitive as to how we can define the exact processes that we would put in place for renewal, but they would have to be similar in terms of the capital and the labour requirements.

**Senator CASH:** So this is another evolving process?

**Mr Speldewinde:** It is five years down the track. Anything could happen in that time.

**Senator CASH:** Could I place on question on notice so I can get the information back after lunch?

**CHAIR:** Yes.

**Senator CASH:** In relation to the National Resources Sector Employment Taskforce, my understanding is that recommendation 4.2 is for the government to adopt and promote a labour agreement for megaprojects, but no actual amount is specified. Can you show me where the \$10 billion is actually specified in that document when we return from the lunch break? My understanding was that someone said it was actually in the taskforce's recommendations.

**Mr Kukoc:** That would be my fault. I thought it was in the National Resources Sector Employment Taskforce recommendations but it may not have been. When we started the process of consultation, it was initially set just as a high threshold based on some preliminary understanding of what big projects would involve. That was based on some preliminary feedback from business of what big projects are due to be rolled out over the next few years. People were talking in terms of many billions of dollars. I will check whether that figure was mentioned in the report itself or if it was just a starting point of the consultation after the report had been delivered.

**CHAIR:** All right. We will now go to lunch.

**Proceedings suspended from 12:34 to 13:36**

**CHAIR:** We will resume this public hearing into the Senate Legal and Constitutional Affairs Legislation Committee estimates process. We are currently looking at matters to do with outcome 1. Senator Pratt, we will start with you.

**Mr Kukoc:** Chair, I also need to correct my statement around the \$10 million figure for EMA. I can do that now.

**CHAIR:** Yes. Let us do that now.

**Mr Kukoc:** Senator Cash asked about the initial negotiating position of the capital expenditure threshold of \$10 million and whether it was in the National Resource Sector Employment Taskforce report. It was not. That was my fault; I apologise for that. I understand, based on the discussion with the secretariat, that that information was passed on to the secretariat by National Resource Sector Taskforce members after preliminary consultations with the business, and the secretariat advised the department that perhaps we could start the negotiations around that figure. So it was rather informal initial feedback from the consultation with business and unions.

**CHAIR:** Thank you. Senator Pratt, do you have questions?

**Senator PRATT:** Yes. I wanted to return to the topic of regional migration agreements and begin in simple terms by asking about how they will work, who is negotiating them and what kinds of occupations might be included?

**Mr Kukoc:** As we mentioned before, RMAs will be custom designed geographically based migration arrangements that will set out the occupations and numbers of overseas workers needed in the area. Individual local employers could directly sponsor workers under the terms of RMAs. It will work in similar terms as EMAs, but in relation to the geographically specific area, and predominantly in relation to the permanent migration and RSMS—regional sponsored migration scheme visas. RMAs will be negotiated with a range of stakeholders in that geographical area, including local employers and community representatives. We will also target those regions with the greatest economic need where there

are high employment growth rates and where there is a strong case and an evidence-supported case for recruiting overseas workers.

The government indicated in the budget announcement that the first priority is the training and employment of Australian workers, so RMAs will include mandatory training and local employment measures to ensure that all those unemployed and underemployed Australians are provided the opportunity to gain long-term, sustainable employment. In particular, RMAs will include measures to assist Indigenous and other disadvantaged Australians to gain employment. In a sense it will be a broader labour supply agreement focused on the needs of the specific geographic area which will combine not only the recruitment of overseas workers through RSMS, but also training and skilling requirements for domestic workers.

**Senator PRATT:** Will such agreements include only 457 temporary workers or will there be a range of visas? I assume that the current protections for 457 visa holders remain in place. We have already discussed the economic relativities there.

**Mr Kukoc:** RMAs, unlike enterprise migration agreements that are focused on the temporary skilled workers 457 visa, will predominantly focus on the permanent migration and regional sponsored migration through permanent visas, but 457 visas will also be included and, as such, 457 visa applicants and sponsors will be subject to the Migration Legislation Amendment (Worker Protection) Act and other protection mechanisms that we have developed over the last few years.

**Senator PRATT:** How do these agreements differ from regular labour agreements and why would that better suit some regions' needs?

**Mr Kukoc:** It differs because it is custom designed to the needs of the whole region and the specific geographic location. It sets the deed of agreement between the Commonwealth and that region. It sets the broader framework of labour market demand, occupations, skilled workers required, training conditions and criteria. Effectively, we front-load a lot of the negotiations for the individual labour agreements that will happen with each employer that will be bringing the workers into that region. We set the broader terms and conditions as a deed of agreement with the region and we then facilitate the visa grants under the direct arrangements with particular employers in that region.

**Senator PRATT:** In some instances, particularly in Western Australia, labour shortages seem to be underpinned by a higher cost of living attached to areas in lower paid industries; therefore Australians are less willing to work there, there are housing shortages and higher cost of living. Bringing people in on a visa is not necessarily going to fix the underlying problem in a regional economy. Are you unpicking those issues in the consultation process?

**Mr Kukoc:** We have just started with the consultation process and there will be a range of issues covered in that consultation process. That was the purpose of this regional based approach which will involve a range of stakeholders, community representatives, state and territory governments, local councils, business and unions, which will effectively give us a very good feel and input into a range of social and economic issues that these regions are faced with.

**Mr Speldewinde:** The important thing is to bear in mind that the regional migration agreements build on template labour agreements which have now been in place for a number of years where agreements are negotiated with a particular industry. They also build on the

concept of the enterprise migration agreement. It opens up the possibility for smaller employers to more easily get the benefit of a labour agreement process because, as Mr Kukoc has said, the high level agreements will be done across the range of stakeholders and therefore the smaller employers will sign up.

**Senator PRATT:** I can certainly see the benefits to that, but one of the underlying issues there is in the structure of some local economies. Other than a skills shortage there are other underlying reasons people do not come to the region to work. I can only assume that you will need to consult around how you make it viable for people to be able to afford to live and work there, but then again those same questions should apply for Australians who should be offered a similar choice.

**Mr Kukoc:** During the negotiation of the RMA we would definitely insist on a very strong case before we could endorse a large engagement of foreign workers in that region, and that case would need to be supported not only by a structured plan to train and skill Australian workforce, but also a structured plan to attract domestic workers from interstate. As we do with the state migration plans, we always require the good labour market evidence and also require a structured plan which will effectively show that the domestic workers are the most important objective of the recruitment. Based on some international standards the Australian labour market is highly mobile, but there is always room for improvement and there are issues in terms of labour mobility. I do not think that we should introduce any incentives through the foreign immigration that will reduce the need for employers to attract labour from interstate.

**Senator PRATT:** You have already outlined that the 457 visa holders are able to have streamlined access to permanent residency, but can you advise what you are looking at in order to achieve that? What conditions, provisions or processes are there in terms of what a 457 visa applicant would currently do, and what are you imagining would be put in place to streamline those applications towards permanent residency attached to a particular region?

**Mr Kukoc:** As I mentioned, we have just started the consultation so a lot of the fine detail will still need to evolve during that consultation process. The government has clearly announced their attention to facilitate and fast track processing of RSMS visas from 457 visa holders who have already spent some time in the regional areas and for whom regional employers continue to support their employment. The process is only commencing so it would be premature to define any specifications, given that may impede the negotiation process.

**Senator PRATT:** The consultation process has just started. I imagine that will clearly involve some regional outreach. Can you give us an outline of what that program looks like, particularly as it pertains to Western Australia?

**Mr Kukoc:** The government also announced an increased investment in regional outreach offices, so we will recruit an additional three outreach officers to specifically help with regional migration by bridging this information gap between employers, regions and the department in terms of engaging skilled workers through RSMS or 457 in regions. That was the initiative announced in the budget. We have a large number of outreach officers already placed with key business groups, unions and state and territory governments. They are already developing significant attention to regional migration matters, but this is now an additional investment into another three outreach officers. Mr Speldewinde, would you like to add to that?

**Mr Speldewinde:** Yes. There have been no firm decisions taken as to specifically which jurisdictions those extra outreach officers will be located in, but we expect that those decisions will be taken over the next couple of months. You asked the question specifically about Western Australia, if I recall correctly.

**Senator PRATT:** Yes. What is the feedback so far about the announcement? What is the department's impression of the feedback overall?

**Mr Kukoc:** Is that about the whole range of initiatives?

**Senator PRATT:** Yes, the RSMS and the new direction of the policy.

**Mr Kukoc:** From what I have seen in the press and from what I have heard from our stakeholders there is general support for both EMAs and RMAs. Of course, with EMAs, a lot of detail has been clarified and that has addressed some initial concerns by the business, so the overall support for EMA is quite obvious. There is a general in-principle support for the RMA, but we need to go through the consultation process and the fine detail and the final design of that.

**Senator PRATT:** Thank you. I look forward to talking to the department further.

**Senator ABETZ:** I would like to go back to EMAs. Firstly, can you clarify if the EMAs are going to apply to all projects, or potentially all projects, that are over \$2 billion worth and, at peak, employ 1,500 employees?

**Mr Kukoc:** In the resource sector.

**Senator ABETZ:** Is it limited to the resource sector?

**Mr Kukoc:** It is.

**Senator ABETZ:** That is what I was trying to get to. For clarification, do we consider the NBN as being part of the resource sector or not?

**Mr Kukoc:** We have not considered that so far.

**Senator ABETZ:** So it might be? Hansard will not pick up two hands waved in the air, but I assume that means that we do not know.

**Mr Speldewinde:** The announcement around enterprise migration agreements was specifically directed to resource sector projects.

**Senator ABETZ:** That was its genesis and I accept that. I am wondering whether it will have broader application. Another example is that I know that a new hospital in my home state of Tasmania would cost \$1 billion. It, therefore, stands to reason that if you were to build a new hospital in one of the cities such as Brisbane, Sydney or Melbourne there is a fair chance that a price tag may well be in excess of \$2 billion. Could it also apply to an area like that? Whilst I know its genesis, I am wondering if all the regulation around it has been so constrained to include only the resource sector?

**Mr Speldewinde:** That would be subject to subsequent consideration by government.

**Senator ABETZ:** We have not gone that far as yet.

**Senator Carr:** I have some information here which may be of assistance to you. These are the task force recommendations, which I have already made clear to the committee: they will be available only to mega projects and after an extensive consultation process the government has set the eligibility requirement at \$2 billion of capital expenditure and a 1,500 peak

workforce. These are for resources projects. Thirteen projects will be eligible, with another 21 still in a feasibility or approval stages that may be eligible.

**Senator ABETZ:** Whereabouts are those criteria set down for members of the public like me to ascertain what all the rules and requirements are around them?

**Mr Kukoc:** My understanding is that there is a definition of the resource industry and resource projects in ABARES.

**Mr Speldewinde:** The detail around the policy for EMAs to date is available on our website. The thinking behind the recommendations, as you are aware, came from a NRSET report. We are looking to link up with the ABARES's definition.

**Senator ABETZ:** Thank you. So 13 have been approved?

**Mr Speldewinde:** There are 13 currently in existence that could potentially qualify if there is a discussion and an agreement. There are 13 that would meet the primary requirements.

**Senator ABETZ:** Are you able to give us that list? Are there any other commercial-in-confidence or other considerations? You could take it on notice, if I may provide that guidance to you. Can you tell us where they are located geographically, in which states? I assume that there are none in Tasmania, but there is another island to the north of that state which I am interested in as well.

**Mr Kukoc:** We have not been approached by any of the project owners for the negotiations as yet. This is our early estimate based on the broader criteria for entering into the negotiation stage, that 13 projects that are currently approved by state governments are likely to qualify if they apply for negotiations around these EMAs, so it would be premature to talk about these projects as they have not applied for negotiations yet.

**Senator ABETZ:** I accept that. Nevertheless, can you take it on notice to see what information you can provide and also with the category of the other 21 that I think were described as being in the pipeline?

**Mr Kukoc:** Will do.

**Senator ABETZ:** At this stage, have we received any applications for any of these projects?

**Mr Kukoc:** Not as yet. We have not received any formal approaches or applications to commence the negotiations.

**Senator ABETZ:** When did the information as to the categories to qualify go up on the website?

**Mr Kukoc:** The initial information is already uploaded on our website around EMAs and the broader criteria for them.

**Senator ABETZ:** When did it go up on your website?

**Mr Kukoc:** On budget night.

**Senator ABETZ:** So that was the first time that it was actually put up on the website for people to understand what the government's thinking was?

**Mr Kukoc:** Yes. There have been a number of meetings with the stakeholders and business where we communicated the likely criteria and discussed the criteria with business, but that was an informal negotiation.

**Senator ABETZ:** In your preliminary thinking you have already determined that there are possibly 13 projects that may qualify. Have you given consideration as to from which countries the workforces might be emanating for these projects?

**Mr Kukoc:** Not as yet. That will be part of the negotiation process. The project owner will first need to develop the business case for the whole project, in terms of recruiting overseas labour by occupations and numbers of overseas workers. They will also need to present a structured training and upskilling plan for the domestic workforce. That is all part of the negotiation process once we start this, but we still do not have an application for that.

**Senator ABETZ:** When the Prime Minister was in China, for example, I think it was the Vice Premier who kindly offered a job lot that China could, in fact, provide the workforce and so on. I am wondering whether it is anticipated that these EMAs will be one nation, or a homogenous workforce, or whether the company that applies may well seek to source the workers from the four corners of the globe?

**Mr Kukoc:** It will depend largely on the business requirements, the needs of the particular labour market and the skills of that project owner. These enterprise migration agreements are not government-to-government agreements. They are agreements between the Australian government and project owners that are in charge of a big resource project that will be happening in Australia. This is government facilitating access to foreign skilled labour and semi-skilled labour for particular businesses and projects in Australia. These are not government-to-government agreements.

**Senator ABETZ:** I understand that, albeit if it is a Chinese company it is bound to be a government owned company somewhere along the way, but that is a discussion for another day. What about the conditions under which the workers will be working? Will they be under the award system and the Fair Work Act that applies to Australian workers?

**Mr Kukoc:** All of these workers will be on 457 visas and, as such, will be subject to protection under the legislation that applies to 457 visa applicants and sponsors. That includes the workers protection act. That includes the requirements for market rates and other conditions. Of course, labour agreements do occasionally contain concessions to some key criteria of the 457, but that would clearly be subject to the negotiations and the outcome of these negotiations. Normally when we provide concessions this needs to be justified with a very strong economic and labour market case, and other forms of protections for the welfare of these workers, and the terms and conditions of employment of Australians will also need to be part of that negotiated outcome.

**Senator ABETZ:** So, that is not certain at this stage?

**Mr Kukoc:** I am just mentioning the usual practice around the labour market agreement negotiations, which I expect will be the case with the EMAs as well. And EMAs contain an additional layer of protection through additional training and upskilling requirements that applied for the whole project.

**Senator ABETZ:** Under such an enterprise migration agreement each of the workers would need a separate section 457 visa, is that correct?



**Mr Kukoc:** That is correct.

**Senator ABETZ:** For each individual worker?

**Mr Kukoc:** Yes.

**Senator ABETZ:** If we have to go through that system for each enterprise in any event, where does the enterprise migration agreement assist?

**Mr Kukoc:** It frontloads a lot of negotiations around the terms and conditions and the overall scope of the project. There is a deed agreement between the project owner and the Commonwealth which sets the broader parameters around the engagement of foreign skilled workers on that particular project.

**Senator ABETZ:** Just so that I can get this straight in my own head: if a project needed, for example, 100 electricians and there were not 100 electricians easily accessible from the Australian marketplace, could they provide a job lot to the government, if you like, that we need 100 electricians and not show it in relation to each separate section 457 application for an electrician? Is that how it would work, or not?

**Mr Kukoc:** Yes, generally. The EMA will set the framework, the labour supply needs, by occupations and skills. Based on these broader parameters it will define the template agreements for individual contractors, which will be fast-tracked once we have the deed of agreement to the EMA. Rather than entering into the negotiation process for each individual agreement, in terms of the broader parameters we will do most of that at the EMA stage. Down to the individual contracts, we will have just template agreements, which will be fast-tracked after the initial EMA negotiation is done. It is the economy of scale effectively in the negotiation process.

**Senator ABETZ:** Would that template, for example, be available publicly?

**Mr Kukoc:** That is subject to commercial-in-confidence. I think I would need to take this question on notice.

**Senator ABETZ:** It seems to me that, if certain rules surround a particular project, it might be helpful for other projects to know what those rules and parameters are so that the wheel does not have to be reinvented separately for each of the 13 or more projects that are likely to come before the department.

**Mr Kukoc:** The terms and conditions of any individual agreement between the Commonwealth and any particular business entity are I think subject to commercial-in-confidence rules and it will require permission from both parties for the details to be released.

**Senator ABETZ:** But will general guidelines be made available?

**Mr Kukoc:** Of course.

**Senator CASH:** In relation to the employer nominated skilled visa questions that I was asking about this morning, I noted an increase of 10,150 places in the independent skills visas for 2011-12 and a decrease in the employer nominated scheme, taking out those which would fall in the regional program. As we have discussed, the government had previously stated their preference for employer nominated scheme visas. Could you take me through why there has been that policy shift?

**Mr Kukoc:** I would not describe this as a policy shift, given that the government has still allocated a major proportion of the skilled migration problem to employer sponsored

migrants. As to the overall employer sponsored places in the skilled migration program, still the most significant part of our skilled migration program is the employer sponsored program. It now makes around 50 per cent of the skilled migration program. That has increased significantly in the last few years. There has been no policy shift. The particular allocation of skilled migrant places into different categories reflected demand. As I mentioned, employer sponsored places are clearly demand driven.

Over the last three years we have seen a significant drop in 457 visa holders in the country. They used to make the largest proportion of people who actually apply for ENS permanent employer sponsorship visas. Effectively this flow-on effect from 457 to employer sponsored visas has eased a bit. That was effectively the only reason ENS as a whole has not been increased even further, although I know that if you take into account RSMS places, which are also ENS, it has been increased overall.

In 2011-12 the total number of employer sponsored visas is 46,000. That compares with around 44,000 last year. There has still been an increase but that has gone largely to RSMS cases because for the first time we have allocated a very significant number of places to RSMS employers sponsored in the region, which reflects the government's regional priorities of the skilled migration program as announced in the budget.

There has not been any policy shift. The reason we have increased independent skilled migration is obviously because of the demographic impact of the ageing of the population and because we expect that the economic conditions over the next few years will be such as to require an additional injection of skilled workers from offshore and from the independent skill categories beyond what is immediately demanded by employers through ENS/RSMS. That was the key rationale for that decision.

[14:10]

**CHAIR:** We now move to outcome 2, Protection, resettlement and temporary safe haven for refugees and people in humanitarian need.

**Senator CASH:** Can the department confirm whether client GRY038—and I will withhold the individual's name—has been released from immigration detention and whether or not he has been given a visa? If he has been given a visa, what kind of visa is it and when was he provided with that visa? If he has not been given a visa, are there any plans to release this particular client? I would appreciate it if we could have that information sooner rather than later.

**Mr Metcalfe:** I am obviously not familiar with that particular number, but I will ask officers to immediately look into that and I will give an indication later as to whether we can answer those questions. We will start looking at that now.

**Senator CASH:** When do you think you will be able to give the information to the officer, just purely so I can give an indication when we will get that information back?

**Mr Metcalfe:** Can I perhaps just have some inquiries made. I undertake to give you an answer in the next half an hour or so as to whether we will be able to answer it quickly or whether it will take some little time to answer those questions.

**Senator CASH:** Thank you. In terms of the ASIO clearance that is undertaken in relation to clients, are all clients sent to ASIO to review and give a clearance or non-clearance to?

**Mr Metcalfe:** I will get Dr Southern to answer that question. Ms Wilson might be able to assist as well, if necessary.

**Dr Southern:** When you are talking about clients, I assume you are talking about—

**Senator CASH:** People who have made application.

**Dr Southern:** For protection visas or whatever?

**Senator CASH:** That is correct.

**Dr Southern:** The government policy is that all IMAs have a security assessment before being granted a visa and, as you know, ASIO manages this process. Obviously we would not be commenting on ASIO's security assessment processes. Our side of the process, if you like, is that we refer these applicants to ASIO for security assessment so that we can make a determination against our public interest criterion 4002, which requires that a visa applicant be assessed by ASIO to not be directly or indirectly a risk to security. In recent months we have introduced a new streamlined risk management security checking process, which has been developed between ourselves and ASIO, and that has resulted in some faster turnaround times.

**Senator CASH:** Is it true to say that, following the changes that have been made, all clients, or IMAs, are sent to ASIO for them to review?

**Dr Southern:** The current arrangements are that, once clients have been found to be refugees through the refugee determination process, they are referred into the streamlined security assessment process.

**Senator CASH:** What changes have been made to this process, and was it following a request from the minister in relation to the streamlining? My understanding is that it was around December.

**Dr Southern:** It was a government decision that ASIO and DIAC work together on streamlining.

**Senator CASH:** What is the streamlining? Can you take me through exactly what the decision was and the impact on the policy from DIAC's perspective?

**Dr Southern:** From our perspective, we worked with ASIO to come up with a method that would allow us to turn assessments around more quickly without compromising the integrity of security checking. It is, as we have described it, a risk managed and intelligence led referral framework, but the actual mechanisms of security assessments are obviously a matter for ASIO.

**Senator CASH:** You are calling it a risk management referral?

**Dr Southern:** A risk managed and intelligence led referral framework.

**Senator CASH:** A risk managed and intelligence led referral framework. Did ASIO advise the department that applications from people from areas, regions or countries considered to be low risk should not be forwarded to ASIO for assessment?

**Dr Southern:** Those details are really matters for ASIO.

**Senator CASH:** You do not know whether ASIO advised the department on that?

**Dr Southern:** ASIO and DIAC have worked together very closely on the security arrangements. Perhaps I could direct some of these questions to one of my colleagues.

**Senator CASH:** I would appreciate it because I want to explore with you the risk management and intelligence framework. What I am trying to get at is, are there particular people who are not being referred to ASIO under this change?

**Dr Southern:** The actual process is managed in a different area of the department. If I could just quickly—

**Senator CASH:** If you could get those people, that would be greatly appreciated.

**Ms Wilson:** Can I have the last question again?

**Senator CASH:** Absolutely. We started on the premise that all IMAs were sent to ASIO for a security clearance. There appear to have been changes made to that process to streamline it. I understand the department now has in place what is called a risk managed and intelligence referral framework. What I would like to understand is, under that risk managed and intelligence referral framework, does that mean that some IMAs are no longer referred to ASIO for clearance?

**Ms Wilson:** All IMAs are considered by ASIO in line with the framework that Dr Southern outlined earlier.

**Senator CASH:** Take me through the streamlining.

**Ms Wilson:** As to one of the big changes that happened with the streamlining, I think you are familiar with the phrase '1A met', which means, through the DIAC processes, a person is determined to be a refugee. Previously we were referring to ASIO all clients as they arrived and got to that point in the process. One of the major changes we achieved as a result of the changes you mentioned was that, when they are assessed as being a refugee, they are referred to ASIO for processing at the '1A met' stage.

**Senator CASH:** Previously that was not the case and all IMAs were sent off, but under the change only those who have been found to be refugees—

**Ms Wilson:** There is more of a sequencing. Those are the people who are closest to meeting all the criteria for a visa grant. They are the people who are getting referred to ASIO for ASIO to focus its assessment on.

**Senator CASH:** Is there any truth in the statement that there are applications from people from various areas, regions, countries, or however you may define it, that are considered to be low risk and therefore are not being forwarded to ASIO for assessment?

**Ms Wilson:** As I said, they are all being considered under the same framework that has been discussed.

**Senator CASH:** Are you saying there is no truth in the statement I have made?

**Ms Wilson:** All IMAs are referred to ASIO for security checking purposes.

**Senator CASH:** Do you have a copy of the risk managed and intelligence referral framework?

**Ms Wilson:** It is a document that is ASIO owned and I think you would have to seek that through them.

**Senator CASH:** That is fine. I will seek that through ASIO. I may have a few further questions in relation to this. I will come back to them if required. I will move on now. In relation to the alleged lost boat people as referred to in an article in the *Sydney Morning*

*Herald*—do I ask those questions now or on Wednesday and Thursday to Customs and Border Protection?

**Mr Metcalfe:** Certainly the responsible agency on those issues is the Australian Customs Border Protection Service. I can even assist you by saying that you should go to program 1.4, which relates to civil maritime surveillance and response. If there was a question about our department's involvement, obviously I would answer that question. But the general issue of the allegedly missing boat is an issue where Customs has the lead responsibility.

**Senator CASH:** In relation to the article that did appear in the *Sydney Morning Herald* concerning the fate of 91 people who vanished on a boat destined for Australian waters that allegedly left Indonesia on 13 November, what has been the department's role to date in ascertaining where those people are?

**Mr Metcalfe:** What I can advise is that, starting in November and continuing into December, my department was approached by individuals claiming to know persons who had been on such a vessel that allegedly departed Indonesia in early October and had not arrived in Australia. We undertook checks of people who had arrived at Christmas Island and through our posts overseas to see whether we had had any contact with any of those named individuals. Those checks were not able to identify any of those persons.

**Senator CASH:** When you say that individuals approached the department, were they clients in the detention centre or were they members of the community?

**Mr Metcalfe:** I do not have any further details. I could take that on notice if you would like information as to who that contact was from.

**Senator CASH:** Thank you very much. Has the government concluded any agreement with any third country to receive or process irregular maritime arrivals to Australia?

**Mr Metcalfe:** Certainly Australia and Malaysia have a joint Prime Ministerial statement with the detailed arrangements now being finalised.

**Senator CASH:** But at this stage we have not concluded an agreement with any third country?

**Mr Metcalfe:** Not in terms of a detailed agreement. There is an agreement between the Prime Ministers of Australia and Malaysia that I am sure you are aware of.

**Senator CASH:** But no other country, not Thailand and not PNG?

**Mr Metcalfe:** That is correct.

**Senator CASH:** Given that the government has yet to conclude any agreement with any third country to transfer asylum seekers, is it true that asylum seekers now arriving are being held indefinitely, similar to the asylum freeze the government introduced in April last year that led to overcrowding and a trebling of processing delays and ultimately violence and riots?

**Mr Metcalfe:** I would not regard the group as being held indefinitely. They will be removed from Australia, as has been made clear in statements by the minister and the Prime Minister. That is not an indefinite period. That will occur at some stage in the future.

**Senator CASH:** In the event that we were to have another East Timor announcement that the government is not proceeding down the path that it had stated that it would, what would be the fate of these particular people?

**Mr Metcalfe:** That is a hypothetical question. The government has directed that these people will be removed from Australia, that that will occur in accordance with our international obligations, particularly in relation to refugees, and that is the basis on which the department is working.

**Senator CASH:** When does the department anticipate that a formal agreement between Australia and Malaysia will actually occur?

**Mr Metcalfe:** I would not set a particular date, but in the near future.

**Senator CASH:** A little like East Timor again. Here we go again. Until that formal agreement is actually made, what happens to those asylum seekers who have arrived post the announcement?

**Mr Metcalfe:** They are detained pursuant to Australian law and will be removed when that becomes practicable.

**Senator CASH:** Logically, if an agreement is not reached, these people will continue to stay indefinitely at Christmas Island?

**Mr Metcalfe:** I think I have already said what I was going to say two questions ago.

**Senator CASH:** We have been through this with East Timor at the October and February estimates. We then had an announcement that the government had no intention at all of proceeding with the regional processing centre in East Timor—despite the evidence that you gave at both the October estimates and the February estimates, which I will shortly be reading back into the *Hansard* for you—and was pursuing a regional processing framework. In the event that the government does not go ahead with its alleged deal with Malaysia, what will actually happen to these people?

**Mr Metcalfe:** I seek leave to table a joint statement by the Prime Minister of Australia and the Prime Minister of Malaysia. To suggest an alleged deal would I think open up the question of whether there is a joint statement between the two Prime Ministers on this particular issue. In relation to the substance of Senator Cash's questions, I have made it clear many times that I do not deal with hypothetical situations.

**CHAIR:** You are tabling that? Thank you.

**Senator CASH:** Does the department have any indication at all in relation to a potential time frame surrounding the deal with Malaysia?

**Mr Metcalfe:** Yes.

**Senator CASH:** What is that time frame?

**Mr Metcalfe:** I would prefer not to disclose that publicly because it is a subject of diplomatic negotiations.

**Senator CASH:** We are going to play this game, are we? Section 198A of the Migration Act refers to the fact that Australia can only send asylum seekers to a specified country. Has the government made a declaration that Malaysia is a specified country?

**Mr Metcalfe:** No.

**Senator CASH:** What implications does that have?

**Mr Metcalfe:** It means that Australia has not yet made such a declaration.

**Senator CASH:** What implications does it have for the people currently detained at Christmas Island that the government has not yet made a declaration that Malaysia is a specified country? Are those people able to be removed?

**Mr Metcalfe:** The people will be removed when practicable, in accordance with section 198 of the Migration Act.

**Senator CASH:** To where?

**Mr Metcalfe:** They will be removed from Australia. That is what the act says.

**Senator CASH:** But at this stage your evidence to the committee is that, in relation to a declaration under section 198A(3), that has not yet been made by this government?

**Mr Metcalfe:** That is right. You may be falling into the mistake of assuming that that is the only removal power available in these circumstances.

**Senator CASH:** Not at all.

**Mr Metcalfe:** I am confirming that section 198A has not yet been the subject of a declaration in relation to Malaysia.

**Senator CASH:** Since you are saying I may be falling into the trap that that is the only removal power available, please enlighten me and the committee as to the other powers available to the government in relation to these people.

**Mr Metcalfe:** The standard power under section 198.

**Senator CASH:** Are you saying that section 198 is able to be invoked without a declaration that Malaysia is a specified country if they were to go to Malaysia?

**Mr Metcalfe:** Absolutely.

**Senator CASH:** I would like to turn now to East Timor.

**Senator TROOD:** Would you mind if I just asked a couple of questions in relation to Senator Cash's line of inquiry?

**CHAIR:** If they are related you can do that.

**Senator TROOD:** They are very directly related.

**CHAIR:** You have the call.

**Senator TROOD:** I am not clear about this. My understanding of the government's position is that, at some point, those people who have arrived since the Prime Minister's statement and are now being detained will be removed to Malaysia; is that right?

**Mr Metcalfe:** The government has made it clear that they will be removed from Australia to another country.

**Senator TROOD:** My understanding is that they were going to be removed to Malaysia. Am I incorrect in that?

**Mr Metcalfe:** If you were to check the minister's statements carefully, he has made it clear that they will be removed to another country.

**Senator TROOD:** Can no-one assume that the people who have arrived since the statement will necessarily be removed to Malaysia?

**Mr Metcalfe:** They will be removed from Australia.

**Senator TROOD:** No-one can assume that they will be sent to Malaysia?

**Mr Metcalfe:** I would not rule anything in or out.

**Senator TROOD:** They could go to Malaysia, but they may not go to Malaysia?

**Mr Metcalfe:** That is a correct inference.

**Senator TROOD:** Have you received any intimations from the Malaysian government that they are prepared to receive people in Malaysia who have arrived since the statement?

**Mr Metcalfe:** What I can refer you to are clear public statements by the Prime Minister, and the indication in the joint prime ministerial statement that, following a formal agreement, people would be able to be removed pursuant to that agreement.

**Senator TROOD:** Am I right in saying there have been some statements or remarks from Malaysia saying that, until such time as an agreement is in place, no-one can be removed to Malaysia?

**Mr Metcalfe:** It is quite clear that actual transfer will not occur until after the agreement is finalised, but I think there was some confusion in the reporting of those remarks that implied that persons already in Australia would not be subject to that possible transfer. What is clear from the Malaysian minister's comments is that the actual effecting of any transfer would only occur after the MOU has been signed.

**Senator TROOD:** So, you are comfortable with the fact that, even though an agreement has not been signed, it would be possible for the Australian government to transfer people to Malaysia subsequent to the announcement but prior to the agreement?

**Mr Metcalfe:** I am comfortable that the persons currently detained in this circumstance will be removed to another country.

**Senator TROOD:** Which may or may not be Malaysia?

**Mr Metcalfe:** We have been through that already.

**Senator CASH:** What contingency plans does the department have in place in the event that the Malaysia deal falls through? Is there a contingency plan that has been worked through?

**Mr Metcalfe:** You know I always have proven contingency plans.

**Senator CASH:** Yes. We did not seem to have one in relation to East Timor, though, or maybe that was Malaysia.

**Mr Metcalfe:** One could argue that we had a very good one.

**Senator CASH:** I will now turn to East Timor, and I will obviously be coming back to Malaysia at length this afternoon. Your evidence at the 11 February 2000 estimates and obviously also at the October 2010 estimates was that Australia has been in discussion with the government of Timor-Leste about the establishment of a regional processing centre, that this is an issue that we continue to have discussions with them about, the proposed centre and how it may operate. You said that it is obviously a significant issue and it is something that is clearly receiving close consideration; that we are certainly continuing to advance our international diplomacy on the aspects of the origins, transit, destination and potential resettlement of people who are regularly moving through our part of the world through the Bali process. You stated also that the specific proposal within a broader regional protection framework of a regional assessment centre or processing centre is a matter that is being



pursued by Australia with, at this stage, the government of Timor-Leste. Could you please advise what further progress has occurred in relation to the proposed regional processing centre in East Timor?

**Mr Metcalfe:** Firstly, I stand by all of the statements that I have made. Secondly, it is very clear that there have been significant debates and discussions within the body politic in East Timor about their willingness to accept such a centre. They are a democracy and that is obviously up to them. As recently as only a few weeks ago we had advice from the President's office that, despite recent media reporting in the Timorese press, East Timor remained willing to discuss a regional assessment centre. However, given the announcement on 7 May between the two Prime Ministers of Australia and Malaysia, East Timor was advised that Australia was no longer going to pursue discussions with East Timor as a first priority, but obviously as part of the regional cooperation framework we continue to look forward to working very closely with East Timor on these and related issues, as we have done for some time.

**Senator CASH:** But in relation to the regional processing centre on East Timor, is it fair to say that the government has abandoned any plans to go ahead with that?

**Mr Metcalfe:** It is certainly not the highest priority we are pursuing.

**Senator CASH:** Is it fair to say that the government has abandoned its plans or is your evidence to the committee that this is now just on the backburner and the East Timorese will be very pleased to know that the government does intend to pursue it at some stage?

**Mr Metcalfe:** I think the minister is being quite measured in his remarks. He has made remarks in relation to the agreement with Malaysia. There has obviously been commentary in relation to other countries, and that in relation to East Timor we have advised them that we are certainly wanting to continue discussions and their involvement through the regional cooperation framework, but the establishment of a centre in East Timor is no longer a high priority for the Australian government.

**Senator CASH:** So, it is no longer a high priority. So it is not true to say, as some media outlets have reported, that the government has abandoned its plans in relation to the proposed regional processing centre on East Timor?

**Mr Metcalfe:** You know me, I would never rule anything entirely out.

**Senator CASH:** I just want to make sure, because the minister has made it quite clear, I thought, that the government had abandoned its plans.

**Mr Metcalfe:** The minister has made it clear that we are pursuing the implementation of the joint prime ministerial announcement with Malaysia, that we have had discussions with one other significant country in our region, and that East Timor is not a high priority. I do not think anyone has ruled anything out ever, but right at the moment our focus is elsewhere.

**Senator CASH:** I just would like to confirm that so we have it very clear for the committee. Your evidence to the committee is that in relation to the proposed regional processing on East Timor the government has actually not ruled that out; it is merely at this particular point in time not a high priority?

**Mr Metcalfe:** I will carefully check the minister's statements to make sure there is nothing I am saying that conflicts with what he has said. Media reporting tends to be fairly black and white at times, whereas in this world it is largely shades of grey.

**Senator CASH:** I would appreciate clarification of exactly what is going on.

**Mr Metcalfe:** Certainly what I am saying to you is that it is not being treated as a priority.

**Senator CASH:** How many officers travelled to East Timor to continue the discussions since the February 2011 estimates until the date that the government announced it did not intend to pursue this option?

**Mr Metcalfe:** Certainly no senior officials from my department travelled to East Timor. I would have to check as to whether that travel occurred by Department of Foreign Affairs and Trade officials. I will take that on notice. But clearly the Australian Embassy in East Timor is a substantial presence and has been very much involved in that dialogue.

**Senator CASH:** In relation to taking those questions on notice, would you be kind enough to also take on notice in relation to those people who did travel to East Timor what were their instructions from the government, what was the outcome of the discussions and what was the cost of the continuing negotiations? Can I also ask, since estimates February 2011 to the announcement by the minister, what work was carried out on East Timor to actually progress the processing centre?

**Mr Metcalfe:** I will take that on notice. In relation to the part of your question about costs, those arrangements, if they fall within another portfolio, I will have to advise you to ask the question there. You may wish to put that question on notice also to the foreign affairs portfolio, because certainly the department and the Department of Foreign Affairs and Trade have worked very closely in relation to the regional cooperation framework and associated issues such as processing centres. In relation to the specific part of your question at the end, I will take that on notice.

**Senator CASH:** In relation to the work that has been done since February 2011 to date, the cost of the work as well?

**Mr Metcalfe:** Yes.

**Senator CASH:** Subsequent to the government's decision that it would not be proceeding with the proposed regional processing centre on East Timor, will the government of East Timor or the East Timorese people receive any compensation from Australia for not actually proceeding with the regional processing centre?

**Mr Metcalfe:** I am certainly not aware of any plans for that.

**Senator CASH:** Are you able to take on notice whether or not there are plans?

**Mr Metcalfe:** I will check, but I will pre-empt that by saying I think it is very unlikely that there is. There have been proper diplomatic discussions, and there was no issue of their having incurred expenditure that might be the subject of any compensation. But if there is anything I can add to that, I will answer that on notice. If there is nothing I can add, I will not answer it any further.

**Senator CASH:** Did the department inform the government that negotiations with East Timor were fruitless or did the government inform the department to cease the negotiations?

**Mr Metcalfe:** Firstly, I do not talk about policy advice to ministers. What I do know is that through our ambassador in East Timor on or around 7 May the government of East Timor was advised that Australia was having discussions with other countries.

**Senator CASH:** Was that by letter or was that by telephone?

**Mr Metcalfe:** I understand it was a contact by our ambassador in Dili. You would have to ask the Department of Foreign Affairs and Trade that question.

**Senator CASH:** What was the total amount expended in pursuing the now non-high priority East Timor regional processing centre and related activities?

**Mr Metcalfe:** I will take that on notice.

**Senator CASH:** Can you also provide a breakdown of the costs and the dates upon which they were incurred?

**Mr Metcalfe:** Yes. That work generally would have involved work within my department in relation to preparing briefing material and other material as well as the travel of myself and other senior officials to Dili as well as similar costs associated with the involvement of the Ambassador for People Smuggling Issues. I will take that on notice.

**Senator CASH:** When was East Timor formally advised that the Australian federal government had abandoned its plans to establish the regional processing centre? What date did you say it was?

**Mr Metcalfe:** I am advised 7 May is when our ambassador in Dili advised the government that the Australian government was pursuing discussions with other countries on this issue.

**Senator CASH:** When did the government make the announcement to the Australian people?

**Mr Metcalfe:** On 7 May.

**Senator CASH:** So, it happened in tandem?

**Mr Metcalfe:** Yes.

**Senator CASH:** Upon what date was the department informed that the government had no intention of actually going through with the regional processing centre in East Timor and so you should stop work on that?

**Mr Metcalfe:** In terms of a formal government decision, there was a cabinet decision in relation to this issue.

**Senator CASH:** What date was that?

**Mr Metcalfe:** I have not normally been drawn on issues relating to cabinet in the past.

**Senator CASH:** I am merely asking for a date. I am not asking for any information surrounding that.

**Mr Metcalfe:** Dr Southern has intimate knowledge of the protocol about these issues, given that she used to be head of the cabinet secretariat. Are there rules around this?

**Senator CASH:** I am merely asking for a date. I am not asking what was discussed or what was talked about; merely for a date.

**Dr Southern:** We would not normally go to that level of detail around cabinet considerations and deliberations, but we will certainly take it on notice.

**Senator CASH:** Upon what basis would you not normally indicate that?

**Mr Metcalfe:** We will check with the minister and take that on notice.

**Senator Carr:** Normal protocol is to advise that there is a decision. The question of when and the process by which it was arrived at has not been traditionally made available, but we will check out what the protocol is.

**Senator CASH:** If you would, that would be appreciated.

**Senator BARNETT:** With respect, Chair, through you, it is quite clear that Senate procedures in terms of requesting a date of when advice was received is in the normal course of events and is in accordance with standing orders and that to take it on notice is totally unsatisfactory.

**Senator Carr:** You are not asking that. You are asking for details of the cabinet consideration.

**Senator BARNETT:** Senator Cash was not asking for details of cabinet considerations.

**Senator Carr:** That is all we are checking. We are just checking out the protocol.

**CHAIR:** Senator Barnett, we know not to interrupt ministers.

**Senator BARNETT:** Answer the question.

**CHAIR:** Senator Carr is attempting to answer your question. You can then have a right of reply or a further comment.

**Senator Carr:** I have been doing these estimates for 18 years. I can assure you that there is custom and practice to advise the committee of a decision. The process by which decisions are made is not normally subject to consideration at the estimates. We will check the protocol and make sure that that interpretation is correct.

**Senator BARNETT:** That was not the question. Through you, Chair, they must be required to answer the question regarding the date. What Senator Carr is talking about is totally irrelevant. We know the protocol; he has correctly stated the protocol. That is not the question. The question was from Senator Cash regarding the date and that question must be answered.

**Senator CASH:** For clarification, my question is: on what date was the department advised that the government would not be pursuing the regional processing centre with East Timor? I understand that the government advised the East Timorese government on 7 May. The government made an announcement to the Australian public on 7 May, but I would like to know when the department was advised of this decision.

**Mr Metcalfe:** The department was advised immediately after the cabinet meeting, which is where we get back into this issue that, by my giving you that date, I would reveal the date of the cabinet meeting, and I just need to check on that particular point.

**CHAIR:** If you could get back to us as soon as possible about that, that would be appreciated.

**Mr Metcalfe:** We will check with the minister.

**CHAIR:** Thank you.

**Senator CASH:** In relation to how East Timor was advised, they were advised through the embassy, through the ambassador, in East Timor?

**Mr Metcalfe:** That is the understanding I have. The briefing that I have indicates that, but you may wish to ask that of the Department of Foreign Affairs and Trade.

**Senator CASH:** Do you know who within East Timor was advised? Was it the President?

**Mr Metcalfe:** You could ask the Department of Foreign Affairs and Trade. We will let them know that you asked questions in this area.

**Senator CASH:** Thank you. I refer to question on notice 102 from the February estimates in which I asked the department to provide a list of the countries that the Australian government has informed about the regional processing centre. The department was unable to provide a list of countries. Does the department know what countries they actually provided or informed about the regional processing centre?

**Mr Metcalfe:** The answer we provided stated that the assessment centre has been discussed in general terms with a wide range of countries as part of Australia's broader advocacy to establish a regional cooperation framework, including through the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process), which comprises 43 member countries and involves the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration.

Then, of course, on 30 March there was agreement to establish that framework. That is paraphrasing that answer. Certainly as a result of the discussions in the lead-up to the Bali process and the Bali process itself, all 43 member countries were advised in relation to the issue. A number of other countries were the subject of briefings. We would need again to check with the Department of Foreign Affairs and Trade. I, for example, was involved in a number of meetings with counterparts from Indonesia, Malaysia and Thailand in which briefing was provided about the proposal, but I was certainly not the only person talking about the issue. We have an Ambassador for People Smuggling Issues. A comprehensive answer to your question now is something that we will need to take on notice.

**Senator CASH:** Thank you very much. Also, in relation to question on notice 104(1) from the February additional estimates, I think that was actually the question I was referring to in relation to the countries that had been provided with a copy of the regional assessment centre. So, if you could take that on notice that would be appreciated.

**Mr Metcalfe:** I do not know that we would have anything to add to that. That question was:

(1) Have any other countries been provided with a copy of the regional assessment centre concept document?

(2) What has been their response to the proposal, if any?

The answer was:

(1) Yes.

(2) A formal response was not sought.

**Senator CASH:** Are you able to provide a list of countries that we provided the document to?

**Mr Metcalfe:** So, you are now asking for more detail—which countries were provided with a copy?

**Senator CASH:** Please, yes.

**Mr Metcalfe:** I will take that on notice.

**Senator CASH:** Why was a formal response not sought? If we provide them with a document, why did we not also seek a response?

**Mr Metcalfe:** We were not seeking their agreement to it. We were providing information to them and so a formal response was not required from them.

**Senator CASH:** Did the department receive any responses from any of the countries, formal or not?

**Mr Metcalfe:** I will have to take that on notice.

**Senator CASH:** We are taking lots on notice today.

**Mr Metcalfe:** You ask an awful lot of questions.

**Senator CASH:** There are an awful lot of questions to be asked in this portfolio.

**Mr Metcalfe:** I think we now had the record of questions on notice of any portfolio.

**Senator CASH:** I turn now to Malaysia. Could I just confirm that there has been no declaration that Malaysia is a specified country under section 198A(3)?

**Mr Metcalfe:** Yes, I have done that three times, I think.

**Senator CASH:** I just want to confirm for the record that there has been no declaration.

**Mr Metcalfe:** Yes—the third time.

**Senator CASH:** Has there been a declaration in relation to Thailand?

**Mr Metcalfe:** No. I think I said that there were no declarations. There are, of course, declarations in place that are historical that date back to 2001.

**Senator CASH:** Is it Papua New Guinea?

**Mr Metcalfe:** Papua New Guinea and Nauru.

**Senator CASH:** So, they are the two that do have the declarations?

**Mr Metcalfe:** Those declarations did not have any ceasing or terminating clause, and so technically they are in effect.

**Senator CASH:** When did discussions commence with Malaysia about the proposed asylum seeker five-for-one people swap and who has participated in those discussions to date?

**Mr Metcalfe:** Firstly, I would not characterise this as a five-for-one people swap.

**Senator CASH:** I did not think you would.

**Mr Metcalfe:** It is not up to me to get into the political debate on this, but I think that is a characterisation that is not strictly accurate. What I can say is that discussions have been underway for several months with Malaysia in relation to the regional cooperation framework. Indeed, the first discussions took place in August last year.

**Senator CASH:** August 2010?

**Mr Metcalfe:** 2010. That was at senior officials level, but most significantly there were meetings involving Minister Bowen with his Malaysian counterpart in October and December last year. So it is an issue that has been under development, under active discussion, and has

led to the joint prime ministerial statement, and that work has been underway for the last six months or so.

**Senator CASH:** For the last six months? That is very good news, that it has been underway for the last six months. I am hoping that you will be able to provide me with the memorandum of understanding or other agreement in writing covering these matters, seeing as we have now had six whole months of discussions.

**Mr Metcalfe:** We had a joint prime ministerial statement.

**Senator CASH:** That says nothing.

**Mr Metcalfe:** It says a lot. With respect, it says a great deal.

**Senator CASH:** I quote:

... 800 irregular maritime arrivals, who arrive in Australia after the date of effect of the arrangement, will be transferred to Malaysia for refugee status determination,

You had a series of questions from Senator Trood in relation to those that have arrived since this joint statement was made and you could not actually say they would be transferred to Malaysia. In fact, you were quite specific that the minister had stated that they may not be transferred to Malaysia.

**Mr Metcalfe:** I have been very careful with my questions and answers, and I would refer you to the *Hansard*.

**Senator CASH:** Can we go through this, then: '800 irregular maritime arrivals', and you have just said to me that this says a lot. I say to you that it says nothing. You have said to me it says a lot, so let us explore the detail.

**Mr Metcalfe:** People smugglers and potential clients in the region think it means something.

**Senator CASH:** We will get on to that shortly, let me assure you. It states:

... 800 irregular maritime arrivals, who arrive in Australia after the date of effect of the arrangement, will be transferred to Malaysia for refugee status determination.

That does beg an interesting question, because the minister made an announcement—or was it the Prime Minister—that any boats arriving after the announcement on 7 May would not be processed in Australia and would be subject to transfer to Malaysia. But what this actually says is 'after the date of effect of arrangement'. What do the words 'after the date of effect of arrangement' actually mean?

**Mr Metcalfe:** The government is quite clear in that it has instructed me not to commence any processing in relation to the persons who have arrived in Australia after 7 May—

**Senator CASH:** Is that the—

**Mr Metcalfe:** and as I have said on several occasions this afternoon, that those persons should be removed to another country.

**Senator CASH:** Let us go back to this statement, because this is a statement that we are all relying on now for the detail in relation to the agreement between Malaysia and Australia. I asked: is there a memorandum of understanding? Your evidence was, no, but you did point me to the joint statement. So, what is 'the date of effect of arrangement'?

**Mr Metcalfe:** The date of the effect of the arrangement will be made clear when the arrangement is finalised.

**Senator CASH:** So, in relation to the boats that have arrived since the announcement on 7 May, and for which the government indicated to the public of Australia that the people were going to be subject to the Malaysian deal, is your evidence to the committee that they are not?

**Mr Metcalfe:** They may be.

**Senator CASH:** They may be. So there is a chance that they will not be?

**Mr Metcalfe:** What I think I have said quite patiently this afternoon is that it is quite clear that the 110 or so people who have arrived since the time of the announcement will not be processed in Australia and will be removed to another country.

**Senator CASH:** So, the ones that have arrived to date are not subject to the:

... 800 irregular maritime arrivals, who arrive in Australia after the date of effect of the arrangement, will be transferred to Malaysia.

It does not say 'or some other country of choice whilst we are playing Pacific island bingo'; it says 'to Malaysia'. Are they not subject to dot point one? Is that what you are telling the committee?

**Mr Metcalfe:** I think you are confusing things. This says that up to 800 persons who arrive after the date of effect of the arrangement—and the date of effect is an issue for the detailed MOU—are eligible for transfer to Malaysia. It is my hope that 800 persons would never be subject to this agreement, because it will be very clear that there is no point in coming to Australia if you are going to be denied what you have paid \$15,000 for, which is to access Australia. The whole idea here is to break the people-smuggling model. In relation to the particular individuals who have arrived since 7 May, I do not think I could have been clearer in my evidence.

**Senator CASH:** What I want to establish, though, is that they are not clearly subject to dot point one, because people referred to in dot point one, despite the statements and press releases the government has issued, the ones who have arrived since 7 May, are not referred to in dot point one because the people who are referred to in dot point one are being transferred to Malaysia. We still have another 800 to arrive once the date of arrangement comes into effect.

**Mr Metcalfe:** There were so many points in that, Chair, I do not understand what the question is, to be perfectly honest.

**Senator CASH:** For the secretary of the department, I think you are now being exceptionally cute in relation to what is a very important issue.

**CHAIR:** Senator Cash, perhaps if we could just have question by question. I think Mr Metcalfe is trying to assist as best he can. Question by question would be helpful.

**Mr Metcalfe:** I have been appearing before this committee for 17 years, and I think I do have a reputation as being frank, open, honest and helpful, but when I am asked the same question six different times and you do not like the answer—

**Senator CASH:** No, you refused to give me an answer.

**Mr Metcalfe:** I have given you an answer.



**Senator CASH:** You give me an answer that you want to give me.

**CHAIR:** Senator Cash, Mr Metcalfe is answering your question—your questions, in fact.

**Senator CASH:** Perhaps if I could confirm, then, for my own benefit, that none of the 110 people who have arrived since the 7 May announcement by the government will be going to Malaysia, or that some of those people will be going to Malaysia—it has not yet been determined?

**Mr Metcalfe:** That question, or that statement, has alternatives within it. Let me try to provide a concise statement. The government has made it clear and the minister has made announcements on several occasions that the persons who have arrived since 7 May will not be processed in Australia, that they will be removed pursuant to migration law to another country, that any issues they have in relation to asylum claims will be dealt with there, and that Australia will not in any way refool those persons to a place of persecution. So that is very clear. In relation to the agreement with Malaysia, it will be operative from the date of effect of the arrangement. That date could either be prospective or date back to an earlier time.

**Senator CASH:** So, it could be retrospective?

**Mr Metcalfe:** It could be tied to the timing of the announcement, for example.

**Senator CASH:** Are there any other possibilities surrounding the retrospectivity of this date?

**Mr Metcalfe:** No, it is made clear that it would only be applicable to persons who arrived after this statement. I can understand your frustration, because until the arrangements are finalised and plans are put in place and given effect to, there will always be some speculation. But the government is quite clear in its resolve to send a very clear message to people smugglers that there should be no guarantees if they send people to Australia, put them on leaky boats and risk their lives as we have so tragically seen in recent times. The message is that there is no point in doing that. This is a very significant development in regional protection for refugees and in Australian border security.

**Senator CASH:** As was, I thought, the regional processing centre in East Timor, but we were proved to be wrong there. In relation to the 110 people, what are the options for countries that the government actually can send them to? Are they only countries in which a declaration currently exists, for example, Papua New Guinea and Nauru?

**Mr Metcalfe:** I made the point before that you do not necessarily need the power under section 198A to be used; you could simply use the removal power. That is an issue on which we were seeking legal advice as to the most effective way to do that. However, it is quite clear that this would be done pursuant to the regional cooperation framework. There are various clear statements there about the need to ensure protection for people who might be refugees, and human rights standards and those sorts of issues. On the issue of which country or countries the persons might be sent to, that will of course be the subject of announcements by the government when the government is ready to make those announcements.

**Senator CASH:** Just in terms of discussions about whether or not children and women will be amongst the 800 asylum seekers to be sent from Australia to Malaysia, have there been discussions surrounding whether or not women and children will be sent?

**Mr Metcalfe:** No. My understanding is that any person would be subject to these arrangements.

**Senator CASH:** So, it could be women and children? That could include women and children?

**Mr Metcalfe:** There is no point people smugglers sending women and children to Australia.

**Senator CASH:** Section 198A(3) of the Migration Act, as we have been discussing, does require the minister to make a declaration in relation to the following matters:

Provides access, for persons seeking asylum, to effective procedures for assessing their need for protection; provides protection for persons seeking asylum, pending determination of their refugee status; and provides protection to persons who are given refugee status, pending their voluntary repatriation to their country of origin or resettlement in another country; and meets relevant human rights standards in providing that protection.

Does the department currently believe that the policies and practices observed by the Malaysian government with respect to asylum seekers and refugees satisfy these requirements and, in particular now that you have given evidence that women and children will be part of the removal process, does it satisfy in relation to women and children? If not, why not, and if so how do they actually satisfy 198A in Malaysia?

**Mr Metcalfe:** Firstly, as I have said several times, do not necessarily assume that section 198(3) would be utilised, but that is ultimately a matter for a decision. I can refer you to the clear statements made by the Prime Ministers of Malaysia and Australia that transferees would be provided with the opportunity to have their asylum claims considered, those in need of international protection would not be refouled, and that the transferees will be treated with dignity, respect and in accordance with human rights standards.

**Senator CASH:** In following on from that, I refer to an article in the *Star Online* dated Thursday, 12 May 2011 by His Excellency Dennis Yocum Ignatius, a Malaysian diplomat who has served as High Commissioner to Canada since 2002, in which he says, commenting on the article regarding the Malaysian deal:

The fundamental problem is that Malaysia has steadfastly refused to accede to the UN Refugee Convention. All refugees are treated as illegal immigrants and are subject to arrest, detention, punishment, and deportation. According to Amnesty International, more than 6,000 refugees are caned every year, while others have been trafficked to Thai gangs by corrupt local officials.

Given this situation, there should be genuine concerns as to the fate of those who are now going to be transferred from Australia.

... one thing is certain: they will join the vast sea of suffering humanity that comprises Malaysia's illegal population which is now estimated to number in excess of a million people.

Does the department have any concerns in light of the evidence that you have given about the statement between the two Prime Ministers with the issues that have been raised by Mr Ignatius?

**Mr Metcalfe:** I am aware that many people have made comments on these issues. What I am pleased about is the clear statement by the head of government from Malaysia in relation to these issues. An important consideration is that the United Nations High Commissioner for Refugees and the International Organisation for Migration will be a key part of the

implementation of these arrangements. I note and accept that Malaysia is not a signatory to the refugee convention; indeed, few countries in our region are, but we have to deal with that reality. Part of the regional cooperation framework is helping build a protection environment within our region, and that is one of the reasons why I think it is a very noteworthy achievement that it takes us into a better place within our region in relation to the protection of the rights of refugees.

Malaysia, of course, hosts a very large illegal population, part of that group that I mentioned in my opening statement, and according to the latest information that I have it hosts a population of around 92,000 asylum seekers. While there may be issues with particular individuals, we are very mindful of the commitments that have been given by the government of Malaysia, the positive comments about this being a game changing arrangement made by UNHCR and IOM and, ultimately, Australia has to come up with some innovative arrangements to try to break the people smuggling business model, otherwise we would be doing nothing and I dare say the boats would be continuing to arrive because people know that some of them are refugees, that Australia is a generous country and gives effect to its responsibilities.

You and I will agree that this is a particularly complex area of international law, but in the circumstances, with the involvement of the UN and the International Organisation for Migration, the clear statements from Malaysia and a strong will to make this succeed will ensure that this succeeds and breaks the promise that people smugglers now make that if you get on a boat and you get to Australia you may well get to stay or you will certainly stay for a long time while we pursue various opportunities.

**Senator CASH:** Is the department satisfied that there will be processes that will be put in place, in particular for the women and children who will be transferred from Australia to Malaysia; that they will not be amongst the 6,000 refugees that are caned every year; that they will not be trafficked by Thai gangs to corrupt local officials; and that they will not be trafficked into child prostitution or the child sex trade? Are you absolutely satisfied, as a department, that we are not going to be placing any of those 800 people at risk?

**Mr Metcalfe:** I would simply refer you back to the statements made in the joint prime ministerial statement.

**Senator CASH:** In relation to section 198A(3) has the department or any other agency been asked and/or provided any advice to the minister about the compliance of Malaysia to these requirements?

**Mr Metcalfe:** We rely upon advice from the Department of Foreign Affairs and Trade on those sorts of issues.

**Senator CASH:** Can I confirm that the department is also seeking legal advice as to the alternative powers of removal under the act, separate to section 198A(3)?

**Mr Metcalfe:** Yes. I do not get out of bed in the morning without getting legal advice these days.

**Senator CASH:** I can believe that, given Mr Ignatius's comments. What assurances and advice have the minister or the department received from the Malaysian government in relation to each of the criteria set out in section 198A(3), apart from the joint statements that

have been made? What is the detail surrounding this, considering we currently have 110 people who have arrived since the announcement?

**Mr Metcalfe:** All I can point you to at the moment is the joint statement. No doubt the detail, in due course, will be of further interest to you when it is available.

**Senator CASH:** To date the guarantee that we have is that the core element of this bilateral arrangement will include ‘transferees will be treated with dignity and respect and in accordance with human rights standards’ but we have no detail as to how that is going to occur.

**Mr Metcalfe:** There is detail, but that is not yet in the public domain.

**Senator CASH:** There is detail?

**Mr Metcalfe:** We are discussing a detailed agreement with Malaysia as we speak.

**Senator CASH:** But at this particular time that is what I have to go on?

**Mr Metcalfe:** There is nothing that I can put on the record.

**Senator CASH:** I would like to refer to page 263 in Budget Paper No. 2 in which it states: The government will provide \$75.9 million over four years to provide support and maintenance for irregular maritime arrivals transferred to Malaysia under the bilateral arrangement with Malaysia.

Who is the \$75.9 million being paid to for the transfer of the 800 asylum seekers?

**Mr Metcalfe:** In the main that would be to the International Organisation for Migration and UNHCR, but Mr Fleming might be able to provide some more detail.

**Mr Fleming:** I do not have anything to add to that.

**Senator CASH:** So you do not know from the current budget papers?

**Mr Metcalfe:** Essentially what that sum is for is, as we indicated, that we will fund the arrangement so the living costs and the cost of processing people in Malaysia is something borne by Australia, given that they are a caseload that was arriving in Australia. It is based upon the same concepts that have been in place for some years now in relation to the care and support for people intercepted in Indonesia under the regional cooperation arrangements that we have had with Indonesia for many years. It is the same type of costing. If you are interested in the detail, then of course I will take it on notice.

**Senator CASH:** I am very interested in the detail. Could you also provide a breakdown of where the money is being spent in each of the financial years?

**Mr Metcalfe:** Yes. Again, there would have been estimates as to the costs of the numbers arriving and that sort of thing. One of the interesting things about this is that if this arrangement works then very few people—

**Senator CASH:** I need to stop you there. You said ‘if this arrangement works’.

**Mr Metcalfe:** If it stops people coming to Australia. The whole idea is to change the people smuggling business model. It is clearly designed to work. It has been formulated on our many years of experience in dealing with these issues. Everyone is fixated on the figure of 800 people, but who wants to be one of those 800 people? No-one does because you would be wasting your money, putting yourself at the back of the queue and not reaching your destination of Australia. One of the issues in estimating costs is actually how many people would, in fact, be subject to the arrangements, and time will tell.

**Senator CASH:** You said 'in the many years of experience' when talking about this Malaysian deal of dealing with these issues. If you have learnt from so many years of experience, why are we only hearing about this now when this has been a problem for several years?

**Mr Metcalfe:** All I can say is that the government made decisions last year. The Prime Minister made clear in her speech to the Lowy Institute in July last year a desire for a regional framework, and the department has been working busily to help put that in place since that time. Of course I cannot get drawn into what advice may or may not have been provided along the way, but certainly in providing policy advice in this area, we draw upon many years of experience in administering arrangements relating to illegal arrivals in Australia.

**Senator CASH:** Including the years where zero boats arrived?

**Mr Metcalfe:** Including the years where zero boats arrived and including the years when thousands of people arrived.

**Senator CASH:** That was before tough decisions were made and zero boats was the result. That might be my analysis; I will not put you on the spot there.

**Mr Metcalfe:** Yes. I will not regard that as a question.

**Senator CASH:** In relation to the \$75.9 million, is any of this money going to be paid for transfer for the 800 in relation to ongoing welfare in Malaysia? Will it pay for their meals, accommodation, ongoing health checks, mental health and for children to attend school? What will the durations of these payments be? You have managed to forecast it over four years, so I am assuming that you have some idea as to how these payments are going to be spent.

**Mr Fleming:** It will cover costs such as that. It will also cover the costs of removing or transferring the individuals to Malaysia.

**Senator CASH:** How much is that estimated to be per person?

**Mr Fleming:** I do not have the breakdown to that level of detail with me. I will have to take that on notice.

**Senator CASH:** Do you know how much it currently costs to remove a person from Australia to another country?

**Mr Fleming:** I do not have that information.

**Mr Metcalfe:** That will vary widely.

**Senator CASH:** Does it depend on the country that they are going to?

**Mr Metcalfe:** It depends upon the particular circumstances as well.

**Senator CASH:** Mr Metcalfe, you said that the money will, in the main, be given to the IOM and the UNHCR. How do you envisage that you will monitor how they spend that money and how they utilise it?

**Mr Metcalfe:** These are very well known organisations. We have strong and robust arrangements with UNHCR and IOM in relation to their accounting for the expenditure. The arrangements that have worked for some years in Indonesia would be similar to the arrangements made in Malaysia.

**Senator CASH:** I note that the minister has stated that those individuals that are going to be sent to Malaysia will be going, and I quote, 'into the community'. Will those individuals be given work rights to support themselves during their stay and, if not, what assistance will be provided to them to support themselves? Is it anticipated that they will have access to welfare payments from Australia?

**Mr Metcalfe:** Not welfare payments.

**Senator CASH:** What type of payments?

**Mr Metcalfe:** As we have indicated, aspects of their care and accommodation would be provided for under that line item. The issue of work rights is a matter for Malaysia, and that is one of the issues that is currently being discussed.

**Senator CASH:** Would we like them to have work rights when they are in Malaysia?

**Mr Metcalfe:** I would not like to offer a view on that because Malaysia, of course, has 92,000 asylum seekers and they will be mindful of their arrangements for all of those people.

**Senator CASH:** That is a very good point that you make. Malaysia has 92,000 asylum seekers. When you talk about this money going towards the care and accommodation of the 800, where has the Australian government anticipated that these people will be housed?

**Mr Metcalfe:** In the community.

**Senator CASH:** In homes in the community or in the slum in the community, as one newspaper reported that one refugee was living in? Will it be under a tent or under a sheet of tin?

**Mr Metcalfe:** No. I think that, again, newspapers need to find interesting stories. The majority of people live in accommodation that is appropriate in that particular country.

**Senator CASH:** What is appropriate for that particular country?

**Mr Metcalfe:** We would look to the International Organisation for Migration to be providing advice as to appropriate living arrangements, in exactly the same way that they have in Indonesia for many years.

**Senator CASH:** Are you satisfied that despite the fact that Malaysia, to quote you, 'has 92,000 asylum seekers' or refugees, our 800 will have appropriate accommodation?

**Mr Metcalfe:** Yes. As you can imagine, there is a balance issue here that these folks will not be unduly advantaged compared to others because that could cause concerns within the broader community, but of course there are requirements that are basic to human dignity so, referring you back to the Prime Ministers' joint statement, we would expect that people would be treated with dignity and respect in accordance with human rights standards.

**Senator CASH:** What is dignity and respect in accordance with human rights standards when it comes to accommodation? What can I expect?

**Mr Metcalfe:** You can expect that they will be commensurate with appropriate living arrangements in that particular country for that class of person, in the same way that they have in Indonesia.

**Senator CASH:** That is not good news, is it, for these 800 people?

**Mr Metcalfe:** We hope they never come. The whole idea is that we hope that they never come. We plan they never come. The people smugglers can no longer sell the rite of passage on a boat that may sink, disappear or crash into the rocks on Christmas Island.

**Senator CASH:** We have been saying this for some time. That has been our point since day one.

**Mr Metcalfe:** The government has now made a major announcement in relation to that issue and that has been based upon quite clear advice as to how we can, on the one hand, ensure that refugees are protected and not sent back to situations of persecution, but that people are not encouraged to travel unlawfully in our region.

**Senator CASH:** Yet some would say, and certainly it has been raised to me, that instead of actually stopping the boats and stopping the incentive, you have actually given people smugglers two options as opposed to one because, depending on what they charge, they can either get you straight to Australia for processing or, alternatively, get you to Malaysia, where you could become one of 4,000 people who will be going to Australia.

**Mr Metcalfe:** There are 92,000 there already and it has been very clear that the resettlement arrangements that Australia has announced will only apply to people who arrive prior to 7 May. There is no incentive whatsoever to go and join a queue of 92,000 people. Australia takes, and has taken, refugees from Malaysia for some years and indeed, over the next four years, we will take around 55,000 refugees internationally. That is a good thing. Australians should be proud of our work in relation to—

**Senator CASH:** How many refugees did you say?

**Mr Metcalfe:** It is about 55,000. It is 13,750 times four. The fact that the government has shown that it is prepared to provide another 1,000 places a year to people who are in need of international protection and who have nowhere to go, at the same time as providing a huge blow to the activities of business smugglers, seems like a very good policy outcome.

**Senator CASH:** Just generally speaking, what legal rights do asylum seekers assume on entering Australian waters?

**Mr Metcalfe:** I might get the chief lawyer to help me through that.

**Senator CASH:** Yes, please.

**Mr Metcalfe:** Australia has an international legal obligation to not refool a refugee. That derives from the refugees convention, which is customary international law, but we are a signatory and we ratified that convention many years ago. Our obligations are not to refool a refugee; that derives from international law. In terms of domestic law, a person who is intercepted and taken to an excised offshore place—

**Senator CASH:** Christmas Island.

**Mr Metcalfe:** Yes, Christmas Island. They have no right to apply for a visa and can only apply for a visa if the minister lifts the prohibition, the bar, and that is a non-compellable, non-delegable, personal power for the minister. It is only through a considered decision by the minister that a person can apply for a visa in Australia. Australian law requires that persons who are intercepted in this way shall be held in detention and a person who is in detention, pursuant to section 198 of the act, must be removed from Australia as soon as practicable. That is the broad legal regime. There are other particular parts of the migration act that may

apply—offence provisions and various other issues—and of course Australian laws may apply in other ways, such as the right to complain to the Human Rights Commission and that sort of thing. That is it in a nutshell.

**Senator CASH:** Just following on from that, what process is in place—and I will refer specifically to the 110 that have now arrived—if these people invoke our protection obligations?

**Mr Metcalfe:** We do not have a protection obligation under Australian migration law because they are excised offshore persons. However, we have an obligation not to refool a refugee under international law. It is possible to transfer a person to another country providing we have assurances that the person would not, in turn, be refooled from that country, and that is the objective of the Australia-Malaysia arrangement: a non-refoul guarantee associated with that. That means that they will need to be the subject of an assessment process in that other country, which is what happened with Nauru and Papua New Guinea in the past and is intended to happen with Malaysia, and the good officers of UNHCR would be involved in ensuring that process occurs.

**Senator CASH:** In relation to the 110 people who have arrived since the announcement on 7 May, what legal rights do they currently have on entering Australian waters, now having been taken into custody by Australian officials and now that they are on Christmas Island?

**Mr Metcalfe:** They have no right to apply for a visa. In the past, Australia has given effect to its no refoulement obligation by a process undertaken by my officers as to whether or not the person is a refugee, which we have discussed that ad infinitum, including merits review arrangements and the ability to pursue issues of law before the Australian courts.

Australia, in this case, is choosing not to exercise its protection or non-refoulement obligations through that method, but through a change of policy it has indicated that we will ensure our non-refoulement obligations are given effect while the person is in another country, in effect removing any incentive for a person to come to Australia and participate in a process that may lead to a refugee status outcome in Australia or lead to an outcome of a refused refugee pursuing litigation in Australia. However, there are rights under the act and under other acts, as I have indicated, that go to complaints and other issues that the persons in immigration detention, regardless of their visa status or their eligibility to apply for visas applying, not withstanding their particular status.

**Senator CASH:** Have any of these 110 people applied for asylum in Australia and said, ‘I would like to put my hand up for a protection visa.’?

**Mr Metcalfe:** I would have to check that. They cannot, of course, apply for a protection visa. Having said, ‘I’m a refugee’, I can check on that, but our advice to them has been, ‘You are being held in Australia pending removal to another country where any claims for asylum will be processed in accordance with international law.’

**Senator CASH:** I would like to explore that with you. You said, ‘Our obligation, at an international level, under the UNHCR is that we cannot have a person returned to their country if they are going to still need protection.’

**Mr Metcalfe:** If there is a real chance of persecution.

**Senator CASH:** Or a country where we fear they may be returned.



**Mr Metcalfe:** Precisely. A country does not meet its obligations under the convention if it returns a person to another country which would then, summarily, return the person. Essentially the international obligation is non-refoulement. That has been given effect to in different ways over the years. It was given effect to in Nauru and Papua New Guinea, and in this way it will be given effect in Malaysia, the key difference being that this is part of a regional cooperation framework.

**Senator CASH:** Does that require the declaration? Is that where the declaration comes in under section 198?

**Mr Metcalfe:** We have been through that discussion already. That declaration may or may not be required, depending on the circumstances, and we are currently looking at that.

**Senator CASH:** You mentioned a policy change in ensuring that Australia does not breach its UNHCR obligations. If we send any of these 800 to a country that may well return them to their country of origin when they should not. What is that policy arrangement? How are we getting those guarantees from the other countries that they will not return the particular asylum seekers and what guarantees do we have that we will not be in breach of our UNHCR obligations?

**Mr Metcalfe:** There are several aspects. Firstly, I would refer you to the statements made in the joint prime ministerial statement that 'transferees will be provided with the opportunity to have their asylum claims considered and those in need of international protection will not be refouled'.

Secondly, this agreement is clearly pursuant to the regional cooperation framework to which Australia and Malaysia are parties and which outlines the types of protection that are applicable to people moving in an irregular manner. Thirdly, of course, the involvement of the good officers of the United Nations High Commissioner for Refugees.

**Senator CASH:** That is in relation to the 800 that are going to be sent to Malaysia. What about the 110 that are not subject to this particular joint statement by the prime ministers? What guarantee do we have from potential third countries where we will be sending them for processing that they will not be returned?

**Mr Metcalfe:** We are returning to where we were before. Those persons will not leave Australia until we are satisfied that they are going to a place where they would not be refouled.

**Senator CASH:** Until Australia is satisfied?

**Mr Metcalfe:** Yes. We would not remove anyone in the faint hope that they would be okay, and that is exactly why detailed arrangements are being put in place.

**Senator CASH:** Do you have a list of those countries to which we are able to currently remove people and not be in breach of our UNHCR obligations?

**Mr Metcalfe:** You keep saying 'UNHCR obligations'. I think it is better to characterise them as refugee convention obligations because, although it could be argued that declarations are currently in place with Nauru and Papua New Guinea, the UNHCR made it very clear that it was not wanting to be associated with the Nauru arrangements for a variety of reasons that we probably do not need to cover again. At the moment the government is focusing on the discussions with Malaysia as the most obvious path forward, but as I have made clear, the 110

people will be the subject of removal to another country, as indicated by the minister, and in a situation where there would be appropriate guarantees as to their treatment under international law.

**Senator CASH:** Do we have a list of countries where currently we are satisfied that we would get those guarantees?

**Mr Metcalfe:** I am not sure if you are asking me for a list that exists in legal terms or whether we believe there are some countries—

**Senator CASH:** No, a list in legal terms. I am happy that we can give consideration to other countries and they may be able to give us a guarantee, but is there a list of countries that are specified?

**Mr Metcalfe:** No. The only countries where declarations currently exist—

**Senator CASH:** Is PNG and Nauru.

**Mr Metcalfe:** and those I would regard as largely otiose.

**Senator CASH:** I accept that. Of the 800 asylum seekers, so the ones referred to in the joint statement, will any processing of these asylum seekers be conducted by Australian officials prior to sending them to Malaysia?

**Mr Metcalfe:** No. The whole idea is that they will be returned for consideration as to any refugee claims in Malaysia.

**Senator CASH:** So processing will occur in Malaysia?

**Mr Metcalfe:** That is right. It is our expectation that would occur by the UNHCR.

**Senator CASH:** In Malaysia by the UNHCR?

**Mr Metcalfe:** That is correct.

**Senator CASH:** When you say that is your expectation, has the Malaysian government agreed to that?

**Mr Metcalfe:** That has certainly been the basis of the discussions that we have had, but as I have indicated on several occasions, the fine detail is now being pursued.

**Senator CASH:** Do you know what the processing of asylum seekers will comprise? Will there be identify, biometric security and character checks?

**Mr Metcalfe:** It will be standard international processes.

**Senator CASH:** If it is being done in Malaysia would there be any requirement for Australian ASIO to be involved?

**Mr Metcalfe:** No, there would not, unless some of those persons were considered to be part of our refugee intake in future years, but the government has made it clear that any people transferring from Australia would not be considered as part of any future intake for a very, very, very long time. There are many other people in Malaysia who have been there for some time awaiting resettlement.

**Senator CASH:** Is that the 92,000?

**Mr Metcalfe:** Some of those would be eligible for resettlement in Australia. It already takes people from Malaysia, as do the US and other countries. The persons who would be considered for a visa for Australia are the subject of any ASIO checking.

**Senator CASH:** What criteria will be employed to decide which 800 persons will be sent to Malaysia? We know the first 110 are not going to be.

**Mr Metcalfe:** I have not said that.

**Senator CASH:** They may or may not be.

**Mr Metcalfe:** That is right. The government has made it clear that any future arrivals will be the subject of removal to a country overseas for consideration there.

**Senator CASH:** In relation to this particular joint statement that you continue to refer me to do we know what criteria will be employed to determine who is going to go to Malaysia?

**Mr Metcalfe:** I think it is best that we wait until the MOU is finalised before I answer questions in relation to that.

**Senator CASH:** Will Malaysian officials be able to veto any potential asylum seekers?

**Mr Metcalfe:** I will answer that after the MOU is finalised?

**Senator CASH:** Has the Malaysian government indicated that they would like the option of vetoing potential asylum seekers?

**Mr Metcalfe:** I would not want to get drawn into discussions, if this is leading into a line of ruling things in or out.

**Senator CASH:** I am merely asking whether the Malaysian government has indicated or raised with you—

**Mr Metcalfe:** We are engaged in a discussion with the Malaysian government and I do not think that it is appropriate to go through various elements of what may or may not be the subject of diplomatic exchanges.

**Senator CASH:** Upon what basis is it not relevant?

**Mr Metcalfe:** It relates to the foreign relations of Australia.

**Senator CASH:** So at this particular point you are not prepared to tell me whether or not Malaysian officials will be given the power of veto?

**Mr Metcalfe:** No, I am not prepared to discuss that.

**Senator CASH:** So we are unable to explore upon what basis this veto would apply?

**Mr Metcalfe:** I am not prepared to discuss that. I think we have seen what I suspected, in that you are going to ask me to rule things in or out and my answer is: no comment.

**CHAIR:** Last question and then we are going to go to afternoon tea break.

**Senator CASH:** In terms of removing asylum seekers, the ones to be sent to Malaysia from Australia, will they be sent by air, boat or both?

**Mr Metcalfe:** It would be my ordinary working presumption that it would be by air, but again I would not want to rule anything entirely in or out.

**CHAIR:** This is a good time to break. Senator Cash, I indicated to Senator Hanson-Young that she could come up after afternoon tea.

**Senator CASH:** How long will that take?

**CHAIR:** She has about 40 minutes or so. Have you got much more?

**Senator CASH:** I have enough to take us through until 9.30.

**CHAIR:** You can have a break for a while.

**Senator CASH:** That is fine.

**CHAIR:** We will have afternoon tea and come back at quarter to 4.

**Proceedings suspended from 15:31 to 15:49**

**CHAIR:** I call the committee to order. We are continuing on outcome 2. Senator Hanson-Young has the call.

**Senator HANSON-YOUNG:** I want to follow on from questions in relation to the so-called Malaysian solution. I want to tease out some of the responses that you were giving in relation to particular parts of the Migration Act. Of course, we know that section 198A requires a declaration of a country where people can be taken to in order to have their claims assessed rather than being done here on Australian soil. You implied that there were other parts of the Migration Act that could be used to remove people if indeed you were not able to declare a country under that section. Is that because you cannot specify a declared safe country for Malaysia?

**Mr Metcalfe:** No.

**Senator HANSON-YOUNG:** Why would you not be using and invoking that particular part of the Migration Act?

**Mr Metcalfe:** I was just being very correct with Senator Cash and simply pointing to the fact that section 198A does permit an offshore entry person to be taken to a declared country but section 198 itself allows the removal from Australia of unlawful noncitizens.

**Senator HANSON-YOUNG:** But it is not illegal to seek asylum, so these people were not necessarily unlawful citizens.

**Mr Metcalfe:** I think you are confusing two concepts there—

**Senator HANSON-YOUNG:** No, I am just quoting the convention.

**Mr Metcalfe:** No, you are not.

**Senator HANSON-YOUNG:** Yes, I am.

**Mr Metcalfe:** No, an unlawful noncitizen is a term of art as described in the Migration Act and it applies to a person who is not an Australian citizen and who has no visa.

**Senator HANSON-YOUNG:** But they are not necessarily illegal or unlawful, are they, if they are seeking asylum?

**Mr Metcalfe:** It is an entirely different concept as to whether they are can assert a right under international law seeking asylum in a country. But Australian law has forever treated a person who does not hold a visa, or entry permit in the old days, as being unlawfully in Australia. The Migration Act now for many, many years requires officers of my department to detain such a person and remove them. That is a clear statutory obligation. It is quite a different concept as to whether a person who arrives without a visa is able to engage Australia's international protection obligation and assert that they are in fact in need of international protection and that Australia should provide that protection.

**Senator HANSON-YOUNG:** In order to invoke section 198 you would be ignoring Australia's obligations?

**Mr Metcalfe:** No, because as I explained—

**Senator HANSON-YOUNG:** If you were to remove asylum seekers who were asking for protection.

**Mr Metcalfe:** If we were to remove a person to a place where they would be persecuted or to a place which would send them back to a place of persecution, that would be a breach of international law.

**Senator HANSON-YOUNG:** How do you know if you are sending somebody to a country of persecution if you have not assessed their claim for protection?

**Mr Metcalfe:** Because in the case of Malaysia we would be talking about persons who were not Malaysian nationals and therefore are not making any claim in relation to Malaysia. We are talking largely about people from Afghanistan, Iran, Iraq or Sri Lanka where we have undertakings from Malaysia backed up by involvement of UNHCR that Malaysia would not refole such a person.

**Senator HANSON-YOUNG:** Except that we have obligations not to send people to places where they may face harmful conditions, where they may not be given protection. If you have not assessed these people's claims, how do you know they are not seeking protection from Malaysia?

**Mr Metcalfe:** Because that would be quite clear that they were not nationals of Malaysia.

**Senator HANSON-YOUNG:** Are you suggesting that there are individuals within Malaysia who are not subject to torture, persecution and physical and emotional abuse who are other than Malaysian nationals?

**Mr Metcalfe:** I would not want to talk about that issue in this forum. But I think we are at real risk here of conflating and confusing several different concepts, with respect. There is a clear legal power—indeed obligation—under the Australian Migration Act for people who do not have a visa and who are not a citizen to be removed from Australia.

**Senator HANSON-YOUNG:** But there are obligations to Australia to not deport people to countries where they may face harm?

**Mr Metcalfe:** At international law as a signatory or a party to the United Nations convention on refugees, Australia does not return people to a place of persecution.

**Senator HANSON-YOUNG:** Except you do not know if you have not given them some type of assessment.

**Mr Metcalfe:** All I can say is—

**Senator HANSON-YOUNG:** Tell me how you can guarantee—

**CHAIR:** Senator, I know you are keen to ask questions. I am just going to ask you to let Mr Metcalfe finish his answer because that might assist with further clarification of what you are seeking.

**Mr Metcalfe:** What I would refer you to is that this particular proposed transfer agreement with Malaysia will be occurring under the auspices of the regional cooperation framework done at Bali on 30 March this year. It incorporates concepts of protection and human rights for persons who may be travelling through the region in an irregular manner. Indeed, it seeks to promote their safety by finding ways of preventing people from employing people smugglers and placing themselves at great risk of death or serious injury through taking

irregular forms of transport such as we so tragically saw before Christmas when many people died because they were using people smugglers.

The issue of the protection of international law will be the subject of the agreement between Australia and Malaysia. I would note the supporting comments of the international body responsible for these matters, the United Nations High Commissioner for Refugees.

**Senator HANSON-YOUNG:** In relation to people's refugee protection, not necessarily in the protection of other complementary issues—that is where I am going—what type of agreement will you be able to establish to ensure that, if you do not assess somebody's claim, what they are fleeing from and what they are in danger of, how can you guarantee their safety and protection?

**Mr Metcalfe:** We would have agreement between the governments of Australia and Malaysia that does go to the issue of their human rights and their dignity while they remain in Malaysia and ensures that if they wish to avail themselves of refugee determination processes that would occur. Indeed, the United Nations High Commissioner is being involved by both Australia and Malaysia as part of this process.

**Senator HANSON-YOUNG:** What part of the Migration Act is the government relying on in order to implement this agreement?

**Mr Metcalfe:** Section 198 and possibly section 198A.

**Senator HANSON-YOUNG:** Primarily section 198?

**Mr Metcalfe:** As I have said several times now, 198 requires the department to remove people from Australia if they do not hold a visa. At the moment people who arrive in an irregular manner by boat do not have a visa. They are held while any claims they may wish to raise are considered. That exists outside the statutory framework of the Migration Act and ultimately leads to an issue for the minister as to whether he is prepared to allow a formal application for a protection visa under the act.

**Senator HANSON-YOUNG:** Lifting the bar.

**Mr Metcalfe:** The legal provisions that we are relying upon in terms of removal are section 198 and 198A and, in relation to their detention, section 189.

**Senator HANSON-YOUNG:** What part of the refugee convention is Australia relying on in order to fulfil our obligations to remove people under section 198?

**Mr Metcalfe:** The refugee convention requires state parties not to refoule a refugee, a person where there is a real chance of persecution for a ground as set out in the refugee convention for reasons of ethnicity, nationality, religion or membership of a particular social group, for example. The transfer agreement between Australia and Malaysia, in the same way as previous bilateral agreements with Nauru and Papua New Guinea, allows Australia to give effect to its international obligations of nonrefoulement because another country is prepared to undertake that they will not refoule a person who is a refugee. The agreement as announced by the prime ministers of the two countries makes it clear that persons subject to this arrangement would not be summarily removed from Malaysia but that they would be subject to the availability of a refugee determination process and that would be undertaken by the United Nations.

**Senator HANSON-YOUNG:** Except there is no agreement.

**Mr Metcalfe:** There is a joint statement between the prime ministers.

**Senator HANSON-YOUNG:** It is a statement, not an agreement.

**Mr Metcalfe:** As I have indicated to Senator Cash, an agreement is being finalised.

**Senator CASH:** It is extensive. It is really extensive.

**Senator HANSON-YOUNG:** Yes, one page. I am sure that is going to protect the lives of very vulnerable people. The requirements for us under the convention as you have outlined mean that we would have to have some understanding of the people, their cases and their needs for protection before we are to send them to a country like Malaysia to ensure that we are upholding those obligations.

**Mr Metcalfe:** With respect, I disagree.

**Senator HANSON-YOUNG:** How do you guarantee that you are upholding the convention and being able to remove somebody to a given country, Malaysia, under section 198 if you have not assessed their need for protection and what they are asking protection from?

**Mr Metcalfe:** With respect to their transfer to Malaysia that would be done on the basis that it was safe for that to occur, and that is the subject of the agreement.

**Senator HANSON-YOUNG:** Which agreement is that?

**Mr Metcalfe:** The agreement that is currently being finalised with Malaysia. Were we to undertake a refugee protection process here there is not much point in transferring somebody somewhere else. And I would go back to the original policy setting that the government is determined to stop the irregular travel of people coming to Australia seeking to avail themselves of Australian refugee processes and placing themselves and their children at great risk of death or major injury as a result. There is a better way. There is a more orderly way for this to occur and that is removing the people smugglers from the equation.

**Senator HANSON-YOUNG:** But of course we will not be resettling the 4,000 nominated people unless 800 people take that boat trip, will we?

**Mr Metcalfe:** We will be resettling 4,000 people from Malaysia over the next four years.

**Senator Lundy:** It is not conditional.

**Senator HANSON-YOUNG:** Where does the agreement say it is not conditional?

**Mr Metcalfe:** I think the Prime—

**Senator HANSON-YOUNG:** The statement from the Prime Minister says it is conditional.

**Senator Lundy:** That is what I am referring to.

**Senator HANSON-YOUNG:** Why do we not take the 4,000 people now?

**Mr Metcalfe:** We take 30,750 people per year. As I have said—

**Senator HANSON-YOUNG:** And we will have an increase of 1,000 this year.

**Mr Metcalfe:** That is right. My maths is not really good but I think that takes us somewhere towards 55,000 to 56,000 people in the next four years. This is something Australians should be proud of.

**Senator HANSON-YOUNG:** Why has the statement and the foreshadowed agreement presented a one for five swap if there is no condition on that one person being returned?

**Mr Metcalfe:** I think that word ‘swap’ and all that sort of thing comes from—

**Senator HANSON-YOUNG:** ‘Transfer’ is your word. Let us use ‘transfer’.

**Mr Metcalfe:** I am using the word ‘transfer’. ‘Swap’ is a word that is sort of a device of the media to try to explain things in their terms. We are talking about a transfer agreement where we would transfer people from Australia to Malaysia to undergo internationally recognised refugee determination processes and where Australia will increase its already generous overseas resettlement program by 1,000 persons per year to assist Malaysia, which has currently around 92,000 asylum seekers. This gives an opportunity for people who have been found to be refugees to have a durable solution. It is designed to stop people who have not been found to be refugees from risking their lives seeking to come to Australia.

**Senator HANSON-YOUNG:** Why would we wait for 800 people to come here before we take all 4,000?

**Mr Metcalfe:** Senator Lundy has made it clear that the 4,000—

**Senator HANSON-YOUNG:** Maybe the minister would like to answer.

**CHAIR:** I am just going to remind you to let the officers at the table finish their answers first.

**Senator Lundy:** As the secretary has painstakingly explained a number of times even in the short time I have been in the room, this policy is designed to—

**Senator HANSON-YOUNG:** I know what the policy does.

**Senator Lundy:** stop the trade of people smuggling and the 4,000 per year from Malaysia—

**Senator HANSON-YOUNG:** No, 1,000.

**Senator Lundy:** Sorry, 1,000 per year from Malaysia—4,000 over four years—allows us the capacity to be able to settle those humanitarian entrants successfully into Australia. I think you would understand all at once would present some particular challenges, but I think we can manage 1,000 additional over the four-year period.

**Senator HANSON-YOUNG:** There is no agreement for a one to five person exchange?

**Mr Metcalfe:** No, if you read the Prime Ministerial statement it makes it clear that Malaysia will accept up to 800 persons. As I discussed earlier with Senator Cash, one would certainly hope that those places will not be needed because it changes the business model. There is no guarantee now that if you come to Australia you will come into the Australian system. The 4,000 places are to be provided over the next four years as part of an increase to our annual resettlement program which is already 13,750 and it will be expanded to 14,750.

**Senator HANSON-YOUNG:** Even if not one of those 106 people currently being detained on Christmas Island are sent to Malaysia?

**Mr Metcalfe:** I do not think I can be clearer.

**Senator HANSON-YOUNG:** You are saying to me that the representation—and now you are blaming it on the media—of the media that this was a one for five exchange is bollocks. That is what you have just said.



**Mr Metcalfe:** I have not used any of those words. You are completely putting words in my mouth.

**Senator HANSON-YOUNG:** Is there an exchange of one asylum seeker for five people to be transferred from Malaysia?

**Mr Metcalfe:** Can I just refer you to the first two dot points of the operative paragraph of the prime ministerial statement which says, '800 irregular maritime arrivals, who arrive in Australia after the date of the effect of the arrangement, will be transferred to Australia for refugee status determination. In return, over four years, Australia will resettle—

**Senator HANSON-YOUNG:** In return?

**Senator Lundy:** To Malaysia.

**Mr Metcalfe:** To Malaysia for refugee status determination. In return, over four years Australia will resettle 4,000 refugees who are currently—

**Senator HANSON-YOUNG:** How are the words 'in return' not conditional?

**Senator BRANDIS:** That is what I was wondering too, Senator Hanson-Young. That is not what he said.

**Senator HANSON-YOUNG:** How are the words 'in return' in that statement not conditional?

**Mr Metcalfe:** I do not understand the point you are making.

**Senator HANSON-YOUNG:** You have sat here for the last five minutes, as has the minister, to tell me that there is no link between the 800 people that Malaysia will agree in this foreshadowed agreement to take in exchange for the resettlement of 4,000 people.

**Mr Metcalfe:** I have not said that. What I have said is that Malaysia has agreed that it will take up to 800 people from Australia who arrive here in an irregular manner and that Australia will take 4,000 people from Malaysia.

**Senator HANSON-YOUNG:** In return?

**Mr Metcalfe:** What I specifically disavowed were suggestions of a swap.

**Senator HANSON-YOUNG:** I would like Mr Metcalfe to explain to me how the phrase 'in return' is not a condition by which the transfer of the two different groups of people will occur.

**Mr Metcalfe:** I see. What I think is quite clear is that Australia has indicated it will take the 4,000 people and Malaysia has indicated it will take up to 800 people.

**Senator HANSON-YOUNG:** In return?

**Mr Metcalfe:** The two things are linked but I rejected the simplistic terminology of a swap, of a five to one swap. I think that you need to have a look at the fact that we will be taking 55,000 or 56,000 refugees. This will mean that we are taking 58,000 refugees and we will stop people smugglers selling dangerous voyages to Australia. That is a good deal.

**Senator HANSON-YOUNG:** Not if you are one of those 800 people who has to risk their lives on the high seas to get here.

**Mr Metcalfe:** That is right, not if you are one of the 800 people who get onto a boat and die off Christmas Island.

**Senator HANSON-YOUNG:** As a result, if they did happen to survive that treacherous trip, arrive in Australian waters to then be returned or sent to Malaysia—

**Mr Metcalfe:** The whole idea is that you would not get on that boat if you are not going to get entry to Australia.

**Senator HANSON-YOUNG:** Because receiving those 4,000 people is in return for us sending 800 people to Malaysia.

**Mr Metcalfe:** I agree with the formulation you have just used.

**Senator HANSON-YOUNG:** The idea that this is unconditional is not true. The minister said it was unconditional and that is clearly not the case.

**Senator Lundy:** It is on the basis that it is up to 800. Your comments imply that there have to be 800 people to go to Malaysia in return for 4,000. What I am making clear is that it is up to 800—

**Senator HANSON-YOUNG:** So only 100 people have to risk their lives?

**Senator Lundy:** Mr Metcalfe made it very clear in repeating the prime ministerial statement again and again that it was up to 800 people—

**Senator HANSON-YOUNG:** You said it was not conditional.

**CHAIR:** Just let Senator Lundy finish what she is saying.

**Senator Lundy:** On the basis that we do not take a smaller proportion of the 4,000 if 800 people do not go, that is my explanation of saying it is unconditional. Part of the agreement that is still being finalised is that we will take 4,000 people over four years and up to 800 will be returned to Malaysia. Mr Metcalfe is absolutely accurate when he says it is not a one for five swap or somehow a formal exchange based on those numbers. Both the up to 800 and the receiving of 4,000 are part of the same agreement, but I maintain those numbers are not conditional in the way that you tried to imply.

**Senator HANSON-YOUNG:** I am just using the language that has been used by the Prime Minister and the minister for immigration actually.

**Senator Lundy:** That is why we are referring to the statements in response to your question so we can be very clear as to what the Prime Minister has said.

**Senator HANSON-YOUNG:** For the last two weeks the government and various ministers spruiking this policy have been saying that it is a good deal because we get to have 4,000 people in exchange for 800 being sent to Malaysia.

**Senator Lundy:** It is a good policy because it will have the effect of spoiling the business case of people smugglers.

**Senator HANSON-YOUNG:** What evidence do you have of that?

**Mr Metcalfe:** I think, as I explained in my opening statement and then in various comments to Senator Cash earlier, Australia has been receiving people in an irregular manner for over 30 years.

**Senator HANSON-YOUNG:** Yes, of course. We do not have to start swapping people in order to change that.

**CHAIR:** Let Mr Metcalfe finish.

**Mr Metcalfe:** It is quite clear that certain policy arrangements have been more effective than others. I could talk for hours if you wish, but I am sure you do not, in relation to that. What is clear though is that there is a business model now operating for people smugglers that they can virtually guarantee that if people pay them \$15,000 or \$20,000 to fly down to South East Asia to be smuggled between Malaysia and Thailand and then to get on a boat, which may or may not end up in Australia, which may sink or disappear, or which may crash into the rocks on Christmas Island, that they are going to profit from that particular motive. I do not think anyone wants people risking their lives in that way.

**Senator HANSON-YOUNG:** No, of course.

**Mr Metcalfe:** Therefore, the whole intention here is to say to the people smugglers: you cannot guarantee that anymore. You cannot guarantee that you can get someone to Australia. That is why this policy, which is devised from a sense of humanity to stop people risking their lives—

**Senator HANSON-YOUNG:** What sense of humanity?

**Mr Metcalfe:** Are you encouraging people to travel illegally to Australia on leaky boats?

**Senator HANSON-YOUNG:** No, I am not but you are.

**Mr Metcalfe:** Absolutely not.

**Senator HANSON-YOUNG:** You have said that in return for Australia resettling 4,000 people that Malaysia has to take some of the people who have come here by boat. Your policy is inherently inconsistent.

**Mr Metcalfe:** Your rationale is missing the key point. The key point is: would you, sitting in Pakistan, being offered a voyage to Australia for \$15,000 with a guarantee of getting there, mortgaging your house, mortgaging your kids' future, still make that decision if you knew that you would not actually get to Australia even if you get on that boat and you arrive here?

**Senator HANSON-YOUNG:** With all due respect I think I have spoken to enough people who have taken that journey to know that that type of idea of a simple, rational decision when you are fleeing for your life and the safety of your family—people take whatever measures are available to them. With all due respect to the families who have risked their lives, families who have lost their lives on the high seas, I think the idea that here in cushy Canberra people in the bureaucracy can sit there and say—

**Senator Lundy:** I take offence at that remark.

**Senator HANSON-YOUNG:** that here is a logical argument for you not to—

**Senator Lundy:** What do you mean by 'cushy Canberra'? Can I just go back to that? I take offence at that. I am the Senator for the ACT and what does 'cushy Canberra' mean?

**Senator BRANDIS:** It probably means it is a very agreeable place.

**Senator Lundy:** Thank you.

**CHAIR:** If you have got questions of the department I would ask you to concentrate on those questions, please.

**Senator Lundy:** There are plenty of families doing it hard here, too.

**CHAIR:** Senator Hanson-Young, I am going to direct you and ask you to concentrate on your questions to the department, please.

**Senator HANSON-YOUNG:** I do not think there is anybody who would argue that here in Parliament House we have it pretty good.

**Senator Lundy:** Is that what you meant by ‘cushy Canberra’?

**Senator HANSON-YOUNG:** I meant Parliament House.

**Senator Lundy:** The people of Canberra do get offended when generalisations are made about their city in this way. I am very happy to pull other parliamentarians up on that fact.

**Senator HANSON-YOUNG:** Thank you. I am more than sure that you have done that for your constituents. I am also very sure that families who have risked their lives for safety and freedom from persecution and torture to be presented with the idea that there is some kind of logical analysis of what is most likely as a result of fleeing their homeland, that somehow some argument being laid out by parliamentarians in Canberra is going to make them choose whether to flee for the safety of their families. With all due respect, the stories of these people are horrendous. I do not think we can water them down.

**CHAIR:** Do you have any further questions?

**Senator HANSON-YOUNG:** I do.

**CHAIR:** There are other senators waiting to ask questions.

**Senator HANSON-YOUNG:** I would like to know if in exchange of 4,000—in return, sorry. I will use the wording of the statement: 4,000 people in return for 800 people being sent—

**Senator Lundy:** Up to 800.

**Senator HANSON-YOUNG:** Up to 800, does that mean that we will take all 4,000 people from Malaysia with zero returns to Malaysia?

**Mr Metcalfe:** I think we made it clear that the two aspects of the arrangement will operate and so we have indicated that we will increase our refugee intake—it is in the forward estimates—to 14,750, including the 1,000 from Malaysia. Malaysia, in undertaking this particular agreement with Australia, I think is pleased that it is able to provide permanent resettlement options for people who are in fact refugees. If that helps us get the people smugglers out of the international game of sending people to different countries, well that is a good thing.

**Senator HANSON-YOUNG:** Will Australia resettle all 4,000 people from Malaysia if zero people are sent to Malaysia in return?

**Mr Metcalfe:** I think I have said yes about six times.

**Senator HANSON-YOUNG:** So the wording in the statement of ‘in return’ means nothing?

**Mr Metcalfe:** It does mean something because as Senator Lundy and I have made clear, Malaysia is undertaking to take up to 800 people.

**Senator HANSON-YOUNG:** My very clear question is: will Australia resettle all 4,000 even if we do not send one person to Malaysia?

**Mr Metcalfe:** I think I have said it seven times now, yes.

**Senator HANSON-YOUNG:** I would like a yes or a no.

**Mr Metcalfe:** I have said yes before.

**Senator HANSON-YOUNG:** In terms of the protections for people beyond the standard refugee protections under the convention as administered by the UNHCR in places like Malaysia, what is the guarantee that somebody seeking complementary protection will be looked after if they are returned to Malaysia?

**Mr Metcalfe:** The core obligation, as you point out, is non-refoulement of a person who is a refugee. In relation to so-called complementary or additional human rights standards the United Nations is familiar of course with those particular obligations. Although people may not be refugees they may be regarded as persons of international concern or international protection.

**Senator HANSON-YOUNG:** What is the guarantee that those people will receive protection?

**Mr Metcalfe:** The guarantees are as outlined in the statement. I cannot take you further than that.

**Senator HANSON-YOUNG:** It does not talk about complementary protection.

**Mr Metcalfe:** It talks about our core obligations in relation to human rights standards.

**Senator HANSON-YOUNG:** How will we know that we are not returning people to Malaysia who need complementary protection and that is not what is assessed by the UNHCR?

**Mr Metcalfe:** The government has made it clear that everyone who arrives will be sent to another country. The UNHCR is involved. The regional cooperation framework provides a framework. This is a very substantial increase in protecting the rights of refugees and at the same time taking people smugglers out of business and preventing deaths at sea.

**Senator HANSON-YOUNG:** Of the people who are currently being held on Christmas Island, of the boat arrivals since this announcement was made, have they had any access to legal advice?

**Mr Metcalfe:** My understanding is no.

**Senator HANSON-YOUNG:** Why is that?

**Mr Metcalfe:** There is no obligation to provide them with access to legal advice.

**Senator HANSON-YOUNG:** Have they had access to anybody outside of the department?

**Mr Metcalfe:** I would need to check on the specific circumstances.

**Senator HANSON-YOUNG:** What type of assessment will be conducted into these people's cases before they are removed to another country?

**Mr Metcalfe:** None.

**Senator HANSON-YOUNG:** How will we know that we are not sending any of those people wherever they are sent to a country where they may face persecution and issues to do with their safety?

**Mr Metcalfe:** We would only send people to a country where we had an agreement as to respect for their human rights and dignity and where they would have access to an

internationally recognised refugee status determination process similar to the millions of other people in that circumstance. Millions of people are in a similar situation.

**Senator HANSON-YOUNG:** A few estimates sessions ago I asked both you and your colleagues about the conditions of detention in Malaysia. I asked about the particular standards and of course in specific reference to the treatment of children. Can you remember what your response to me was?

**Mr Metcalfe:** I cannot recall that. We deal with thousands of questions.

**Senator HANSON-YOUNG:** That is why I thought I would ask if you remembered.

**Mr Metcalfe:** You might refresh my memory.

**Senator HANSON-YOUNG:** The response that you gave me was that Australia already spends some money in Malaysia for detention and support of the processing of people's claims through the UNHCR, through the IOM. The response that you gave me was that the conditions in which people are held, including children, was solely an issue for Malaysia. Do you still agree with that statement?

**Mr Metcalfe:** I would regard the situation in relation to the 92,000 asylum seekers currently in Malaysia as an issue for Malaysia.

**Senator HANSON-YOUNG:** Do you agree that while we may have our own set of standards of how we think people should be treated and looked after here in Australia, they may not be the same standards by which people are treated and cared for in Malaysia?

**Mr Metcalfe:** There will be different arrangements and different standards amongst the different countries of the world.

**Senator HANSON-YOUNG:** Do you agree that the standards in Malaysia for the treatment of asylum seekers are different from the accepted standards of treatment here in Australia?

**Mr Metcalfe:** Yes.

**Senator HANSON-YOUNG:** Do you agree that the detention of children in Malaysia would be something that would be unacceptable here in Australia?

**Mr Metcalfe:** It is not something that I wish to comment on as to the applicable standards in any other country. But what I would simply note in relation to—

**Senator HANSON-YOUNG:** You did two years ago.

**Mr Metcalfe:** the Australia/Malaysia—no, I think we made it clear that it was a matter for Malaysia if I am right in your refreshing of my memory.

**Senator HANSON-YOUNG:** You said we had different standards.

**Mr Metcalfe:** We have indicated that the transferees under this arrangement will be treated with dignity and respect and in accordance with human rights standards. As I have indicated, both the United Nations High Commissioner for Refugees and the International Organisation for Migration will be involved in the implementation of this particular MOU.

**Senator HANSON-YOUNG:** How do you expect the impact of a special agreement for a special type of treatment for up to 800 people in Malaysia will be seen in Malaysia in comparison to the other type of standards that the remaining 92,000 asylum seekers receive?

**Mr Metcalfe:** It is a good question. That is something that we are mindful of in settling the arrangements with Malaysia.

**Senator HANSON-YOUNG:** What do you think the impact will be?

**Mr Metcalfe:** I would not want to speculate on something that is currently the subject of discussions with another country.

**Senator HANSON-YOUNG:** What type of safeguards are going to be in the agreement to ensure that those up to 800 people—taking on Senator Lundy's explicit point there—will be treated differently from the 92,000 other asylum seekers in Malaysia?

**Mr Metcalfe:** I can certainly understand your interest in the question, but as I indicated to Senator Cash before I do not think it is appropriate for me to get drawn into a running commentary on issues that are currently the subject of international negotiations.

**Senator HANSON-YOUNG:** I think it is appropriate because we are talking about—

**Senator Lundy:** Perhaps if I could just make a comment that the UNHCR spokesperson, Yante Ismail, is reported to have said that the UNHCR thinks the agreement has potential to enhance the protection for refugees in Malaysia as well as the region as a whole.

**Senator HANSON-YOUNG:** That is because it is pretty bad at the moment.

**Senator Lundy:** Yes, but you acknowledge then that at least it is an opportunity for improvement. That is what we are being told as it is being reported; that that is the view of the UNHCR and I think it needs to be acknowledged in this conversation.

**Senator HANSON-YOUNG:** Of course the UNHCR simply assesses people's claims. It is not up to them to decide how the Malaysian authorities will treat asylum seekers living in their country.

**Senator Lundy:** I just think it is relevant to the discussion that that comment was made by the UNHCR.

**Senator HANSON-YOUNG:** I can read newspaper reports as well. How can we possibly take any type of assurance when we are talking about 92,000 asylum seekers in Malaysia where we know the conditions are not good? It is not just the Australian media telling us this. It is international organisations who have monitored this stuff on the ground. It is evidence gathered over years of how asylum seekers are treated in Malaysia. What type of assurance can we possibly get that there will be a special case for a handful of up to 800? Are they going to be kept in a totally separate space?

**Mr Metcalfe:** As I have said, I am not going to be drawn on that but I—

**Senator HANSON-YOUNG:** This is my point; this is Senate estimates. There is a budget line item, Australian taxpayers' dollars being put aside to be spent on this particular agreement. If we do not know what type of conditions these are going to be kept in, if we do not know what the assurances are that these people will have their dignity upheld, will have their human rights protected, will be treated with the standards that Australians would expect people who arrive on our doorstep asking for help should be treated, when will the Australian taxpayers know whether this is money that they would actually like to be spent?

**Mr Metcalfe:** As I have indicated on several occasions, this is the subject of international negotiations with another country, with a close friend of Australia. It is clearly an innovative arrangement. I can understand that some people are a little surprised or confused about it. The

detail that you are seeking is a subject of discussions which will doubtless be the subject of further communication by the government when the government is ready to do that. I will leave that to the minister as to when he is ready to make those sorts of announcements.

But I do think it is important that, while of course there has to be a very proper focus on people who may be able to access a people smuggler and come to Australia, we are also mindful of the other people who do not have those resources, of the fact that Malaysia is hosting 92,000 asylum seekers and is doing so with a population roughly the same as Australia; it is hosting a very large number of people. We have to deal with the reality that not many countries in this region are signatories to the convention but that the regional cooperation framework does provide some movement towards a protection arrangement. So we have to work in the real world, not an abstract world or a world as you would like it to be. I think the minister has made it very clear how shocked he was at the tragic loss of life associated with CF221, the rumours about other people having disappeared at sea. The government is quite determined to try to remove the incentive for people to use irregular methods and to normalise the movement of people in the region. That includes providing additional refugee places for people who are in fact refugees.

**Senator HANSON-YOUNG:** If people are going to be treated with a higher standard of care, respect, dignity and protection when they are sent to Malaysia, why do you think this will be a deterrent?

**Mr Metcalfe:** It is clearly a deterrent if your intention is to come to Australia and you are denied accessing the Australian system. You made a comment before about people not having choices. Some people do have choices and some people quite intentionally seek to come to Australia, because it is a great country.

**Senator HANSON-YOUNG:** Most of those people come in through Qantas Airways.

**Mr Metcalfe:** That is absolutely right. Millions of people come and go every year. For the people who bypass the system, who forge visas or use people smugglers to get on boats, we are trying to bring some order into what is clearly a dangerous situation that people are facing, to remove that incentive for that travel and to encourage people to access protection arrangements in countries in their immediate area or region.

We need to be careful about falling into the trap of thinking that all irregular maritime arrivals are the same. We are talking about different nationalities, people, motivations, circumstances, situations that they are coming from and reasons for coming to Australia. We are not talking about a homogenous group. The one thing we do know, though, is that they are risking their lives once they start dealing with people smugglers, and we are determined to provide an international system through the regional framework that provides for a more orderly method of managing this type of migration.

**Senator HANSON-YOUNG:** Why would we not simply resettle more people directly from those countries?

**Mr Metcalfe:** Australia, per capita, resettles as many people as any other country in the world.

**Senator HANSON-YOUNG:** Why would we not resettle more people directly from Malaysia and Indonesia, if we did not want people boarding boats out of desperation because they cannot stay where they are?



**Mr Metcalfe:** There are always going to be more people in the world who want to come to Australia than Australia could possibly ever take. We are incredibly fortunate living here in cosy Canberra, Adelaide and Perth, to live in a First World country with great democratic rights and freedoms. Many people do not enjoy that. Unlike many other countries, we provide places for some of the most needy people in the world to come here.

**Senator HANSON-YOUNG:** There will always be people desperate for relief from persecution and torture.

**Mr Metcalfe:** The only way to stop that is by denying them that opportunity, by saying, 'There's no point risking your life because if you come here you won't stay here.' I would argue this is a very clear policy in relation to a very difficult set of circumstances. The alternative is to do nothing and we will keep seeing people coming to Australia—because Australia is a great place and because the people smugglers market Australia as a destination—drowning; risking their lives; sending young people out without their parents in the hope their parents will rejoin them; going into a detention environment, which I am sure we will talk about; becoming depressed or disenchanted if they do not receive what they want, which is a life in Australia; and experiencing all of the ills and evils associated with that. The government at least is seeking to do something to provide an orderly process as opposed to an illegal process of travel.

**Senator HANSON-YOUNG:** Except that of course those people who arrive here will be sent to a place like Malaysia, where they will have more rights and more protection than the majority of other people seeking asylum in that country.

**Mr Metcalfe:** I have not been drawn into making a comment on that issue.

**Senator HANSON-YOUNG:** We know that the conditions for asylum seekers in Malaysia do not measure up to the protections of people under the refugee convention. If we do not have those guarantees of protection for people, we will not only not fulfil our own obligations under our own migration act; we will not be fulfilling our obligations under the convention. That is why you have said there will be an agreement that upholds people's dignity and human rights.

**Mr Metcalfe:** Absolutely.

**Senator HANSON-YOUNG:** So those people will get more rights?

**Mr Metcalfe:** No. I have not gone into comparative issues. That is one thing I have been hesitant to do. I know Senator Lundy has indicated there is a view from the relevant international United Nations body that this is a positive development.

**Senator HANSON-YOUNG:** Because the current rights of people are substandard.

**Mr Metcalfe:** No. It is about trying to reduce incentives for people to risk their lives.

**Senator HANSON-YOUNG:** The comments made by the UNHCR were specifically around the ability perhaps under this type of agreement to enhance the standards of protection for all asylum seekers.

**Mr Metcalfe:** That is a very positive thing, if we can achieve that.

**Senator HANSON-YOUNG:** Because currently the standards are pretty poor.

**Mr Metcalfe:** Yes. In the real world you have to work with what you have got.

**Senator HANSON-YOUNG:** Yet for some reason the Australian government is trying to tell the Australian people that the 800 people we send to Malaysia will receive different rights and protections from those of the majority of other asylum seekers in Malaysia.

**Mr Metcalfe:** I have not offered to comment in a comparative way. I have simply indicated that the agreement is that people returned from Australia will be accorded human dignity and dignity in accordance with human rights standards.

**Senator HANSON-YOUNG:** And yet we know that asylum seekers in Malaysia are often treated appallingly. We know the conditions; the evidence is there. People are caned, whipped and deported.

**Mr Metcalfe:** I have not made a comment in relation to that.

**Senator HANSON-YOUNG:** You said yourself that internal comparison is a concern and that is why it is being worked out in the agreement.

**Mr Metcalfe:** I do not think I said that, but I am happy to check the record.

**Senator HANSON-YOUNG:** I am more than happy for you to check the record, because I specifically asked about the perception that 92,000 other people would be treated differently from the 800 under Australia's special deal.

**Mr Metcalfe:** I agreed it was an issue, but I have not been drawn into a commentary about the situation facing the 92,000 people in Malaysia, noting that Malaysia very generously hosts those 92,000 people, and I am not going to get drawn into commentary or opinions.

**Senator HANSON-YOUNG:** Do you think it is acceptable that asylum seekers in Malaysia are subject to whipping and caning?

**Mr Metcalfe:** I believe that people everywhere should be accorded dignity and respect.

**Senator HANSON-YOUNG:** Do you think whipping and caning are part of that?

**Senator Lundy:** I do not know whether that is a specific question to the officer.

**CHAIR:** I think you are asking for a personal opinion from Mr Metcalfe. I do not believe that is appropriate.

**Senator HANSON-YOUNG:** I will rephrase my question.

**CHAIR:** If you have questions about the budget or the PBS, please continue.

**Senator HANSON-YOUNG:** Is upholding human rights and dignity undermined by actions such as caning and whipping?

**Mr Metcalfe:** I would not want to be drawn into a specific example. What I know is that dying on the high seas is clearly a major loss of your human rights. If the government can come up with international arrangements to protect the rights of refugees and to remove the incentive for them to get on leaky boats and drown on the high seas or smash into Christmas Island, and for children, women and men to drown and for Australian sailors to risk their lives in rescuing them, I personally think that is a good thing.

**Senator HANSON-YOUNG:** As to the 100-plus asylum seekers that are currently being held on Christmas Island, what types of human rights are being upheld for them at the moment?

**Mr Metcalfe:** They are being accommodated in accordance with Australian detention standards. We have indicated to them that Australia is not going to process any claims and that they will be removed to another country, where any claims will be considered.

**Senator HANSON-YOUNG:** Do the Australian detention standards require access to legal advice?

**Mr Metcalfe:** No.

**Senator HANSON-YOUNG:** So the government's detention values do not require access to legal advice and support?

**Mr Metcalfe:** If a person makes a request for legal assistance in relation to their detention, section 256 of the act is applicable and will be given effect. If a person under the previous policy came to Australia they were given not legal advice but migration application advice in relation to the construction of their claim for refugee status in Australia. But the government has made it clear that in relation to boats intercepted those processes will no longer apply and that people will be returned to an overseas destination, where any processing will occur.

**Senator HANSON-YOUNG:** How many children are being held—106 or 108?

**Mr Metcalfe:** I will have to check on the precise number. It is over 100.

**Senator HANSON-YOUNG:** In the group of 100-plus are there human rights under the UN Convention on the Rights of the Child being upheld?

**Mr Metcalfe:** I would expect so.

**Senator HANSON-YOUNG:** What rights are being protected under that convention?

**Mr Metcalfe:** Are there any rights that you do not believe are being upheld?

**Senator HANSON-YOUNG:** The right not to be detained and the right to support and assistance. They are currently in detention indefinitely.

**Mr Metcalfe:** They are in the same circumstances as many hundreds of other young people who are accommodated not in detention centres but in alternative places of detention, and that is the circumstance of any particular children in this situation.

**Senator HANSON-YOUNG:** With the group of 100, including children, are they all being held in the same facility?

**Mr Metcalfe:** They are being held across the same facility, yes.

**Senator HANSON-YOUNG:** In the Bravo Compound?

**Mr Metcalfe:** I will have to check the precise details. That takes us to outcome 4.

**Senator HANSON-YOUNG:** Yes. I can come back to that, but they are all being held in the same facility?

**Mr Metcalfe:** That is my understanding at the moment.

**Senator HANSON-YOUNG:** Men, women and children?

**Mr Metcalfe:** That is my understanding.

**Senator HANSON-YOUNG:** So children are being detained in the same way as adults?

**Mr Metcalfe:** My understanding is that the groups are being held in the same place.

**Senator HANSON-YOUNG:** What advice have those people been given about their current status?

**Mr Metcalfe:** I think this takes us to program 4.2. We have moved beyond the policy discussion, where I think we were in Outcome 2, and you are now wanting to talk about conditions of detention on Christmas Island.

**Senator HANSON-YOUNG:** No, I am asking specifically about these people pending removal.

**Mr Metcalfe:** I am saying, Chair, that we are moving into program 4.2.

**CHAIR:** And we do not have those officers available.

**Mr Metcalfe:** I am certainly happy to talk about that when we get to the right time.

**Senator HANSON-YOUNG:** That is all of my questions. Thank you.

**CHAIR:** For this outcome?

**Senator HANSON-YOUNG:** Yes.

**CHAIR:** Senator Cash.

**Senator CASH:** During Senator Hanson-Young's questioning, both you and the minister were at pains to ensure that the committee understood that the bilateral arrangement with Malaysia was not to swap 800 asylum seekers who have come to Australia for 4,000 refugees from Malaysia; it was up to 800. I want to confirm that that is correct—that we will receive 4,000 under this agreement regardless of whether it is one, 50, 100 or up to 800. You had quite a lengthy discussion with Senator Hanson-Young regarding that.

**Mr Metcalfe:** Was there a question?

**Senator CASH:** Yes. Is that correct? Am I correct in saying that?

**Mr Metcalfe:** I think we have said that many times.

**Senator CASH:** I just want to confirm this. I want to read you the joint statement, which says:

Prime Ministers Najib and Gillard have agreed that core elements of this bilateral arrangement will include:

- 800 irregular maritime arrivals, who arrive in Australia after the date of effect of the arrangement, will be transferred to Malaysia for refugee status determination;
- in return, over four years, Australia will resettle 4000 refugees already currently residing in Malaysia;

Is it fair to say that the words 'up to' should actually be placed in front of '800'?

**Mr Metcalfe:** It is clear that it is not more than 800. What if it never gets to 800?

**Senator CASH:** That is exactly right. Why is it not 'up to' 800?

**Mr Metcalfe:** That is probably a semantic point.

**Senator CASH:** You would agree it is not 800; it is up to 800?

**Mr Metcalfe:** It can be up to 800, because let us say no boats come; we will not have 800.

**Senator CASH:** I thought you did not deal in hypotheticals. That is what you have spent the last three estimates telling me.

**Mr Metcalfe:** You have dragged it out of me. I have made a hypothetical comment. Let us say no boats come.

**Senator CASH:** Let us not say that, because that is pathetic based on the government's record to date.

**Mr Metcalfe:** I will move out of hypotheticals.

**Senator CASH:** Let us move out of hypotheticals. If I then turn to the department's website, in relation to the proposal it states:

Australia and Malaysia will enter into an arrangement that undermines the people smuggling business model.

The Australian Government envisages this arrangement will mean that:

- 800 irregular maritime arrivals, who arrive in Australia after the announcement on 7 May 2011, will be transferred to Malaysia for refugee status determination
- in return, over four years, Australia will resettle 4000 refugees already residing in Malaysia (as at 7 May 2011)

Again, would it be more prudent to insert the words 'up to' before '800'?

**Mr Metcalfe:** We are stuck on this semantic point.

**Senator CASH:** I do not think it is semantics at all.

**Mr Metcalfe:** Let me explain. If 800 people come then 800 people will be transferred. If 800 people do not come, fewer than 800 people will be transferred.

**Senator CASH:** However, we will still get 4,000.

**Mr Metcalfe:** However, we have made it clear that Malaysia has agreed to take up to 800, and we have agreed to take an additional 4,000.

**Senator CASH:** Is that up to 4,000 for Australia's part of the deal or is it 4,000?

**Mr Metcalfe:** No. We have made it likely that we will expand the humanitarian program by 4,000 places over four years, to 14,750 places per year.

**Senator CASH:** Will the department give consideration to amending what is on its website to include the words 'up to', which have so painfully been gone through today?

**Mr Metcalfe:** The words on our website are taken from the joint statement, and that is authoritative, but it is quite clear that the Malaysians have agreed to take 800.

**Senator CASH:** Up to 800.

**Mr Metcalfe:** They have agreed to take 800, but whether we need to send them 800 we will have to wait and see.

**Senator CASH:** But we are getting 4,000 regardless, and that is the agreement that Australia has.

**Mr Metcalfe:** As part of our resettlement of close to 60,000 people over the next four years we will take 4,000 from Malaysia, and, if we can stop people smuggling, wouldn't that be great?

**Senator CASH:** Been there, done that under the Howard government. Yes, it would be great. In fact, listening to the discussion that you had with Senator Hanson-Young in relation to wanting to stop people getting on boats and making that horrible journey to Australia, which has been the coalition position since day one, if everything you say is true in relation to the benefits that the Malaysian deal will bring to Australia, why has the department not advised the government to reopen Nauru?

**Mr Metcalfe:** It is not appropriate for me to provide information to this committee as to the advice I have provided this government or a previous government.

**Senator CASH:** I might take from that that you have advised the government to reopen Nauru.

**Mr Metcalfe:** You should not assume I have given any such advice. In the classic words, I can neither confirm nor deny.

**Senator CASH:** Earlier today you were kind enough to inform the committee that in relation to the Malaysian proposal, deal or bilateral agreement the government and the department had been in negotiation for several months with Malaysia, and you stated that was as far back as August 2010 at a senior official level. Do you have a date in August 2010 that the discussions commenced?

**Mr Metcalfe:** I do not have the precise date in August. I know that a senior officer from my department and the Ambassador for People Smuggling Issues were in Malaysia to discuss the broad concepts for the regional cooperation framework. But the discussions about a possible transfer agreement with Malaysia arose as a result of discussions between Minister Bowen and his Malaysian counterpart.

**Senator CASH:** Could you provide me with the dates that your senior officers were in Malaysia in August?

**Mr Metcalfe:** Yes. It was a senior officer, and I am happy to do so.

**Senator CASH:** I would like to confirm this. I do not want to get this wrong, because there was an election on 21 August and I do not want to misquote you. You had a senior officer in Malaysia in August, and you will provide me with the date. Earlier today you said that you had been in discussions for several months with Malaysia, but you have just said that that was more in relation to the regional processing.

**Mr Metcalfe:** The regional cooperation framework. Just remember the chronology here. In July the Prime Minister announced a regional cooperation framework and talked about a regional assessment centre in East Timor. I am obviously scrupulous in relation to caretaker convention provisions. That was established with a clear government policy that had been announced. The department undertook work in relation to the establishment of a regional cooperation framework, and that was something that was underway during the caretaker period and leading up to the election.

**Senator CASH:** Now that we have established that it is up to 800 and not 800, in terms of the \$79 million that I was previously asking about that is going to be paid to Malaysia and will go to the IOM or the UNHCR, what processes have been put in place—I am assuming that was based on the 800—so that, if we do not send 800, they will not be given that money and will be given only a proportion of that money?

**Mr Metcalfe:** It is very much based on an actual expenditure model similar to the arrangements in Indonesia that have been taking place for many years. I think we have undertaken to come back in relation to the detail.

**Senator CASH:** For the details.

**Mr Metcalfe:** Yes, we will do that.

**Senator CASH:** In terms of the 2010-11 budget, can you remind me—

**Mr Metcalfe:** Is that 2010-11 or 2011-12?

**Senator CASH:** No, 2010-11. How many IMAs did the department budget for arriving in Australia? I know we had this brief conversation at February estimates.

**Mr Metcalfe:** We will have to get Mr Sheehan back.

**Senator CASH:** I will also be asking: in the 2011-12 financial year, how many IMOs has the department budgeted for?

**Mr Metcalfe:** I am just looking at program numbers and I am wondering whether this is under 4.3, Offshore asylum seeker management. It may well be that essentially the budgeting for the costs of arrivals in Australia is something we get to under 4.3. We are happy to come back to you tomorrow.

**Senator CASH:** That is fine, but I am not going to be able to ask questions about Malaysia tomorrow in program 4.3, and my questions tie directly to Malaysia.

**Mr Metcalfe:** Essentially in outcome 2 we are talking about protection, resettlement, temporary safe haven for refugees through partnering with international agencies, refugee advice and policy design. That is clearly pertinent to the \$76 million that we have said we will come back to you on. I think you were asking questions about budgeting this year for arrival numbers in Australia, and presumably there is a series of questions, which is clearly in program 4.3.

**Senator CASH:** I want to make a comparison. You told me you hoped that up to 800 do not arrive—would it not be great that we have stopped the boats? I want to compare that statement with the figures that are in the 2011-12 budget and how many IMAs the department has budgeted for to see whether or not we will make the 800 figure.

**Mr Metcalfe:** Yes. I am very happy to talk to you about it under 4.3.

**Senator CASH:** In terms of these 800 asylum seekers to be sent by Australia to Malaysia, you have stated that it is intended that they will be processed by the UNHCR.

**Mr Metcalfe:** I have indicated that the expectation is that refugee status assessment will be undertaken by UN officials.

**Senator CASH:** What is the expectation in relation to whether or not their refugee status will actually be recognised by the Malaysian government?

**Mr Metcalfe:** Malaysia has indicated that, if a person is found to be a refugee, they would not be the subject of summary return or refoulement, but rather they would enter the caseload within Malaysia of people eligible for international resettlement. The government has also made it clear that these people would be effectively not a priority caseload. There is no incentive to come to Australia, be returned to Malaysia, get quick processing there and then come back to Australia, if that is where you are driving with these questions. It is about the fact that the Malaysians would regard the people as being recognised as being in need of international protection, and they would then be the subject of resettlement efforts, along with the many thousands of other people who are refugees in Malaysia.

**Senator CASH:** Did you say that their processing will not be a priority in Malaysia?

**Mr Metcalfe:** The advice is that they will be processed, but that UNHCR would be involved in the determination of the timing of that. That would not be the subject of any threatened refoulement without their having been through a process.

**Senator CASH:** What will happen to them in between that time if there is actually a lag time in Malaysia?

**Mr Metcalfe:** They will be temporarily living in Malaysia, like thousands of others.

**Senator CASH:** As an illegal immigrant, because of their status?

**Mr Metcalfe:** The issue of their precise status is something that is being worked through and is part of the agreement.

**Senator CASH:** I hope so, because the newspaper article that I am reading—and we were talking about newspaper articles before—from 8 December 2004, from the Malaysian National News Agency, states that more than 18,000 illegal immigrants were whipped—that in Kuala Lumpur, as at December 8, a total of 18,607 illegal immigrants were whipped this year under an amendment to the Immigration Act introduced in 2002. Is there any guarantee that these people's status will never be that of an illegal immigrant?

**Mr Metcalfe:** No. I have said that the issue of their status is the subject of detailed discussions.

**Senator CASH:** Is the Australian government seeking a guarantee that they will never have a status?

**Mr Metcalfe:** The Australian government, in a joint prime ministerial statement—and I have said many times that aspects of human rights and dignity are conveyed in that particular statement—

**Senator CASH:** Is Australia a signatory to the UN Convention Against Torture, to your knowledge?

**Mr Metcalfe:** Yes.

**Senator CASH:** Is torture defined in that UN agreement to include corporal punishment?

**Mr Metcalfe:** I would have to check.

**Senator CASH:** It is. Again, what guarantees is the Australian government seeking that these 800 people are not going to be subjected to corporal punishment? In addition, we have now established there may well be a lag time in determining what their status is, and they will be living in the community?

**Mr Metcalfe:** I would say two things in response. Firstly, as I have indicated on several occasions, the entire policy intention is that people would not come to Australia in the first place and, therefore, saying '800 people' is hypothetical. Malaysia has indicated it will take 800. Whether those places are needed, because people realise the futility of coming to Australia, we will see in the fullness of time. In relation to the circumstances of their presence and stay in Malaysia, I can refer you again to the joint prime ministerial statement.

**Senator CASH:** Which says nothing, from my perspective.

**Mr Metcalfe:** It has quite significant operative words.

**Senator CASH:** It is a broad statement.

**Mr Metcalfe:** You have said on several occasions that it says nothing, but we have been discussing it for most of the afternoon.

**Senator CASH:** And you are not able to give me any details at all regarding the absolute substance of this proposal.



**Mr Metcalfe:** I am not prepared to give it to you.

**Senator CASH:** I hope there is some more substance, because even if it is only one person that we return to Malaysia under this deal—I believe it will be 800—I would hope that as a government we have sought a guarantee that they will not be subject to corporal punishment, put into the child sex slave regime or anything like that. I would sincerely hope that is a guarantee that we will be given in writing.

**Mr Metcalfe:** I will convey those remarks to the minister.

**Senator CASH:** You do not need to be sarcastic.

**CHAIR:** I do not think he was.

**Mr Metcalfe:** I am sorry if you understood me to be sarcastic. I certainly was not. I was undertaking to provide your remarks to the minister.

**Senator CASH:** Now that we know there is going to be a lag time in these up to 800 people being processed by the UNHCR, after they are processed by the UNHCR what appeal rights will they have if their refugee status is rejected and they are now illegal immigrants?

**Mr Metcalfe:** They would have the same as any other person considered by UNHCR, and there are many tens of thousands of people in that situation globally.

**Senator CASH:** Will the Malaysians guarantee that they will facilitate that process?

**Mr Metcalfe:** The Malaysians have undertaken not to refole people.

**Senator CASH:** I am glad we have that guarantee or, should I say, undertaking. I am not sure whether that is as strong as a guarantee. How are you going to know that someone has not been returned? What is the process that the Australian government is putting in place to ensure that, whether it is one or 800 people, considering there are 92,000 refugees in Malaysia and there are up to one million illegal immigrants—

**Mr Metcalfe:** That is where the good offices of UNHCR and IOM come into play. We are talking about two sovereign nations.

**Senator CASH:** One that is not a signatory to the treaty.

**Mr Metcalfe:** There are many not subject. As I said, we have to operate in the real world. We are determined to find ways to remove people smugglers from sending people on perilous voyages and having bodies of children smashed against the rocks on Christmas Island, to put it bluntly. We are undertaking, in accordance with an international framework, with the good offices of the relevant international organisations and with the cooperation and goodwill of a sovereign country and a close friend of Australia, an innovative policy solution to overcome the terrible issues that we see at the moment of people risking their lives.

**Senator CASH:** In your discussions with Senator Hanson-Young you also stated, in relation to those who arrive post the 7 May announcement by the government, that all who arrive will not be processed in Australia. When you say 'all' are you referring only to the up to 800 people who are going to be the subject of this agreement or are you saying that every single asylum seeker who now comes to Australia will not be processed in Australia?

**Mr Metcalfe:** The minister made that point very clear, so I will refer you to media statements that he has made that are no doubt on his website. He has formally directed me to not undertake any processing of any persons who arrive in Australia from this time.

**Senator CASH:** Can you then provide for the committee, as at the date of 7 May when the announcement was made: what was the number of irregular maritime arrivals who were here and how many were still to be processed? I just want to make sure that we have those correct figures so that, going forward, if there is any processing we can make that comparison.

**Mr Metcalfe:** So, essentially you are talking about some statistics in relation to the people who had arrived prior to the announcement. I imagine we will go to that on 4.3. I do not know whether we have a date of 7 May, but we have a date for our statistics around that time, so we can cover that tomorrow in 4.3.

**Senator CASH:** In terms of the minister giving you a directive, though, as you just said, what is the date that he actually said is the cut-off date for people who have arrived?

**Mr Metcalfe:** Essentially his formal advice to me was dated on 7 or 8 May. It was certainly before a boat of people arrived, after the 7th. It is quite clear that any arrivals from the 7th are treated in accordance with the new policy.

**Senator CASH:** The department's website also states, 'The Australian government is consulting closely with the UNHCR and the IOM regarding implementation of the arrangement'. What consultations to date have the Australian government had with both the UNHCR and the IOM?

**Mr Metcalfe:** Just before answering that, I can advise you that the minister directed me on 12 May that, until further notice, no processing of any asylum claims is to occur in relation to offshore entry persons.

**Senator CASH:** So you could say it is like the asylum seeker freeze in relation to Afghanistan and Sri Lanka. This is not a blanket, 'We will no longer be processing asylum seekers in Australia.' This is a bit like the 'up to', until the minister again directs you, so until further notice.

**Mr Metcalfe:** I think that is just a standard way of describing things. The government's policy is clearly that no processing of any asylum claims is to occur in relation to offshore entry persons who are intercepted or arrive directly in Australia after 7 May 2011. That is quite different from the processing suspension, and I am happy to talk about that.

**Senator CASH:** But you did say that the directive states 'until further notice'.

**Mr Metcalfe:** It is always open for a government to make alternative arrangements.

**Senator CASH:** Change its mind.

**Mr Metcalfe:** There could always be a change of government. A different government could have a different perspective.

**Senator CASH:** Could you confirm that there is no blanket—

**Mr Metcalfe:** Right now I am absolutely clear that anyone who arrives will not be processed in Australia and that they are to be detained pending removal to another country, where any claims they have will be assessed.

**Senator CASH:** Until further notice from the government.

**Mr Metcalfe:** It is crystal clear.

**Senator CASH:** Until further notice from the government, as your directive says.

**Mr Metcalfe:** Absolutely. Certainly, the minister has given me no indication that there is going to be any change in that regard.

**Senator CASH:** I am sure he has not, but that does not mean that he cannot.

**Mr Metcalfe:** Of course ministers can change, but the minister has been very clear in relation to the directive.

**Senator CASH:** And that is why he was so clear in his directive and he said 'until further notice'.

**Mr Metcalfe:** And right now that is what we are doing. In relation to UNHCR and IOM, you might just restate the question, if you would not mind.

**Senator CASH:** Sorry, what was that?

**Mr Metcalfe:** Your question, which I think I interrupted, related to discussions that we have had with UNHCR and IOM.

**Senator CASH:** In terms of 'no further processing', is that only by those who arrive here by boat or is it also those who arrive by plane and then invoke protection?

**Mr Metcalfe:** It is irregular maritime arrivals. There is no change of policy in relation to people who may arrive here on an aircraft.

**Senator CASH:** How will this not encourage people to get on a plane and come here, if you are only stopping one type of processing versus another type of processing?

**Mr Metcalfe:** Yes, that is a very good question. In fact, one could argue that we have been so successful in stopping people coming by plane that that plays into the people-smuggler market—boat voyages as well. We certainly have strong measures in relation to the irregular travel of people by air, including visa arrangements, airline liaison officers and others that I think we have probably discussed previously.

**Senator TROOD:** You say you are not going to process anybody. That clearly means that you are not going to go through the formalities of testing their claim to be refugees.

**Mr Metcalfe:** Correct.

**Senator TROOD:** What does it mean in terms of engaging those people? You have said to us earlier in the day that you take very rigorously your obligations—or the Australian government does—with regard to nonreturn of individuals who might be at risk. I am struggling to understand how you are going to determine whether or not individuals are at risk if you do not actually process them in some way or at least talk to them about their circumstances.

**Mr Metcalfe:** They will not be returning to their country of nationality. They would be going to Malaysia and they would be going in circumstances where there were—

**Senator TROOD:** I am sorry for interrupting, but you told us earlier that they are not necessarily going to Malaysia; they are going to another country, and the agreement—

**Mr Metcalfe:** Thank you for correcting me. We have been talking about Malaysia for so long that—

**Senator TROOD:** Perhaps I misunderstood you. That is why I am correcting you.

**Mr Metcalfe:** No, you are right. We have been talking about Malaysia for so long. As I have indicated previously, the advice that those folks have been given is that they will be sent

to another country, and which country will be advised in due course. That does not require us to engage with them on a determination as to their particular circumstances, because they will be going to a country where there was no possibility of their refoulement in contravention of the refugee convention, in exactly the same way that people were transferred to other countries in the past where appropriate arrangements were in place to ensure no summary return to a place of persecution.

**Senator TROOD:** So, the absence of processing means the only reason you would engage with them is to tell them they have to get on a plane to go to this detention centre?

**Mr Metcalfe:** We have told them that they are being held in Australia until they return to another country.

**Senator TROOD:** And they will be shipped around the country to wherever they can be accommodated until such time as an opportunity arises for them to transfer?

**Mr Metcalfe:** Currently that is Christmas Island. They are going through what we would normally do—initial health and identity checks so that we know who we are talking about. But we are not—

**Senator TROOD:** Is that not part of processing?

**Mr Metcalfe:** No. I think that by ‘processing’ we normally would mean processing in relation to whether they have claims in relation to the refugee convention. There is no refugee status assessment process underway.

**Senator CASH:** I will come back to my questions on the UNHCR now that Senator Trood has raised those issues. Can you confirm how many boats have been intercepted and carrying how many asylum seekers since 7 May 2011?

**Mr Metcalfe:** I was going to do this under 4.3, but from recollection there have been three boats and I can give you the precise number when we come to the program.

**Senator CASH:** I would like to ask a number of questions in relation to the people on those boats.

**Mr Metcalfe:** Can we do that under 4.3?

**Senator CASH:** As it relates to the Malaysian deal, though.

**Mr Metcalfe:** Certainly, people detained in Australia relate to 4.3, and of course we will be mindful of the Malaysia transfer agreement in answering those questions. I do not have the officials with me to deal with 4.3 at this stage.

**Senator CASH:** So, basically anything on the IMAs who have arrived after 7 May—

**Mr Metcalfe:** If you want to go to their particular circumstances, I would suggest that falls under 4.3. What we have been doing at this stage primarily is talking about the policy discussion. But in relation to the operational management, that takes you into the other outcome.

**Senator CASH:** We will go back to policy, then—and we canvassed this in some part. I just want to be quite specific in relation to understanding this. In relation to the asylum seekers that have arrived here since 7 May 2011, and in fact any going forward who are now going to be subject to the no-processing directive, what legal rights do they assume on

entering Australian waters and they say, 'I am an asylum seeker and I want to claim Australia's protection'?

**Mr Metcalfe:** I would refer you to a discussion I had with Senator Hanson-Young earlier. I am not sure whether you were here for all of that. Essentially, to summarise that advice, a person who arrives in Australia without a visa is subject to detention under the Migration Act and a person in detention is subject to removal under the Migration Act, under the combination of sections of 189 and 198. There is no obligation to advise people in relation to particular issues. If a person requests access to a lawyer in relation to their detention, that is a matter for the person, and we are to make reasonable facilities available in relation to that. People are not being given access to government funded application assistance processes through the IAAS, which are designed to elicit information as to whether there is a protection need; we are not processing them in that particular sense. We are confident we are complying with our obligations under the Migration Act in relation to the appropriateness of their lawful detention in Australia and, as I have said, it is being made clear to them that they are being held in Australia pending their removal to another country.

**Senator CASH:** Are we actually saying that these people do not assume any legal rights when they enter Australian waters and are transferred?

**Mr Metcalfe:** It has been the case since 2001 that a person who arrives in an irregular way and goes to an excised offshore place, such as Christmas Island, Ashmore Reef or the Cocos, has no right to apply for a protection visa or any other form of visa in Australia. The only way that they are permitted to apply for a visa is if the minister lifts the bar. The minister has indicated that he does not propose to do that. He has directed me to undertake no refugee processing. We are going through basic identity and health checks.

**Senator CASH:** So, we are going through basic identity and health checks.

**Mr Metcalfe:** It is obviously appropriate that we know who we are detaining, so we find out who the person is and what relationships they may have with other people, and of course anyone who comes into immigration detention is checked in terms of their health.

**Senator CASH:** But we do not define that as processing?

**Mr Metcalfe:** That is not processing in the sense of a series of steps that lead you ultimately to consideration as to whether the minister may wish to exercise lifting the bar and granting a visa.

**Senator CASH:** I just want to confirm that, even if these people invoke our protection, we are not obliged to do anything for them unless the minister lifts the bar?

**Mr Metcalfe:** That is correct. The system that applied prior to 7 May, or prior to 12 May depending on how you want to regard it, was that people who arrived were taken into detention and the department then interacted with them, including through the provision to them of government funded migration advice to allow them to articulate any claims they may have for protection in Australia. Ultimately, that leads through to the process that I am sure we will explore in detail relating to whether or not their claims are accepted under international law and, if so, various checks are then undertaken. We have briefly discussed security checking, for example, and there are a large number of checks that we do. That ultimately leads to a submission to the minister as to whether he would wish to lift the bar and allow them to make a formal legal protection visa application. That is then dealt with quite

promptly, because all the work has been done at an earlier stage. None of that is occurring in relation to these folks, with effect from 12 May.

**Senator CASH:** Again, I need to be very clear here. What I am talking about is: what happens when someone invokes our protection obligations by saying, for example, ‘I am fleeing persecution on the basis of my religion, and I am seeking protection’? Do we not then automatically have an obligation to make a refugee status assessment?

**Mr Metcalfe:** No. The obligation we have derives from the refugee convention—that is, we must not refole, send back to a place of persecution, a person who may be persecuted, where there is a real chance of persecution. That is an obligation under the refugee convention and one would argue, I suspect—you are a lawyer—that it probably amounts to customary international law and so it is a universally binding obligation on nation states. The way that Australia is giving effect to that obligation is to say to people, ‘While Australia will not determine that particular matter, we will send you to a place where that will be considered according to international standards’—in the case of Malaysia, by the United Nations High Commissioner for Refugees.

**Senator CASH:** So the only legal obligation—

**Mr Metcalfe:** That is exactly the same logical concept as applied with Nauru in the past and with Papua New Guinea in the past. It is the same concept. However, there are significant differences in relation to the effects, most notably of which, of course, is that we now have a regional cooperation framework agreed between a number of countries.

**Senator CASH:** If, during the identity checks to determine who these people are, and health checks, a departmental officer is confronted with someone saying, ‘I am fleeing persecution because of my religion’, are any cases going to be given to the minister?

**Mr Metcalfe:** No.

**Senator CASH:** It is absolutely ‘no’?

**Mr Metcalfe:** That is the minister’s directive. If a person indicates that to us we would say, ‘We note what you are saying, and that is a matter for you to pursue with the relevant authorities when you have moved to another country.’

**Senator CASH:** And because this situation is so similar to the situation in Nauru and what was in PNG and Manus Island, why have we not reopened Nauru? The analogy is basically that you can see this is what happened in Nauru.

**Mr Metcalfe:** It is a matter for the government to indicate its position in relation to that. I did say there is an important difference. The important difference is that the Australia-Nauru agreement was a bilateral arrangement.

**Senator CASH:** Yes.

**Mr Metcalfe:** There was no framework that it operated within.

**Senator CASH:** Is this not a bilateral arrangement, according to the statement?

**Mr Metcalfe:** It is a bilateral arrangement operating within a regional cooperation framework. We have spent a lot of time over the last few estimates talking about the reason that Australia was looking for a regional cooperation framework. If you go to the framework, which I tabled this morning as part of my opening statement, you will note that the operative paragraph, 19(vii), indicates that arrangements should seek to undermine the people-

smuggling model and create disincentives for irregular movement and may include, in appropriate circumstances, transfer and readmission. Clearly, the bilateral arrangement that Australia has reached with Malaysia is contemplated by the regional cooperation framework that was done as part of the co-chair statement in Bali on 30 March this year.

**Senator CASH:** But you did not need a regional processing framework for Nauru or PNG; you just needed the bilateral arrangement?

**Mr Metcalfe:** There was no regional framework applicable to Nauru, and that is why some would argue it was a subject of criticism by the United Nations High Commissioner for Refugees and others, but I was not going to go there.

**Senator CASH:** No.

**Mr Metcalfe:** You did not ask me a question about that.

**Senator CASH:** No, absolutely not. If you are talking about the subject of criticism, I thought that Malaysia, not being a specified country, with its record in terms of illegal immigrants would be the subject of concern.

**Mr Metcalfe:** If I can, with indulgence, talk about work I did previously, there were appropriate undertakings in relation to Nauru. It is a matter for the government as to whether it wishes to pursue that. It is an entirely separate issue. The previous government had those undertakings in place with Nauru, and the government is obviously putting those arrangements in place with Malaysia on this particular occasion, the big difference being that this does operate with UNHCR support and as part of a regional cooperation framework. It is very much a regional concept. We have seen comments, I think, from a number of other governments indicating their great interest in what is going on.

**Senator CASH:** That is very interesting, because it also states in the joint statement that this is a one-off pilot project. Is it literally just that; a one-off pilot project? It is not going to be replicated anywhere else?

**Mr Metcalfe:** That was the language that was agreed between the prime ministers in relation to this particular arrangement, but I think our ministers made it clear that the government will continue to explore policy solutions for what is a pressing problem.

**Senator CASH:** The department website also states, 'Malaysia and Australia are also considering the establishment of an independent body to advise on issues related to the implementation of the arrangement.' What would be the nature of the independent body and who is anticipated to sit on it?

**Mr Metcalfe:** That is something that will also be subject to those more detailed arrangements, and I would be delighted once the agreement is finalised to talk with you about it.

**Senator CASH:** In the joint statement it also states, 'Australia will fully fund the arrangement'. Is any money or funding at all being provided by Malaysia or is it completely 100 per cent Australia's money?

**Mr Metcalfe:** It is certainly our expectation that Australia would pay for the transport to and the stay in and processing within Malaysia of this particular group of people. Obviously, we have had a discussion as to that, and Malaysia is indicating it could take 800. Whether that is actually required, we will see. No doubt Malaysian agencies will incur some costs, and that

would be handled by Malaysian agencies. The figures that we provided are essentially for the care and maintenance of the individuals themselves.

**Senator CASH:** Again, there is no detail surrounding how that care and maintenance is going to be undertaken or how we are going to monitor where the individual is?

**Mr Metcalfe:** I am sure there will be announcements in due course about that.

**Senator CASH:** Going back to my previous question, the department's website states, 'The Australian government is consulting closely with the UNHCR and the IOM regarding the implementation of this arrangement.' Would you be able to outline for the committee the consultations to date that the Australian government has had with both bodies? Who was involved in these discussions from Australia, from the UNHCR, from the IOM, and what discussions occurred?

**Mr Metcalfe:** Yes. I might have to take some dates or details on notice, but what I can say in the broad is that, firstly, we have a very constructive open and longstanding working relationship with both organisations. We have a senior executive service position based in Geneva to assist that exchange, and of course we have a very regular relationship with the UNHCR and the IOM representatives in Canberra as well. Through the course of late last year there was a series of discussions about a regional cooperation framework, about Australia's desire to work with Indonesia as co-chair of the Bali process and to create a regional cooperation framework. The United Nations High Commissioner held an important workshop in Manila, from memory, which articulated some of its doctrinal thinking about how, in a region where not many countries were party to the convention, protection needs could be developed and established. I will take on notice and provide you with the timing of that very important workshop that UNHCR presented to, which was held under the auspices of the Bali process. The minister travelled to Geneva in mid-December last year. I accompanied him and we met with the United Nations High Commissioner for Refugees and the Director-General of the International Organisation for Migration.

**Senator CASH:** That was last year?

**Mr Metcalfe:** That was in December last year. The discussions were largely in relation to the regional cooperation framework, but within that framework concepts such as assessment centres and transfer and re-admission agreements were being discussed and contemplated. In relation to further discussions, there were clearly bilateral discussions between Australia and UNHCR—and separately IOM—at the time of the Bali ministerial meeting on 29-30 March, and then there were subsequent discussions following that as we and Malaysia came closer to the agreement that has been discussed. Importantly, there have been discussions at a very senior level with UNHCR and IOM. Those discussions have been undertaken largely at very senior official level by the Ambassador for People-Smuggling Issues or by one of my officers who works for Dr Southern, whose main role is advancing these issues. We have also taken the opportunity to reacquire the expertise of Peter Hughes, who was a deputy secretary of the department, who has extensive knowledge, background and contacts in this area. He has been a key asset for us in advancing these discussions. There have been a series of discussions moving from conceptual to the broad to more detail to specific issues over the period of the last six months and I am happy to provide more of that on notice.



**Senator CASH:** Going back to the ‘up to 800’ that will be sent to Malaysia, what is the detail surrounding how they will be fed and how they will be accommodated? Will the kids be sent to school, will they receive health care, will they receive mental health support and for how long? Do we have those details?

**Mr Metcalfe:** Those issues are the subject of the more detailed discussions that we have been talking about, which are currently underway with the Malaysian authorities. In the broad we would be looking to the International Organisation for Migration to provide those types of support. That is exactly the role that IOM has provided in a very constructive way over the last 10 years or so in Indonesia, where Australia has for many years now, with the assistance of the Indonesian authorities, sought to intercept people travelling to Australia and prevent their onward passage to Australia, denying people-smugglers the opportunity to market Australia as a destination. For people who then stayed in Indonesia—and some of course accepted that they were not getting anywhere and they have gone home or gone to some other place—there are appropriate care arrangements. We certainly would envisage similar types of arrangements being put in place in Malaysia.

**Senator CASH:** When you say ‘envisage’, is there a commitment to date insofar as the details are being mapped out, on food, shelter, health care, schools and so on?

**Mr Metcalfe:** As I have said, that is in the detailed discussions that are currently underway, and I am sure announcements will be made about that in due course. It is within the framework as outlined in the joint prime ministerial statement.

**Senator CASH:** In terms of the \$75.9 million being provided to the UNHCR and the IOM, are you able to tell me what that split is between the two?

**Mr Metcalfe:** No, I think we undertook earlier today, did we not, to talk to you more about that \$75 million, and that will be part of that response.

**Senator CASH:** In terms of the Indonesian model, my understanding is that the IOM actually keeps the IMAs in designated hotels and detention centres.

**Mr Metcalfe:** Some are detained by the Indonesians and IOM provide some support and services. Many live in hostel or village type situations. Some have been there for quite some time, of course. There are a variety of arrangements that we are talking about. In the broad we are talking about people going back into the same situations that the 92,000 other asylum seekers have, with appropriate undertakings in relation to observance of human rights and with a similar type of lifestyle and arrangement. So, it is not Australia; it is not what would happen—

**Senator CASH:** The Prime Minister said that they will be released into the community.

**Mr Metcalfe:** It is our expectation that, after an initial period of identification and processing by the Malaysians, they would join the other 92,000 people in Malaysia and that they would be subject to similar arrangements, but I do not think it is appropriate to get drawn into a detailed discussion while the specifics are being worked through.

**Senator CASH:** So, that is the same in relation to the work rights; that is still the subject of discussion?

**Mr Metcalfe:** It is the same issue.

**Senator CASH:** In relation to the up to 800 asylum seekers to be sent by Australia to Malaysia and who will then obviously remain in Malaysia subject to their processing outcome—

**Mr Metcalfe:** Unless they choose to leave.

**Senator CASH:** Unless they choose to leave and that would be a voluntary return to wherever they are going. What processes is the Australian government going to put in place to ensure that these people stay in Malaysia or, alternatively, if they decide not to stay in Malaysia, will not attempt to enter Australia by other means?

**Mr Metcalfe:** Certainly they would be the subject of the same directive that the minister has put in place, that they would not be processed in Australia and that they would be sent to another country. They would just be wasting their money twice.

**Senator CASH:** But is any monitoring arrangement going to be put in place by the government to ensure that they do not get back on a boat and come back to Australia?

**Mr Metcalfe:** I cannot control every boat and every port in every part of Asia, but what we can say is that, ‘If you come to Australia, you will not be processed. If you come back to Australia’—

**Senator CASH:** For the time being.

**Mr Metcalfe:** ‘... you will not be processed.’

**Senator CASH:** For the time being.

**Mr Metcalfe:** The minister has made it very clear that this is the arrangement that will apply. To lapse into the vernacular, you would have to be pretty dumb to waste your money twice hoping for some form of changed policy in Australia, which is not going to happen.

**Senator CASH:** You cannot guarantee it is not going to happen, though, because the minister was quite specific in his directive to you that there was no blank guarantee—

**Mr Metcalfe:** I have got a specific directive that I have got to put in place and of course it is open to were there to be a change of government or a future government or something—

**Senator CASH:** He specifically stated ‘until further notice’.

**Mr Metcalfe:** What I know right now is what the minister has made extremely clear, unambiguously clear. If someone comes to Australia, for example the 100 or so people we currently have got, we of course are recording their biometrics, their fingerprints, so if they come back we will know that they have come back. We have seen some people come to Australia who were previously removed. Some people are persistent. But the very clear, unambiguous message is that you are wasting your money if a people smuggler says you will get to Australia and you will get into a process in Australia; you will find yourself in some other country pursuing your claims there.

**Senator CASH:** I know you have said that you will get back to me with more information in relation to this \$75.9 million, but seeing it is a budget item and it is budget estimates, is it the Australian government’s proposal that food, shelter, health care and schooling be met from the \$75.9 million?

**Mr Metcalfe:** That is my expectation that the—

**Senator CASH:** That is your expectation?

**Mr Metcalfe:** care and the presence of the people in Malaysia would be met by Australia, and that is good value for money as far as we are concerned.

**Senator CASH:** But again, it is on a cost basis in terms of this?

**Mr Metcalfe:** Yes, we would be billed that—

**Senator CASH:** The Malaysians will bill us; will they?

**Mr Metcalfe:** No, we would expect that that would be put in place by IOM, that they would be the service provider in this particular area and that we would have quite routine arrangements, as we do with IOM in other countries, for them to be recompensed for that cost.

**Senator CASH:** Has Australia provided any undertaking to assist with brokering the resettlement of any of the up to 800 persons transferred to Malaysia?

**Mr Metcalfe:** I am sorry, there was a word there that I did not quite catch.

**Senator CASH:** Brokering the resettlement.

**Mr Metcalfe:** Brokering the resettlement, no, we would expect that those people are subject to ordinary resettlement arrangements by UNHCR, but making it very clear that they would not be the first people to be considered but rather the last people to be considered. Any suggestion that you come to Australia to get transferred to Malaysia—to get a fast-track out of Malaysia—is quite wrong.

**Senator CASH:** In answers to previous estimates questions the department confirmed that in 2009-10 340 visas were granted from humanitarian applicants in Malaysia. Will it be the case therefore that that will basically now go to 1,000, and if it is the same, 340?

**Mr Metcalfe:** No, I think currently we are probably issuing more visas than 340 but the number from Malaysia next year will be 1,000. I am sorry, Mr Fleming is going to help me here.

**Mr Fleming:** I think your point is: is it just 1,000 or is 1,000-plus what it would otherwise have been—

**Senator CASH:** Yes, exactly, or is it—

**Mr Fleming:** and, yes, it is the latter. We would otherwise do several hundred out of Malaysia so it will be 1,000 plus—

**Senator CASH:** Plus what would—

**Mr Fleming:** some amount determined in accordance with global priorities and UNHCR.

**Senator CASH:** So, 1,000 is just what we—

**Mr Metcalfe:** It is in addition to what we are already doing. As you know, each year the government will look at its humanitarian program of 13,750 and make judgments after consulting with UNHCR as to where we should select those humanitarian entrants broadly from the Middle East, Asia and Africa and this 1,000 will be on top of that and be for Malaysia and will be additional to numbers we would otherwise have taken from Malaysia.

**Senator CASH:** In terms of the 1,000 per year from Malaysia and the fact that in 2009-10 only 340 visas were actually granted for humanitarian applicants from Malaysia, my understanding was that in that same year there were only 1,059 applications from Malaysia for humanitarian visas. Given the limited numbers that have come from Malaysia to date,

what was the basis for the government agreeing that 1,000 would be an appropriate figure per year over the four years?

**Mr Metcalfe:** That was a figure discussed with the Malaysian government as to what would assist them in dealing with a very large problem, noting that other countries are also resettling refugees from Malaysia, and the United States in particular has taken quite a large number of refugees, particularly Burmese Chin minority from memory. That was a figure that was agreed between Australia and Malaysia as something that would help them. Malaysia is prepared to help us smash the people smuggling business model and we are helping them through providing some assistance in relation to the large number of refugees they have in their country.

**Senator CASH:** Do you have any figures in terms of how many humanitarian visas have been issued to date for people coming from Malaysia?

**Dr Southern:** In this current program year?

**Senator CASH:** Yes, thank you. In relation to the \$75.9 million, I appreciate it is going off to the IOM and UNHCR potentially for the health care, the food, et cetera, and the schooling. In terms of accountability et cetera, what is the procedure that is put in place by the government to ensure that this money actually does go to what the Australian government intends it to go to?

**Mr Metcalfe:** There would be an MOU between us and IOM and UNHCR about the disbursement of those particular funds and the appropriate monitoring and accounting processes in the same way that we have that in place elsewhere. I am sure you are aware from our previous conversations that we work very closely with those two bodies right around the world, and have done for decades, so there are very well established processes for how we work in this area.

**Senator CASH:** In terms of the 4,000 refugees who are currently in Malaysia and who will be coming to Australia over the next four years, are there any written criteria surrounding how we will actually determine which 4,000 will be coming to Australia?

**Mr Metcalfe:** Those would be referrals from UNHCR. Firstly it is clear that they would be people who had arrived in Malaysia prior to 7 May so that this particular arrangement does not of itself act as a pull factor. We were quite concerned in the policy design to reduce potential pull factors while maximising the potential to smash the people-smuggling business model. Normally there would be a discussion between UNHCR and Australia and of course we would be talking to the Malaysian government as to the people who might be eligible for resettlement and how we can best assist. There are many thousands of people apparently there not only from near countries such as Burma but from a number of other countries around the world and we would expect to have those discussions as part of framing our resettlement program for Kuala Lumpur. We will of course need to supplement our own resourcing within the Australian High Commission in Kuala Lumpur. It is something that Mr Vardos is currently working through, whether we supplement additional staff locally or whether we undertake additional processing by the deployment of teams from Australia for short-term missions. We have different models for processing depending upon particular circumstances in particular countries and we are getting down to that detailed discussion now.

**Senator CASH:** The reason I am pursuing this detail in relation to this particular item is that this is a budget item. It is the budget for 2011-12 and consistently throughout the questioning throughout Malaysia I am continually told that it is the subject of further discussion and that you will provide further detail when you have those details. The parliament has actually been asked to sign off on this budget. You cannot really give me any details surrounding what is going to be happening with this \$75.9 million? This is but one example of a lot of money that is being spent in this particular portfolio outcome. What comfort do I have from the department today that the parliament should sign off on this budget if you cannot provide me with any concrete detail in relation to the expenditure of what is taxpayers' money?

**Mr Metcalfe:** I think there is a lot of detail available—

**Senator CASH:** But you will not provide me with any of that detail.

**Mr Metcalfe:** The very precise questions you are asking are the subject of current discussions with a foreign country and it is not the practice of the Australian government to conduct diplomatic discussions in a public forum such as a parliamentary committee, but of course we would be very happy to provide detail about how the government will be making this arrangement work in the detail once that has been finalised and the arrangements are settled. But in terms of the detail it is very clear. People who arrive in Australia will no longer be processed in Australia. They will be sent to an overseas country. In the case of Malaysia we have spent some hours now talking about the arrangements relating to Malaysia. It is clear that Australia will need to undertake, pursuant to the Prime Ministers' joint statement, the cost of maintaining those people and the processing of those people in Malaysia in exactly the same way that we for many years have undertaken similar activities in Indonesia without there being such a degree of formality in the particular agreement. That expenditure of a few tens of millions of dollars a year has the very strong potential to stop people risking their lives coming to Australia, and I would regard it as being excellent value for money.

**Senator CASH:** But that is only based on the limited detail that you have given us. How does the parliament satisfy itself that in relation to the joint statement between the Prime Minister of Australia and the Prime Minister of Malaysia that this money is going to be well spent when we do not have any concrete details?

**Mr Metcalfe:** You will have that detail in due course.

**Senator CASH:** Is it before the parliament votes on the budget?

**Mr Metcalfe:** I am not sure of the timing of that, but what I can say is that the money will not be expended if it is not required to be expended. It is very much around the care, maintenance and support of people who are transferred from Australia under this particular arrangement on a per person basis. If it is not required to be spent, it will not. If it is required to be spent it will be a very good deal for Australia.

**Senator Lundy:** Can I just add that if it were absent from the budget I am sure you would be highly critical of that fact, given the government's stated policy intention to come to an agreement with Malaysia on these matters.

**Senator CASH:** I am highly critical of the fact that we are being asked to sign off on budget items that we are unable to get any details of.

**Senator Lundy:** I am sure you would be more highly critical, perhaps with some justification, if those figures were absent from the budget as opposed to in the budget, which they are.

**Senator CASH:** I am highly critical of words that are missed out, including 'up to 800'. They are the types of things that I am highly critical of.

**Mr Metcalfe:** We have been around this. That is just a straight point of logic. It is a straight point of logic—

**Senator CASH:** We will discuss that tomorrow—

**Mr Metcalfe:** There will not be 800 people—

**Senator CASH:** when we fully understand what the department has budgeted for in relation to IMAs, because if I recall rightly in the February estimates when I asked you whether or not you had exceeded the number of arrivals it was by over 1,000, and when I asked you what your anticipated forecast for IMAs was as of 30 June this year, it was approximately three times the amount, heading into 6,000. Let us wait until tomorrow and we will pursue that a lot further.

**Mr Metcalfe:** We certainly will, but I just wanted to make the point that as a point of logical, deductive reasoning, if 800 people do not come, you cannot send 800 people. I am not going to go overseas and find people—

**Senator CASH:** I agree, because it is exactly right.

**Mr Metcalfe:** So I think we agree on the logic that you will only send 800 if there are 800. If there are not 800, you will not send 800 because there are not 800.

**Senator CASH:** Except 110 have arrived to date but things have not even been finalised. When the minister made this exciting announcement he said that he expected legal challenges. What legal challenges—and I am happy to ask you, minister—did the minister anticipate?

**Mr Metcalfe:** I think that the minister was quite clear on expecting that there would be some criticisms and concerns about this because it is an area of very decisive policy. In the past we have seen some advocates or others mount challenges to government action in this area, as was seen in 2001. The minister was simply making it clear that these things could be expected and that the government is determined to pursue its policy because it is the right thing to do. I am not going to use this forum to coach people into what they might wish to do. I am sure they can work that out themselves.

**Senator CASH:** But the minister himself did raise the subject of potential legal challenges. Did he seek any advice from you as to what those legal challenges might be?

**Mr Metcalfe:** Yes.

**Senator CASH:** Are you able to inform the committee what the legal challenges are that you believe do arise from the announcement?

**Mr Metcalfe:** No.

**Senator CASH:** Is there a reason for that?

**Mr Metcalfe:** Because it would be a way of coaching people into dealing with this. I am sure that you want this policy to succeed so that boats stop coming. The whole stated

intention of many parliamentarians has been to reduce and stop irregular maritime arrivals, and this is a clear and decisive policy. I do not think it would be—

**Senator CASH:** We do not have a policy yet. You have a one-page statement—

**Mr Metcalfe:** I have got a pretty clear directive of that.

**Senator CASH:** If you do have a policy then why are you not giving that information surrounding the policy to this Senate committee?

**Mr Metcalfe:** I think we have explained that we do not disclose international negotiations. We have those in private between countries, not in public. In relation to potential legal challenges, I am surprised as a lawyer that you would be asking me to outline areas where people may seek to challenge these issues. I think I will leave that up to them to work that out for themselves.

**Senator CASH:** Why would the minister raise it?

**Mr Metcalfe:** Because I think he wanted to be open and clear with the Australian public that this would be a contested issue and that the government was committed to pursuing its policy objectives notwithstanding the fact that there may be legal challenges, there may be protests or there may be issues. The government took a very well informed decision and the minister was being quite open with people.

**Senator Lundy:** Just to reiterate, the point that Mr Metcalfe makes is a very important message to people smugglers that comes with this policy and that is: you do not have a product. We do not want people to get on those boats. They will not be processed in Australia. They will be sent to a third country, as you know, and I would have thought that the coalition would be fully supporting that policy intention. I certainly understand your questioning of the detail. The officers have made very clear all afternoon we are not able to give you the detail as those negotiations are proceeding.

**Senator BARNETT:** Can I ask through you, Chair, did you take legal advice from your own officers within the department?

**Mr Metcalfe:** Yes, but not only those officers.

**Senator BARNETT:** Who else?

**Mr Metcalfe:** The Solicitor General.

**Senator BARNETT:** How many times did you seek advice from the Solicitor General?

**Mr Metcalfe:** As they say in the classics, it was an iterative process but there was a series of questions, consultations and advice provided over a period of time.

**Senator BARNETT:** Did you receive written advice from the Solicitor General?

**Mr Metcalfe:** Yes.

**Senator BARNETT:** How many pieces of legal advice did you receive?

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

**Senator BARNETT:** More than one?

**Mr Metcalfe:** I think more than one, but let me check on that. I will take that on notice.

**Senator BARNETT:** When you do so can you advise the date upon which you first sought the advice and secondly received the advice?

**Mr Metcalfe:** I am happy to.

**Senator BARNETT:** Did you seek advice from the Attorney-General's Department?

**Mr Metcalfe:** The Attorney-General's Department have been critically involved as part of the whole-of-government formulation and development of this policy.

**Senator BARNETT:** I am sure they were.

**Mr Metcalfe:** Whether there was written advice from the Attorney-General's Department or, more likely, the Solicitor General as the second law officer of the Commonwealth, I can check on that as well.

**Senator BARNETT:** Likewise could you advise the committee when you sought the advice and when you received the advice from the Attorney-General's Department as opposed to the Solicitor General?

**Mr Metcalfe:** I will take that on notice. But I should just say that the Australian government is very confident of the lawfulness of this policy and this approach but—

**Senator BARNETT:** But you are predicting legal action to follow, litigation to follow, and the minister has already flagged that—

**Mr Metcalfe:** We have seen that over time.

**Senator BARNETT:** So you are heading into very turbulent waters, as it were.

**Mr Metcalfe:** We have seen that this is a contested area of public policy, not only at the political level but also between the government and various advocacy groups and others. There has been a major High Court challenge in relation to certain aspects late last year and of course—

**Senator BARNETT:** Which was successful?

**Mr Metcalfe:** It confirmed the view that people in offshore processing arrangements were able to access the Australian legal system. It also commented upon procedural fairness in relation to decision making. But of course we saw in 2001 in the case of Vidarlis against Ruddock a legal contest in relation to the removal of people on HMAS *Manoora* to Nauru. It is of course an area where there are strong views held by people and some of those resort to the courts. The government in seeking to ensure that it is acting lawfully and properly has received advice from the most senior lawyers available to it and is confident as to its approach.

**Senator BARNETT:** But it is highly likely, based on the minister's advice, that litigation will follow and this will end up in the courts, but you are saying to us that you are confident of your legal position.

**Mr Metcalfe:** I am as confident as I can be.

**Senator CASH:** To ensure that we understand the procedures to be employed in directing asylum seekers to Malaysia or another third country, can you take me step by step through the agreed processing procedure but in particular what legal jurisdiction and what legal rights will asylum seekers have at each stage of the process? In particular when will they assume, or not assume, the legal rights of the third country?

**Mr Metcalfe:** I explained the legal position of people in some detail before subject to the directive that they are being detained lawfully in Australia, that they will be removed lawfully



from Australia, that our position at international law is that we have an obligation not to send a person to a place of persecution or nonrefoulement. The effect of transferring the person to a third country would be a place where Australia was very confident that there would be no refoulement from that place. That would be confidence obtained through an agreement with that country pursuant to the regional cooperation framework and with the auspices of the United Nations High Commissioner for Refugees, particularly in relation to the Malaysian discussions.

The person would then be subject to the domestic laws of the country to which they had been sent. International law still applies. The MOU that Australia would have with that country would be applicable and any rights the person has at international law to protection would be given effect to in that country.

**Senator CASH:** So the person will be subject to the domestic law of the third country which—

**Mr Metcalfe:** By definition, if you are in the country you are subject to the law.

**Senator CASH:** In relation to a country such as Malaysia, which we all know has the death penalty and has corporal punishment, they will be subject to the death penalty and to corporal punishment even though Australia does not have the death penalty, and obviously we are also opposed and we have signed the convention specifically against torture.

**Mr Metcalfe:** Yes, exactly the same laws that you are under when you are there as a tourist.

**Senator CASH:** Absolutely, but I just want to ensure that that is what we are returning them to potentially.

**Mr Metcalfe:** There is no suggestion here that the persons are put beyond the domestic law of the country and indeed it is an impossible legal principle to suggest, short of giving the people diplomatic status, that they would be able to not be subject to laws of another country in the same way that any foreign national, or citizen of that country, is subject to that law.

**Senator CASH:** When will they actually assume or be subjected to domestic law? Exactly when will that point be? Is it when they—

**Mr Metcalfe:** As you are when you get off the plane, you are subject to the law of that country.

**Senator CASH:** What happens if people refuse to get off the plane as we had in the situation of the *Oceanic Viking* and you actually are in Malaysia, will the Malaysians have control of the people and be able to force them off an aircraft?

**Mr Metcalfe:** It would be our expectation that people would certainly be encouraged to depart the aircraft but that if they refused to do so then the authority of the captain of the aircraft, under international transport safety law, would be able to be used to remove the person from the aircraft and they would then be handed over to the local authorities.

**Senator CASH:** So hand them over to the Malaysians in terms of the Malaysian deal?

**Mr Metcalfe:** The use of force, although extremely regrettable, and as absolutely a last resort, sadly does have to be contemplated in these circumstances—

**Senator CASH:** Yes, it does.

**Mr Metcalfe:** and that is something that we are clearly focused upon.

**Senator BARNETT:** Did you receive legal advice from the Solicitor General or elsewhere regarding the rights of these people once they do land in Malaysia?

**Mr Metcalfe:** I will have to check on that point. I think the major focus of our legal advice has been authority under Australian law. But it is—this is not a legal concept—a no-brainer that if you were physically present in another country you are subject to the laws of that country.

**Senator BARNETT:** So corporal punishment or capital punishment or the laws of that country will apply to these people and that is categorically—

**Mr Metcalfe:** In the same way that they apply to any person in the country, including you if you were there as a tourist.

**Senator CASH:** Except for the fact that we are returning these people—

**Senator BARNETT:** But these people are not there as tourists.

**Senator CASH:** Exactly, these people are not there as tourists.

**Senator BARNETT:** This is the whole point. These people are not there as tourists; are they?

**Mr Metcalfe:** They are being sent there pursuant to an agreement and the prime ministerial agreement makes it clear in relation to human rights standards and the dignity of the person.

**Senator BARNETT:** What does that mean?

**Mr Metcalfe:** With respect, we have been talking about this for many hours—

**Senator CASH:** This is half the problem though, we do not seem to have any answer to it.

**Senator BARNETT:** Nobody knows what it means.

**Mr Metcalfe:** I think I have been giving answers all afternoon. There are principles explained in the—

**Senator CASH:** Joint statement.

**Mr Metcalfe:** joint statement. There are principles applicable to the regional cooperation framework and the detailed diplomatic discussions to put this into effect are proceeding.

**Senator BARNETT:** Do you have a paper on the human rights that apply in Malaysia to detainees?

**Mr Metcalfe:** No, I do not.

**Senator BARNETT:** Have you read any papers or are you aware of the human rights that apply to such people in Malaysia?

**Mr Metcalfe:** Yes.

**Senator BARNETT:** What have you learnt from such—

**Mr Metcalfe:** I have relied on advice from the Department of Foreign Affairs and Trade on those issues.

**Senator BARNETT:** Have you received any written advice from the department of foreign affairs?

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

**Senator BARNETT:** Could you provide that advice to us and advise us when you received that advice?

**Mr Metcalfe:** I will have to see firstly whether it exists and secondly whether there are any security or other classifications associated with it. I will take that on notice.

**Senator CASH:** This is actually quite a serious point because in relation to the *Oceanic Viking* Australia expected Indonesia to deal with those on the *Oceanic Viking*. That did not end up happening and the Australian government entered into a special deal with those on board the *Oceanic Viking*. What will happen? Has the government contemplated what may well happen when they touch down—and you said potentially by plane—in Malaysia and these people will not get off the plane?

**Mr Metcalfe:** Yes.

**Senator CASH:** What processes are going to be put in place?

**Mr Metcalfe:** Appropriate processes.

**Senator CASH:** What is an appropriate process when you are subject to the domestic law of Malaysia?

**Mr Metcalfe:** A measure that is lawful, is proportionate—

**Senator CASH:** Did you say 'awful'?

**Mr Metcalfe:** Lawful.

**Senator CASH:** It would be awful. That would be about the best evidence I have had all day.

**Mr Metcalfe:** Hansard may wish to double check but I did in fact say 'lawful'. A lawful process, a proportionate process, a process that has due regard to the dignity of the individual in the same way that every day—or most days—we deport people from Australia. Some people are not cooperative in relation to that. Immigration authorities worldwide have to deal with people who are not cooperative. Our standard position is to seek people's cooperation, to work with them, to help them understand that they have to do something but ultimately if they refuse to put the law into effect and that law relates to the use of reasonable force as a last resort, in relation to the disembarkation of a person from an aircraft then there are obviously powers in relation to the captain of the aircraft under relevant international air traffic security regulations and it is in that framework that this would operate.

Our determination to stop people smugglers saying to people: go to Australia; you will get a process; muck up and the Australians will not deal with it or any of those sorts of things. People smugglers should forget about them. This arrangement is designed to prevent people from spending thousands of dollars getting on leaky boats, sailing on unsafe voyages and sometimes dying. If we have to be determined about that, we will be.

**Senator CASH:** Again, I could be flippant and say: been there; done that. I appreciate your genuine passion but where was it two-and-a-half, three years ago when these changes were actually made?

**Mr Metcalfe:** I am speaking as a government official. I am not speaking as a politician. I am just saying that having to deal with the orphans and the relatives of the people who were drowned on CF221 is not a pleasant task.

**Senator CASH:** No, it is not. That is exactly right.

**Mr Metcalfe:** If governments are able to find innovative ways to take the illegality and the criminality out of this process and to provide better arrangements, then surely that is a good thing.

**Senator CASH:** In his ministerial announcement Minister Bowen stated that these asylum seekers could actually be transferred by boat to the third country. Is that correct?

**Mr Metcalfe:** That he said that?

**Senator CASH:** In his ministerial announcement he said by boat or by plane.

**Mr Metcalfe:** Whatever he said in the ministerial announcement, he said.

**Senator CASH:** It was by boat or by plane.

**Mr Metcalfe:** I think I answered the question before that we ordinarily would expect it would be by aircraft, but I would not rule anything in or out.

**Senator CASH:** In terms of it being by boat and you do end up in the *Oceanic Viking* situation where people refuse to get off the boat, have the Malaysians agreed to use force to get the people off the boat?

**Mr Metcalfe:** We have not discussed transfers by boat.

**Senator CASH:** So you have not discussed transfers by boat yet?

**Mr Metcalfe:** No. The minister has made it clear that he is keeping his options open as to the mode of transport. The mode of transport is, frankly, irrelevant to whether people are subject to this arrangement, and were they to be returned to another country and taken to an airport or a port they would be moving into that country. And if there needs to be the appropriate use of force in extremis, as a last resort, because people were not prepared to cooperate then that is the case.

**Senator CASH:** How is the mode of transport irrelevant?

**Mr Metcalfe:** In legal terms.

**Senator CASH:** Let us talk about political terms where you had the *Oceanic Viking* situation.

**Senator Lundy:** You are asking an official about the budget statements, so it is not appropriate to ask the official about political questions.

**Senator CASH:** I will withdraw that. How is it irrelevant when the government has been faced with a very expensive situation and one that is still ongoing that we will be discussing later on this evening in relation to the *Oceanic Viking*?

**Mr Metcalfe:** It is a fair point that you are making. Having someone depart an aircraft if they do not wish to, although a difficult situation, is a situation that is quite different to departing a boat. We saw with HMAS *Manoora* in 2001 a long period of resistance by people to depart that boat, and eventually persuasion and, I recall, an element of force was required after days of people refusing to leave the Navy boat. There is a logistical difference between being able to manage something at an airport where there are appropriate facilities, air bridges

and that sort of thing, as opposed to having someone clamber down 80 or 90 steel steps if they do not wish to. As in all of our situations we have to be very mindful of the safety of the officers undertaking that particular task and of the persons subject to those particular requirements. There are logistical differences, which are ultimately a matter for the authorities involved in that transfer, and that is why I believe that it is more likely that we would be looking at transfer by aircraft than by vessel. It is also much quicker.

**Senator CASH:** You raise a very good point with the HMAS *Manoora* in terms of force needed to be used to actually get the people to disembark. Have you had discussions with the Malaysians in terms of this deal? Will they accept people that have to be forced off a plane or a boat or will they say, 'We're not prepared to take those people; they're Australia's problem'?

**Mr Metcalfe:** It is our expectation that if people are being returned as part of this deal those people will be disembarked appropriately.

**Senator CASH:** The key term there is 'appropriately'. I believe your evidence is that you have acknowledged that the government has contemplated that some form of force may have to be used.

**Mr Metcalfe:** In extremis. As you know, we plan for all contingencies, and that is one of the contingencies. I hope that it never comes to that. I hope that people would accept that their future lies other than in Australia and that it sends a very strong message to people contemplating taking a voyage to Australia that there is no point in doing so.

**Senator CASH:** Has the Australian government put that to the Malaysians in their discussions?

**Mr Metcalfe:** Which particular thing?

**Senator CASH:** Will the Malaysians be prepared to accept the asylum seekers from Australia that need to be forcibly removed from either a boat or a plane?

**Mr Metcalfe:** We have been discussing a whole range of issues with the Malaysians and I am not going to get drawn into a discussion or conduct diplomacy in a public manner.

**Senator CASH:** In terms of our legal obligations, has Australia taken all necessary precautions and sought legal advice to ensure that we do not legally breach our UNHCR obligations in respect of the asylum seekers who are sent to Malaysia, or is that also still ongoing?

**Mr Metcalfe:** No. We are quite clear on our legal position.

**Senator CASH:** You are very clear on that?

**Mr Metcalfe:** Yes.

**Senator CASH:** Do you accept the legal position?

**Mr Metcalfe:** Yes. The department would never recommend to government or provide advice to government on a matter that was not lawful. By definition, in proceeding with this there is a very high confidence that this is lawful, and I would again note the references made by Senator Lundy to the supportive comments made by the United Nations High Commissioner for Refugees.

**Senator CASH:** In the budget papers \$216.4 million has been budgeted to receive an additional 4,000 humanitarian entrants from Malaysia over four years. Could you advise where these amounts have been accounted for in the portfolio statements by output class and the purpose for each of the payments in each output class?

**Mr Metcalfe:** We might have to get Mr Sheehan back. There will be some costs in my portfolio associated with the processing and other support arrangements, for example the Humanitarian Settlement Scheme and the Adult Migrant English Program. Some costs, of course, fall in other portfolios where the people may be subject to support arrangements as well. In terms of a disaggregation, we will see if Mr Sheehan can assist.

**Mr Sheehan:** Can you ask that question again?

**Senator CASH:** Absolutely. In relation to the \$216.4 million that has been budgeted to receive the additional 4,000 humanitarian entrants from Malaysia over four years, can you advise where these amounts have been accounted for in the portfolio statement by output class and the purpose for each of the payments in each of the output classes?

**Mr Sheehan:** There are additional costs for the department which are under outcome 5. The \$216 million is not just for the department. The amount for the department over the forward estimates period is \$68.4 million and the remaining \$148 million relates to other programs across government.

**Senator CASH:** So it is not in relation to this particular portfolio statement?

**Mr Sheehan:** That is right. It is \$68.4 million in our budget papers.

**Senator CASH:** Can you take me to where that is in terms of the breakdown?

**Mr Sheehan:** It is on page 17. We have 'Humanitarian Migration Program—increase of 4,000 places'. It is on the bottom line for programs 2.1 and 5.1. If you add the \$16.2 million, \$14.7 million, \$13.9 million and \$13.993 million you will come up with \$68.4 million.

**Senator CASH:** Is that the only funding from the \$216 million?

**Mr Sheehan:** On page 18 under 2.1, five lines from the bottom—can you see that?

**Senator CASH:** The Humanitarian Migration Program?

**Mr Sheehan:** Yes. It is \$2,096,000, \$2,301,000, \$2,459,000 and \$2,605,000, which amounts to \$9.4 million. They are the only two components.

**Senator CASH:** So there is nothing else in that \$216 million that falls within this department?

**Mr Sheehan:** No. There is a range of other costs.

**Mr Metcalfe:** As I explained before, our costs are largely going to be the cost of administering the selection of the 4,000 people. There is the visa processing cost. I suspect that is in the departmental expenses on page 18. The administrative expenses would be support through the English program and the Humanitarian Settlement Support program. The balance of the funding will be in other portfolios associated with support costs for people through benefits such as health care and so on.

**Senator CASH:** I think you have taken on notice how much has been allocated per year for each person of the 4,000 resettled under the program. Have I asked that question?

**Mr Metcalfe:** I do not recall that.

**Senator CASH:** How much has been allocated per year for each person—which I suppose is 1,000 four times—resettled under the program and for what purposes? Where are those figures?

**Mr Metcalfe:** The estimate is based on 1,000 per year.

**Senator CASH:** Is that what the \$68.4 million is?

**Mr Metcalfe:** Yes. It is not as though we are getting in 4,000 in one year.

**Senator CASH:** Are you able to break it down to how much has been allocated per person?

**Mr Metcalfe:** We can try. No doubt the financial wizards can do that. Of course, there will be a rolling series of expenses. In the first year there will be 1,000 extra refugees. In the second year there will be the 1,000 plus the second 1,000. In the third year there will be 1,000 plus 1,000 plus 1,000.

**Senator CASH:** Is it anticipated that the budget will include any welfare payments that might be made to the humanitarian entrants for the cost of health care, schooling or any other services that they require?

**Mr Metcalfe:** Those will be in the FaHCSIA or Health portfolio.

**Senator CASH:** They will be in a different portfolio?

**Mr Sheehan:** That is in the differential between the \$216 million and the other \$140 million or thereabouts. That is where you would find those costs.

**Senator CASH:** You can take this on notice. Can you tell me which other portfolios and output classes the rest of that money is in, as it relates to the 1,000 under the humanitarian program?

**Mr Sheehan:** We can take that on notice.

**Mr Metcalfe:** We can probably check and get back to you during the course of our appearance before these estimates as to which portfolios and which outcomes, if you have questions of those departments. We can quickly check with the other departments. It will be Health, FaHCSIA and possibly Employment. It is the folks who provide services at Refugees Access. We are one of those, but not the only one.

**Senator CASH:** Yours is basically the settlement services.

**Mr Metcalfe:** It is settlement services. I should also point out that in addition to the calculation which we have discussed previously of 1,000 on 1,000 on 1,000 on 1,000, some of our services people will only access for a particular period of time. The English language training, the humanitarian support and the complex case management are so much. Some of that will be starting and finishing. There may be some overlap through that, which is why we have such fine accountants working for us in order to work that out.

**Senator CASH:** Is it fair to say that the \$68 million is what it costs to resettle 4,000 people over four years?

**Mr Sheehan:** In this portfolio?

**Senator CASH:** Yes. Is the \$68 million that is in outcome 5 what it costs to resettle 4,000 people over four years?

**Mr Metcalfe:** That is correct, in this portfolio.

**Senator CASH:** In this portfolio?

**Mr Metcalfe:** Yes.

**Mr Sheehan:** In terms of averages, there is a whole range of other complex parameters that go to that but, just to be clear, it is not as simple as just dividing one by the other.

**Senator CASH:** In terms of an overall estimate of 4,000 people over four years, to resettle them under outcome 5, in terms of the services that this portfolio provides, it is \$68 million.

**Mr Metcalfe:** If you want to increase the refugee program by 1,000 persons per year and take that over the four-year forward estimates then this is the additional cost of that occurring.

**CHAIR:** Senator Cash, do you have many more questions in this outcome? Senator Pratt has some questions as well.

**Senator CASH:** I do. I understand that we will have the dinner break and then we are returning until 9.30 for this outcome.

**CHAIR:** Yes.

**Senator PRATT:** I am asking about after dinner.

**CHAIR:** You can keep going. We might start with Senator Pratt after dinner and then we will come back and you can finish.

**Senator CASH:** I have a number of questions in relation to Malaysia, but based on the advice that I have been given I understand that I will be raising those questions tomorrow in outcome 4.

**Mr Metcalfe:** Are they the operational aspects?

**Senator CASH:** It is in relation to the asylum seekers that have arrived since 7 May 2011. There are a whole lot of questions surround where they are located and so on.

**Mr Metcalfe:** Yes, that is 4.3.

**Senator CASH:** I would like to go back to the \$216 million. Is any of that in outcome 4 or is it just in outcome 5?

**Mr Sheehan:** No. As I read out, it is in 2.1 and 5.1.

**Senator CASH:** That is what you took me through.

**Mr Sheehan:** Yes.

**Senator CASH:** So there is none in outcome 4. Can you confirm that?

**Mr Sheehan:** Confirmed.

**Mr Metcalfe:** Outcome 4 is about the detention processing of people in Australia; 4.2 is around onshore detention; 4.3 around offshore asylum seeker management. This is, of course, about the resettlement of refugees, so under 2.1 is the humanitarian effort and 5 is the settlement services.

**Senator CASH:** In relation to this figure, seeing that we have the benefit of Mr Sheehan with us today, it is \$216 million divided by 4,000—I know that is a very crude way of working out what a per person cost is—which is \$54,000 per person.

**Mr Metcalfe:** It is.

**Senator CASH:** So the total cost to the department in relation to the \$216 million is the \$68 million which you have been talking about.



**Mr Sheehan:** Which is about \$17,000.

**Senator CASH:** Correct, and 4,000 divided into \$216 million is \$54,000 across all portfolios per person, but it is approximately \$17,000 per person just in this portfolio.

**Mr Sheehan:** Yes. That is just in terms of pure maths.

**Senator CASH:** Just in terms of pure maths, as crude as that is. So it is \$17,000 in this portfolio and then \$54,000 across the other portfolios?

**Mr Sheehan:** For 4,000 in total.

**Senator CASH:** Correct.

**Mr Sheehan:** It is roughly \$17,000 from \$54,000, which will leave you with \$37,000.

**Senator CASH:** Yes, to be used in other portfolios.

**Mr Sheehan:** On average. It is the incremental increase in the program because there would be fixed costs underneath that you would not take into consideration as it is just the change in the program and not necessarily a full-blown overall cost.

**Senator CASH:** I accept that. I am working through what I am asking tomorrow in 4.3. Senator Pratt, do you have any questions on Malaysia?

**Senator PRATT:** Yes.

**Senator CASH:** I am happy to finish up because the rest of my questions will be tomorrow in 4.3.

**CHAIR:** We will go to Senator Pratt.

**Senator PRATT:** I have questions about Malaysia and also about the Bali process, so I might start there. I do not want to disturb the officers at the table.

**Mr Metcalfe:** The accountants will come back if we need them.

**Senator PRATT:** I do not know that I will need the accountants. I have before me the co-chair's statement. I note that the statement highlights ministers looking at the achievements that have been made through state cooperation, but the statement itself does not go into detail as to what those achievements are viewed to be and I would be interested in knowing.

**Mr Metcalfe:** I am wondering whether Mr Fleming can assist.

**Mr Fleming:** There are a range of activities that we undertake in the region with fellow Bali process members, particularly around capacity building. For example, we fund programs with the United Nations Office on Drugs and Crime to work with countries in the region. That includes developing computer based training for use in the region on detection and prevention of people-smuggling. The UNODC is also doing work that we fund on establishing a coordination and analysis unit to see how we can collect intelligence and information to analyse and target operational responses throughout the region. There is also a partnership against transactional crime through regional organised law enforcement that looks at the capacity throughout the region of various law enforcement prosecution, relevant institutions and so on, to investigate and prosecute cases of migrant smuggling. They are some examples through the UNODC.

We also have a broad range of other bilateral and multilateral engagement that we undertake in terms of capacity building and countries in the region learning from each other. That can go from migration management around legislation to governance and organisation

structures for managing migration, developing IT border management systems, and the work practices that underpin that. We do a lot of work in the region on identity management and biometrics, as well as document examination. There are a range of initiatives around sharing immigration intelligence and understanding how to work with intelligence functions. Obviously we fund the Bali process directly and work under that regional forum. We fund a range of outreach officers from the IOM. That is a sample of the activities throughout the region.

**Senator PRATT:** Dot point 6 in that statement specifically refers to ministers noting, with concern, the large number of lives lost due to the actions of smugglers and traffickers. We know that Australia has its fair share of that traffic and, indeed, risk to lives, but I was wondering how those risks would be characterised more broadly in the region. Where are those key risks? Clearly there is a risk because people travel by boat to Australia, but I am sure that there are other parts of the journeys that people take that also have that very risky element to them.

**Mr Metcalfe:** Mr Fleming and Dr Southern may be able to add to this. In broad terms, people put themselves into a very vulnerable position the whole way through. They are essentially placing their fate, quite often the fate of their children or in some circumstances the fate of young people travelling alone, into a very uncertain international criminal and legal framework. There is a good reason why the Bali process deals not only with people smuggling but people trafficking, because quite often those flows of vulnerability and exploitation get mixed up together.

What we see here in the people that arrive by boat are the small proportion of people who actually come to Australia and, of course, some of those tragically perish along the way, as we have seen so tragically and so graphically recently. There is an element of vulnerability associated with the irregular travel. They are beholden to people smugglers who have clearly shown no particular compassion or mercy for people, and the people are liable to exploitation, whether it is financial or physical, on that particular voyage. It is a difficult and complex area of international law, but the human dimension of uncertainty about this, the means by which people will travel and the vulnerability that they place themselves in are quite extraordinary.

A few weeks ago I was in Malaysia and I had a small opportunity to visit the major port outside Kuala Lumpur called Port Klang. It is a very big freight port, but there is also a passenger terminal there for ferries between Malaysia and Sumatra across the strait. I was told by immigration officials there about some folks that they had seen recently, Afghan nationals, who had been detained by the Malaysians as seeking to travel illegally on to Indonesia with the destination of Australia. Those Afghans had travelled via Pakistan, Dubai and Bangkok on false passports, intriguingly issued by a South American country, where they sought to pass themselves off as Peruvians. They were then smuggled across into Malaysia and then further sums of money were demanded and expected of them. The vulnerability that the people have in these sorts of situations is quite extraordinary. The means to which people smugglers will go to counteract government actions is significant. A key policy objective of governments through the Bali process and more broadly through engaging with the UNHCR is to provide safe measures for people rather than employing unsafe means.

**Senator PRATT:** I think that goes to the issue that I wanted more information on. I note the further paragraphs following that. Clearly that would lead towards why the statement talks about the need for regional cooperation of a multilateral and bilateral nature.

**Mr Metcalfe:** Yes.

**Senator PRATT:** I would like to ask about multilateral versus bilateral and whether they are seen to be competing or complementary options.

**Mr Metcalfe:** It is clear that there is a whole range of countries involved in this issue. It is important that any policy response that Australia has operates within an international framework. We have the overarching obligations under the refugees convention, but, as I have said, it is a matter of reality that many countries in our region are not signatories to that convention. That is fact and we have to deal with it.

The UNHCR, through its good offices, has been promoting the observance of protection for vulnerable people, refugees and displaced persons throughout the world and throughout the region. In my opening statement this morning I gave some staggering figures of people in that particular situation. Whilst it is important for Australia to reach particular bilateral arrangements with countries, it is my view that that has to be done within an international framework, otherwise Australia is simply acting in a lonely sort of way and will not attract the overall support of the United Nations system and the broader doctrine relating to the protection of refugees, the return of non-refugees in conditions of safety and the resettlement of refugees where resettlement elsewhere is important.

A key aspect, for example, of the Australia-Malaysia arrangements is that it has been conducted in the context of an international framework and that the United Nations High Commissioner for Refugees is involved, both in the assessment of any refugee claims and in the resettlement of people, so it is not just Australia's problem. On earlier occasions where bilateral arrangements were reached, the resettlement of the refugees was Australia's responsibility and no-one else took any responsibility for it. In those situations where people were transferred to other countries, many were refugees and the vast majority came to Australia. In other words, those arrangements were simply another form of Christmas Island processing.

**Senator PRATT:** In that context, what proportion of people sent to Nauru and Manus Island under the Howard government ultimately ended up in Australia anyway?

**Mr Metcalfe:** Mr Fleming or Dr Southern may have some information about that.

**Mr Fleming:** I do, but it may take me a few moments to find it.

**Mr Metcalfe:** Just while that is happening, Chair, there was one matter that I took on notice from Senator Cash at the beginning of the discussions this morning about a particular person and I can provide an answer on that, so perhaps I can do that just before the dinner break after we finish Senator Pratt's questions.

**Senator PRATT:** I will certainly have questions.

**Mr Metcalfe:** We could do it immediately before the dinner break if Senator Pratt continues after the dinner break.

**Senator PRATT:** I am happy to continue after the dinner break, but in the context of the UNHCR, the statement from Bali and in the context of the UNHCR's commentary about our

arrangement with Malaysia and their views about how both of those agreements fit together. I am happy for you to answer that after the dinner break.

**Mr Metcalfe:** Chair, are we breaking at 6.30 for dinner?

**CHAIR:** Yes.

**Mr Metcalfe:** Perhaps we could answer Senator Pratt's question after the dinner break because I think Mr Fleming will have some information for you. Can I answer Senator Cash's question from earlier?

**CHAIR:** Yes.

**Mr Metcalfe:** You asked me about a particular individual and gave me a reference number. You were conscious of the protection of the person's privacy and I thank you for that. I can confirm that the advice that I have is that that person has not been granted a visa and that they remain in detention.

**Senator CASH:** Do they remain in detention at Christmas Island?

**Mr Metcalfe:** Elsewhere.

**Senator CASH:** On the mainland?

**Mr Metcalfe:** Yes. I would prefer not to provide any more detailed answers, respecting the person's privacy, but I think that answers the question. You asked me did they have a visa, what kind and when. They do not have a visa and they remain in detention.

**Senator CASH:** I appreciate you getting back to us on that.

**CHAIR:** We will break for dinner.

**Proceedings suspended from 18:30 to 20:02**

**CHAIR:** We will resume this public hearing of the Legal and Constitutional Affairs Legislation Committee's examination of the budget and estimates process. Senator Pratt will continue with her questions.

**Senator PRATT:** The UNHCR has provided some comment and critique of the Bali Regional Ministerial Conference and its outcomes at the same time as also providing some comment about our prospective arrangements with Malaysia. I am interested to know whether both those arrangements are consistent in terms of the views of the UNHCR?

**Mr Fleming:** We have been working very closely with the UNHCR and with IOM as well while we have been working with the Malaysians. The four parties have had discussions together as well as separately. We have been very mindful of making sure that any arrangement we come up with is protection sensitive and has at least the support and preferably the involvement of UNHCR. At this stage it does look like, as you will have seen from the public comments, that they are on board and playing a role, particularly around refugee status determination and also care and support for any transferees while they are in Malaysia, in accordance with UNHCR's general role in Malaysia.

**Senator PRATT:** Could you comment on the UNHCR's views of the ministerial conference on people-smuggling, the Bali process?

**Dr Southern:** The UNHCR was obviously a party to those discussions and you will note from the ministerial outcome statement that there are quite a lot of references to the UNHCR and their role. I think their public commentary subsequent to that was very much that the

regional cooperation framework particularly lined up with some of the work that they had been doing. As the Secretary mentioned earlier, there had been a workshop in the Philippines late last year talking about regional arrangements. We have been working very closely with them since then on the Bali process.

**Senator PRATT:** So how do these regional and bilateral arrangements compare to approaches taken under the Howard government's Pacific Solution? They were largely only bilateral in a hosting sense.

**Mr Fleming:** Certainly those arrangements were not in the context of any regional cooperation framework or similar arrangement. Certainly things like transfer and processing arrangements are only one element under a regional cooperation framework. It envisages a range of initiatives to improve humanitarian assistance and protection processing and outcomes in the region.

**Senator PRATT:** I am interested in knowing what is meant by 'burden sharing' in the Bali conference statement. What is the significance of that statement?

**Dr Southern:** I think we could point to the arrangements that we are proposing with Malaysia as being a very specific example of burden sharing. For a country which is hosting a large number of refugees, part of the arrangement would be that 4,000 of those refugees would be settled in Australia. It is those kinds of arrangements that were contemplated under the agreement.

**Senator PRATT:** So that would also underpin the multilateral nature of regional arrangements as opposed to Australia dealing with the pointy end on its own shores.

**Dr Southern:** Yes.

**Senator PRATT:** In relation to Malaysia, we did just comment briefly about the so-called Pacific Solution. To be clear, that was a policy setting that Australia was going alone on in a regional sense.

**Dr Southern:** Yes.

**Senator PRATT:** I think we have covered Malaysian government giving treatment of those returned. I will review the Hansard on that.

**Mr Metcalfe:** There is some information that you asked about this morning about litigation issues. We have that material now, so we are happy to ask the officer to come forward if you would like.

**Ms Hardy:** Senator, this morning you asked for some details about the total legal expenditure and also the total spent on litigation. The total legal expenditure for the 2010-11 budget was \$30.88 million budgeted.

**Senator PRATT:** And that was legal.

**Ms Hardy:** Yes, that is total legal expenditure. I add that that was revised down from \$35 million at the start of the financial year. The amount that was spent until 31 March was \$22.85 million. You also asked about the 2011-12 budget. At this stage I can only give you an indicative budget, and at this stage that is \$42 million, which is a combination of the \$30 million budgeted for this financial year and the \$12 million we discussed this morning which has been allocated for judicial review following the High Court case last year.

In terms of litigation, the 2010-11 budget was \$21.68 million. That was revised down from \$25.46. That is consistent with what I said to you this morning about the total legal expenditure coming down over the last few years. In terms of the amount spent on litigation, I am only able to provide you with the external legal spend at this point, and that was \$10.34 million until 31 March 2010. The internal legal spend has not yet been attributed, but I can provide that to you when it is.

**Senator PRATT:** Thank you.

**Ms Hardy:** For the 2011-12 budget—again, indicative only at this stage—for litigation, there is \$33 million, which is approximately the \$21 million budgeted for this year plus the \$12.7 million budgeted for the judicial review following the High Court matter. They are the figures that I think you were seeking. I also follow up with another thing you asked me about this morning, which was the two judicial review matters that we had following on from the High Court decision last year and the amount that had been spent. As of 31 March 2011 it is approximately \$22,000 spent on those two cases. I think I may have misled you this morning. I think I indicated that the other 58 matters that were before the courts that had been filed at the moment had no money spent on them. In fact, \$19,000 has been spent on those matters to date. But as I indicated, they have not yet been heard.

**Senator CASH:** I appreciate that. Thank you very much for coming back. To turn to the memorandum of understanding between the Australian government and the government of Afghanistan which was signed on 17 January 2001, what numbers of failed Afghan asylum seekers have been returned to Afghanistan to date, both voluntarily and non-voluntarily?

**Mr Metcalfe:** I will ask Mr Fleming to assist us in this area.

**Mr Fleming:** I cannot immediately find the figure for the voluntary returns, but we should be able to get that over the course of the next couple of hours. But there were no involuntary returns as yet.

**Senator CASH:** Okay. Has the UNHCR referred any appropriate cases of Afghan refugees abroad for consideration under Australia's refugee resettlement program?

**Mr Fleming:** Certainly we have Afghans as part of the offshore humanitarian refugee program.

**Senator CASH:** How many have been referred?

**Mr Fleming:** During what period?

**Senator CASH:** To date.

**Mr Fleming:** I will have to get that figure for you. We will take that on notice.

**Senator CASH:** In terms of Afghan asylum seekers, have any failed asylum seekers taken advantage of the reintegration package?

**Mr Fleming:** I will have to take the numbers of returnees on notice, but we may be able to get back to you on that this evening.

**Senator CASH:** In relation to any asylum seekers who have returned voluntarily to their countries, how many have taken advantage of the reintegration packages?

**Mr Fleming:** I will include that.

**Senator CASH:** Okay, but the question is how many, to which countries have they returned and what has been the cost of the reintegration package in the 2010-11 year to date? Do you have that?

**Mr Fleming:** Yes, as at 16 May, 62 clients have taken up reintegration assistance packages.

**Senator CASH:** In relation to non-voluntary returns, is there a reason that there have been no non-voluntary returns? Is the Australian government pushing—

**Mr Metcalfe:** To Afghanistan?

**Senator CASH:** Yes.

**Mr Fleming:** Following the High Court case late last year, any contested removals had to have their refugee claims reconsidered. As a consequence, we are only recently getting cases becoming available for return. But they are coming through now, and we expect to commence involuntary returns in the very near future.

**Senator CASH:** How many are being detained awaiting involuntary return either to Afghanistan or to other countries?

**Mr Fleming:** I do not have all of the countries.

**Senator CASH:** Do you have it for Afghanistan?

**Mr Fleming:** For Afghanistan there are around 40 who are now at the end of the process and available for return who have not shown an indication of returning voluntarily, so we will commence an involuntary removal process.

**Senator CASH:** And when are these non-voluntary return processes scheduled to take place?

**Mr Fleming:** I expect that they will commence within the coming weeks to months.

**Senator CASH:** Okay. And, currently, where are those 40 Afghani asylum seekers who have had their claims rejected?

**Mr Fleming:** I do not have that breakdown. We would have to take that on notice.

**Senator CASH:** In terms of the fact that there are 40 awaiting involuntary return, what is the hold-up, given that the agreement was signed on 17 January 2011?

**Dr Southern:** As Mr Fleming indicated, some of those delays have been because cases are working through the post-High Court processes. We indicated that some of them required reassessment after the High Court case, so those processes have been underway.

**Senator CASH:** When you say 'some of them', how many of the 40 were subject to that process?

**Mr Fleming:** They all would have been subject to the reassessment, Senator.

**Senator CASH:** So they are all entitled to have their claims reassessed?

**Mr Fleming:** Yes.

**Senator CASH:** And these claims have continued to be rejected?

**Mr Fleming:** Yes—sorry, I will have to double-check that, because it could include cases that had their first 'affirm on review' after the High Court case, in which case they did not have to be reassessed. Sorry, I will have to check that.

**Senator CASH:** How has the Australian government determined that it is safe to return these failed asylum seekers to Afghanistan?

**Mr Fleming:** Essentially, they have been through an exhaustive process of examining international protection obligations, and we also look at the reintegration assistance. I guess the flip side of them having a reintegration arrangement that makes sure that they have access to a sustainable return includes, implicitly, a view that it is safe for them to return.

**Senator CASH:** So it is the government's position that it is safe to return to Afghanistan Afghani asylum seekers whose claims have failed? That is the current view of the government?

**Mr Fleming:** That is correct.

**Senator CASH:** In relation to the \$5 million reintegration package—and now I am talking more generally—provided for in the 2010-11 budget, how much of that has been expended to date?

**Mr Fleming:** It is whatever the 62 packages cost, but I do not have that figure to hand. I will see if I can get it and provide it tomorrow.

**Senator CASH:** And how much of that expenditure related to small business loans.

**Mr Fleming:** I will include that information.

**Senator CASH:** And what is the status of those small businesses.

**Mr Fleming:** Okay.

**Senator CASH:** Did you not anticipate questions in this area tonight? You have just taken almost everything on notice.

**Mr Fleming:** Yes, we did anticipate some questions, but there is a very, very long list of questions that could be asked and are asked. So I just do not have the details that you are specifically asking for—

**Senator CASH:** You did not come with the answers to these questions.

**CHAIR:** I think they might have come with some answers in relation to these questions but not the specific detail that you are asking for, Senator Cash. I think that is the point that is being made.

**Senator BARNETT:** This is budget estimates, Chair.

**CHAIR:** That is correct, but I am assuming that people from any department are not exactly mind-readers and they do the best they can.

**Mr Metcalfe:** Thank you, Chair.

**Senator CASH:** In relation to the 40 Afghans, how long have they now been detained, pending their involuntary return?

**Mr Fleming:** I do not have that breakdown.

**Senator CASH:** Okay. As Senator Barnett has pointed out, it is budget estimates, so I will try and ask some questions about the 2011-12 budget. In Budget Paper No. 2, on page 257, under 'Border security—reintegration assistance program—continuation', it says:

The Government will provide \$7.0 million in 2011-12 to continue the Reintegration Assistance Program established in 2010.



I do not think you are able to answer this, actually: what assistance has been provided to date under the Reintegration Assistance Program? Or perhaps not in terms of money but in terms of—

**Mr Fleming:** As I have said, there were 62 packages.

**Senator CASH:** Okay. So there are 62 packages.

**Mr Fleming:** I will see if I can get the dollar amounts.

**Senator CASH:** And what do those packages consist of?

**Mr Fleming:** They comprise a mixture of in-kind and cash assistance up to a maximum value specified, depending on where they are. It is up to US\$4,000 or US\$3,300, with a limit on the cash component—it is not to exceed \$500.

**Senator CASH:** When you say 'in kind', what are some examples of in-kind assistance?

**Mr Fleming:** That might be assistance with, as you say, small business start-up. It might be training, skilling and re-skilling on return to Afghanistan, which are things that are negotiated and worked out on a case-by-case basis between the returnee and IOM and put to the department for consideration and sign off.

**Senator CASH:** What small businesses have been set up under this program?

**Mr Fleming:** Again, I would have to include that in the question on notice about small businesses.

**Senator CASH:** In relation to the 62 packages, does that equate to 62 asylum seekers who have taken up the reintegration package assistance?

**Mr Fleming:** That is correct,

**Senator CASH:** What countries have they come from?

**Mr Fleming:** I do not have that at hand. I think it includes Afghans, Vietnamese, Iranians and Sri Lankans, but I will confirm that.

**Senator CASH:** Thank you. Have any asylum seekers who have applied for reintegration assistance returned to Australia?

**Mr Fleming:** I am not aware of any under this scheme, no.

**Senator CASH:** Could you take it on notice to verify whether or not any of them have returned to Australia?

**Mr Fleming:** Yes.

**Senator CASH:** In relation to the 40 Afghans who are waiting non-voluntary return, are you able to tell me when each of their cases finished? When were they given the final negative assessment?

**Mr Fleming:** I thought that was the question I took on notice. I just need to distinguish that from a question I took on notice a couple of minutes ago. You have asked about how long it had been since they had become available for involuntary removal.

**Senator CASH:** Is it the same date, is it?

**Mr Fleming:** Yes, it would be.

**Senator CASH:** Since the date that they were officially told that they were negatively assessed?

**Mr Fleming:** Yes, that would be the same.

**Mr Metcalfe:** And the expiry of any potential period of judicial review. So we would not regard the person as being available for removal until they effectively had nothing left to pursue.

**Senator CASH:** I just wanted to make sure that there is no distinction between those two dates.

**Mr Fleming:** I do have an answer to one of the questions you asked about how many voluntary returns to Afghanistan there were this financial year. It was four.

**Senator CASH:** You have had four voluntary returns?

**Mr Fleming:** Yes, there have been four voluntary returns to Afghanistan this financial year.

**Senator CASH:** If you return voluntarily can you take up the reintegration package?

**Mr Fleming:** Yes. They are primarily aimed at voluntary returnees.

**Senator CASH:** Did these four people take up the reintegration package?

**Mr Fleming:** We will double check that, but I believe so.

**Senator CASH:** I will now turn to Papua New Guinea. In an article in the *Australian* on 13 May 2011 it was reported that talks commenced on the asylum seeker processing centre on 14 March 2011. Is that report correct?

**Mr Metcalfe:** There had been a series of discussions with PNG in recent times. Certainly on 14 March I was in Papua New Guinea and I had an informal discussion with the PNG foreign minister.

**Senator CASH:** Sorry, did you say informal or formal?

**Mr Metcalfe:** It was an informal discussion with the PNG foreign minister on the issue.

**Senator CASH:** Was that the very first talk that was had in relation to PNG or have there been previous discussions?

**Mr Metcalfe:** Yes, by an officer within this portfolio. It is clear, though, that for some time PNG has been indicating to Australia that it was interested in again hosting a processing centre. My understanding is that there may have been indications given to political-level office holders in the foreign affairs portfolio about that. Certainly, the PNG High Commissioner to Australia had informally advised me in previous discussions over some months that PNG would be interested in talking with Australia about this issue. The first discussion that I would regard as significant occurred on 14 March.

**Senator CASH:** Regarding insignificant discussions, I found out today that discussions with Malaysia went as far back as August 2010.

**Mr Metcalfe:** Those discussions were about a regional cooperation framework. The more detailed discussions about a possible transfer agreement date from around December.

**Senator CASH:** In relation to PNG, you say that 14 March was when the first substantial discussions were had, but how far back do the insubstantial discussions date?

**Mr Metcalfe:** As I have said, the PNG high commissioner had been indicating to me for some time—and I would have to check, certainly over the last few months—of his belief that

there was interest in the issue in PNG. We would have to check, and you may possibly want to ask questions in the foreign affairs portfolio, as to the contact that may have occurred with ministers, parliamentary secretaries or officials in that portfolio. But it was fairly clear that PNG had some interest in the issue being discussed and that was an issue that was discussed on an informal basis by me with the foreign minister on 14 March.

**Senator CASH:** Where will the centre be located? Will it be reopened on Manus Island or will we see another facility?

**Mr Metcalfe:** That is ultimately a matter for PNG. There certainly have been discussions and an indication from them that they would expect the Manus Island facility is the most likely place that they would identify.

**Senator CASH:** Did the government or the department commence the dialogue with PNG about reopening a processing centre, or did PNG raise it with Australia?

**Mr Metcalfe:** I would characterise it as the latter.

**Senator CASH:** PNG raised it with us?

**Mr Metcalfe:** Yes. These are always iterative processes, as you will appreciate. My awareness is that PNG indicated that it would be interested in having a discussion and, at a certain point, I was asked to have a discussion, and there may be other discussions in the foreign affairs portfolio as well.

**Senator CASH:** Has there been any discussions with PNG from Australia's perspective that there may be an alternative site to Manus Island?

**Mr Metcalfe:** I would not put it any stronger than in some of the informal discussions advice came from the PNG side that they may be interested in a place other than Manus Island. Certainly the more recent discussions have focused around the reopening of the Manus facility and we are currently awaiting further advice from PNG as to the view of the government on that issue.

**Senator CASH:** Just to confirm, PNG raised this with the department in those informal discussions?

**Mr Metcalfe:** Yes. We received indications that they were interested—

**Senator CASH:** Expressed a willingness.

**Mr Metcalfe:** Yes, that is a good way to describe it.

**Senator CASH:** Given that Nauru have also expressed their willingness to host a detention centre, why has that been ignored by the government?

**Mr Metcalfe:** I can talk about the discussions we have had with PNG and I would refer you to statements by ministers in relation to the issue of Nauru.

**Senator CASH:** You have had no instructions to negotiate with Nauru?

**Mr Metcalfe:** I have no instructions to have any discussions with Nauru on this issue.

**Senator CASH:** Is there a reason for that? There is a detention centre there that could be reopened. You have said that PNG approached Australia and that Nauru also approached Australia. What are the fundamental differences? We are happy to work with PNG but not with Nauru?

**Mr Metcalfe:** I think the minister is on the record in relation to those issues. I would not seek to add to what the minister said other than to say that PNG is the area that we have been asked to have those discussions with and currently we are awaiting further advice from PNG.

**Senator CASH:** What is the scope of the negotiations you have had to date?

**Mr Metcalfe:** Following the informal discussions I had back in March, a more specific discussion with the foreign minister that occurred on 3 May involving the parliamentary secretary, Mr Marles, and me. There has been advice from PNG that essentially it is an issue that they wish to consider at the cabinet level and we are awaiting their cabinet consideration of the matter.

**Senator CASH:** Apart from yourself, how many other DIAC officials have travelled to PNG to discuss the potential reopening of a processing centre there?

**Mr Metcalfe:** On the occasion I went to PNG with Parliamentary Secretary Marles on 3 May, I was accompanied by three officers and there have been other discussions involving my departmental officers where this was not the primary issue but it was discussed on the margins, so to speak.

**Senator CASH:** And they were in PNG at the time?

**Mr Metcalfe:** That is right. For example, Dr Southern was in PNG on 18 April as part of our annual Immigration Working Group. We have an annual bilateral with PNG Immigration. And I understand that there were side discussions to further explore the advice we had had from PNG about their interest in a processing centre.

**Senator CASH:** And which officials has the department met with in PNG to progress the potential reopening of a detention centre there? At what level are we actually making—

**Mr Metcalfe:** We are talking at the level of the Secretary of the Department of Foreign Affairs, the Deputy Secretary of the Department of Foreign Affairs and the head of the PNG Immigration Service. So we are talking about agency head or deputy head level.

**Senator CASH:** In relation to the DIAC officials travelling to PNG, are you able to provide the committee with a list of those officials who travelled to PNG, and on what dates?

**Mr Metcalfe:** Yes, happy to.

**Senator CASH:** Is there any funding in the budget to—

**Senator BARNETT:** Just quickly, how many were there? I did not catch that.

**Mr Metcalfe:** Three officials accompanied me and Mr Marles on 3 May.

**Senator CASH:** Is there any funding in the budget to re-establish and operate a centre at Manus Island or in PNG?

**Mr Metcalfe:** I will get the Financial people to come and join me, Senator.

**Senator CASH:** Thank you. I appreciate that. Just while they are joining us, in relation to the official within PNG that the department has been meeting with, has the Prime Minister actually made any representations to the government of PNG on this matter?

**Mr Metcalfe:** Has our Prime Minister?

**Senator CASH:** Our Prime Minister.

**Mr Metcalfe:** Not that I am aware of, but there have been discussions or contacts at ministerial level.

**Senator CASH:** But not from the Prime Minister herself?

**Mr Metcalfe:** Not from my understanding.

**Senator CASH:** Good evening again to the finance gurus. Is there any funding in the budget in relation to the reopening of a centre at Manus Island or in PNG?

**Mr Sheehan:** There is money in the budget for an operating centre.

**Senator CASH:** Can you take me to it in the portfolio budget statement, please?

**Mr Sheehan:** It is in outcome 4, Senator, on page 53—under 'Offshore asylum seeker management'. In the community and detention services, \$709,376 in 2011-12. It is about halfway down the page.

**Senator CASH:** Sorry, where is it? Community and detention services?

**Mr Sheehan:** Yes, 4.3: Community and detention services—\$561,943 for the current 2010-11 revised budget. And then in the 2011-12 budget, \$709,376. It is in that number there.

**Senator CASH:** Why is that not listed as a new measure?

**Mr Sheehan:** It is an estimates variation, as deemed by the Department of Finance and Deregulation.

**Senator CASH:** Is all of that money for PNG?

**Mr Sheehan:** Oh, no. The majority of that funding is related to our IMA cohort.

**Senator CASH:** Okay. What is the money that has specifically been set aside within that figure for PNG? So, what is the actual cost?

**Mr Sheehan:** In that number there is \$81.758 million in administered funds. There is also \$48.213 million, which is within the offshore asylum seeker management. The \$186,311 I think you will find further down the page. That is the departmental component.

**Senator CASH:** So what is the total cost for PNG?

**Mr Sheehan:** I would not say it is for PNG; it is for a processing centre.

**Senator CASH:** A processing centre.

**Mr Sheehan:** Wherever it might be because, at that point of time, who is to say where it might have been.

**Senator CASH:** So this is not specifically in relation to a processing centre at PNG?

**Mr Sheehan:** Well, it could be; but it is a processing centre.

**Senator CASH:** Somewhere.

**Mr Sheehan:** Somewhere—of \$129.971 million in total.

**Senator CASH:** So \$129.971 million has been set aside by the government for a processing centre somewhere?

**Mr Sheehan:** Yes.

**Senator CASH:** But not necessarily in PNG?

**Mr Sheehan:** It depends on where it might eventuate. We have a calculation for costs, but it depends on where that might be.

**Senator CASH:** Why was it not listed in Budget Paper No. 2, as Malaysia was? Why is there no separate listing for this?

**Mr Sheehan:** Because it was deemed to be an estimates variation by the Department of Finance and Deregulation as part of broader processing costs.

**Senator CASH:** Is it merely an estimates variation of \$129.971 million?

**Mr Sheehan:** Yes.

**Senator CASH:** That is a rather large variation. Was there any capital associated with that?

**Mr Sheehan:** Not at this stage. We do not know whether we are going to build a centre or lease one. It all depends on the final scenario.

**Senator CASH:** Was the funding that the Prime Minister promised in relation to the regional processing centre highlighted in the budget or in previous budgets, or is that also just an additional appropriation?

**Mr Metcalfe:** The Prime Minister's announcement in July was, of course, after last year's budget. I think I am correct in saying that this is the first time that a provision would be made in the budget for the establishment of an assessment centre overseas.

**Senator CASH:** So why is it not actually in Budget Paper No. 2? Why is it hidden within a program component expense in outcome 4.3?

**Senator Lundy:** I do not think you could call hidden a figure that has actually been published in the papers.

**Senator CASH:** It is when it is actually within another figure.

**Senator Lundy:** No, you just never found it. You have asked the question, and it is there, so by definition it is not hidden.

**Senator CASH:** I could not find it. There is no item that says, 'Processing centre in Papua New Guinea or on Manus Island.' It is not there.

**Senator BARNETT:** It is not obvious.

**Mr Biddle:** The view of the department of finance on this would be that, because we already care for IMA people, we are simply opening up an alternative centre. So it is an extra centre in the same way that Christmas Island is a centre and in the same way that our other onshore centres are considered centres. This is another assessment centre, so the department of finance advised that this would be reflected as an estimates variation. If there were a capital injection, that would then be reflected as a budget measure, because that is new funding that would not previously have been expensed.

**Senator CASH:** What other announcements or new measures are not specifically highlighted in the budget and for which I have to go through figures like this to pull them apart?

**Mr Biddle:** This is the only one I am aware of that you could argue—

**Senator CASH:** The only one you are aware of?

**Mr Biddle:** That you could argue that any time we vary our visa activity adjustment in our normal funding model. We have a funding model with the department of finance in which we have activity levels that go up and down, depending on the number of visas we are estimating

to process or the number of citizenship applications we are willing to process. That is an activity adjustment. We do not normally reflect that as a budget measure. It is an activity estimate and, therefore, the estimates will vary from each additional estimates hearing or budget hearing in terms of the amount of activity we expect to undertake in certain streams of work.

**Senator CASH:** When was the decision made to treat the \$129.971 million as an estimates variation, as opposed to putting it in the budget papers as a budget measure?

**Mr Sheehan:** We will have to take that on notice. I cannot recollect the exact date.

**Senator CASH:** Could you also take on notice the question I asked to which you answered, 'This is the only one I am aware of,' on what other announcements or new measures are not specifically highlighted in the budget but where one actually needs to work through figures and speak with officials like yourselves to find out what is hidden within them?

**Mr Sheehan:** I do not think there are any others. This was part of the broader estimate for IMA related activity and for detention and associated costs.

**Mr Metcalfe:** Can I add to a question that I answered earlier. It has just been drawn to my attention that, in the interview he gave today on Sky News, the minister has indicated that according to his knowledge our Prime Minister has spoken to the Acting Prime Minister of Papua New Guinea. I was not aware of that, so I add to my answer in relation to that and advise that there has been contact at the Prime Minister to Acting Prime Minister level.

**Senator CASH:** When did that occur?

**Mr Metcalfe:** This does not advise me.

**Senator CASH:** The previous answer you gave was that you had minister to minister representations. From an Australian perspective, which minister has had the meetings in PNG?

**Mr Metcalfe:** Parliamentary Secretary Marles has had meetings, but Mr Rudd has also had discussions with Prime Minister Somare. Mr Bowen has been in correspondence with the foreign affairs minister of PNG and I have now been advised that the Prime Minister has spoken to Deputy Prime Minister Abal.

**Senator CASH:** So it is Minister Bowen, Minister Rudd, Parl Sec Marles and now the Prime Minister as well?

**Mr Metcalfe:** That is correct.

**Senator CASH:** When was the last meeting held and when is the next one scheduled?

**Mr Metcalfe:** I am not aware of anything scheduled at this stage. We are currently awaiting advice from PNG in relation to the matter. I will have to check as to precisely when the last discussions involving Parliamentary Secretary Marles took place. It was a week or so after the meetings that I was there for, so around 12 May, but I will correct that on notice if I am incorrect.

**Senator CASH:** Thank you. I want to return to what we were referring to as an estimates variation of \$129.971 million, which is contained within the figure of \$709.376 million.

**Mr Sheehan:** And the 186 below. There is a departmental component and an administered component. I mentioned two different components.

**Senator CASH:** The 186 is also part of it?

**Mr Sheehan:** That is the departmental expenses for offshore asylum seeker management. So there are two components to it: administered and also departmental.

**Senator CASH:** In relation to the departmental expenses, can you take out the part that is attributable to PNG or Manus Island or a regional processing centre or a processing centre on PNG?

**Mr Sheehan:** The departmental component is \$48 million.

**Senator CASH:** So it was 81 from the 709 and 48 from the 186?

**Mr Sheehan:** That is right.

**Senator CASH:** Where would I find capital costs?

**Mr Sheehan:** There are not any capital costs in the DIAC budget. As I mentioned earlier, we did not know whether we were constructing a centre or leasing a centre or how the overall proposal might come together.

**Senator CASH:** So the \$129 million does not include any capital costs?

**Mr Sheehan:** No, it includes costs for management of the existing clients, food and a range of other costs that you would normally have.

**Mr Metcalfe:** As I understand it, it is treated as an estimates variation because we would have the obligation to do that in any event. This would be a case load that would otherwise be being processed in Australia were it not for other arrangements with other countries, as we have been discussing all afternoon. As Mr Sheehan has indicated, because we are still waiting for advice from PNG as to whether they wish to proceed with the issue, it has not been possible to calculate a capital cost. That would involve us looking at the facilities, whether it is Manus or somewhere else, and the condition of the facilities. Clearly, if the matter does proceed there will need to be a detailed assessment as to the capital cost and appropriate funding sought.

**Senator CASH:** Regarding this figure of \$129.971 million, if this money is not spent in PNG, whether on Manus Island or for a processing centre on PNG, where will it be spent? In Australia?

**Mr Sheehan:** Or anywhere else. Yes, it could be spent in Australia.

**Senator CASH:** It could be spent in Australia. When you say 'or anywhere else'—

**Mr Sheehan:** As in, in Australia or—it is related to IMA related activities for people who come via irregular maritime arrival.

**Senator CASH:** What I am hearing is that this money is not necessarily for a processing centre in PNG; it is just a redirection—if you get the Manus Island facility up and running again, you are rearing and ready to go with \$129.971 million.

**Mr Sheehan:** Obviously, with IMA related activity, when we have an agreement with PNG, we would have money available to spend there.

**Senator CASH:** But one would assume, because there are no capital costs associated with this—

**Mr Sheehan:** On that basis. Obviously—



**Senator CASH:** On the basis that it would be—

**Mr Sheehan:** Obviously, if we need to construct facilities, roadworks, site works or whatever, we would need to seek funding for capital works.

**Senator CASH:** You said that it could be spent anywhere—it could be spent in Australia—if it were not spent on PNG. Where else would it be spent? What other countries are we talking to where we could actually factor in the \$129.971 million?

**Mr Sheehan:** We developed a costing for a generic processing centre. It could be in PNG, but we needed to calculate costs to put into the budget process.

**Senator CASH:** So you are not talking to anybody else in relation to—

**Mr Sheehan:** Not that I am aware of.

**Senator CASH:** Mr Metcalfe, are you aware of anyone else that the government is talking to in relation to this particular item?

**Mr Metcalfe:** Not at this stage.

**Senator CASH:** Minister, are you aware?

**Senator Lundy:** No.

**Senator CASH:** If PNG does not go ahead, will this money actually be spent?

**Mr Sheehan:** It is an estimates variation and, when we come back at additional estimates, obviously if PNG does not go ahead, then we would need to revise our estimates and there would obviously be a potential overall reduction in our costing for the 2011-12 year.

**Senator BARNETT:** So we have confirmation that there is no inclusion in the budget for capital. On Manus Island, is there any capital required to re-establish the operation and the facility on that island?

**Mr Metcalfe:** We have not had the opportunity yet to have a detailed survey. It is fair to assume that there probably would be some capital requirement, but that would require a detailed assessment as to the state of the facility and the associated infrastructure—water, sewerage et cetera. At the time of the finalisation of the budget documents, we did not have that information. We do not have that information. We are waiting on advice from PNG as to whether they wish to host a centre, but one of the first things we would need to do following that is to have a detailed assessment team in place.

**Senator BARNETT:** I can understand that you do not have a detailed assessment before you at the moment. Do you have a general or an overview of the assessment of the capital costs required to re-establish a facility on Manus Island?

**Mr Metcalfe:** No, Senator. As I have said, some of my officials have been to Manus and have had a general look, and from that it is clear that the centre would require work to become operational.

**Senator BARNETT:** Can you describe that for us? How underprepared is the centre? What type of work is required? What type of capital is required?

**Mr Metcalfe:** As I said, it would go to issues of the repair and restoration of the buildings. As you would probably recall, it is on a large naval base, but the real issue that would require a detailed study would be the provision of water, sewerage, power and associated

infrastructure. We have not undertaken such a detailed assessment because we are waiting for PNG—

**Senator BARNETT:** You have said that. But you have sent officials to Manus Island to review the facility. They have obviously come back and provided a report—is that correct?

**Mr Metcalfe:** They provided some broad briefing in relation to the issue. The first question, obviously, is: is it ready to be used immediately? The answer is that no work would be required and that we would need a detailed assessment team to look at the work that would be required.

**Senator BARNETT:** Have they provided a report?

**Mr Metcalfe:** I imagine that they provided a report.

**Senator BARNETT:** Could you please provide the report?

**Mr Metcalfe:** I will take that on notice.

**Senator BARNETT:** Thank you. When did they visit the facility? How many officers were there and who were they?

**Mr Metcalfe:** They were the three offices that I referred to before. They accompanied me to PNG on 5 May. It was a group led by PNG's chief migration officer. It included my three officials and the deputy head of mission at the Australian High Commission in Port Moresby. They travelled to Manus Island and had some discussions there. As part of that visit, they undertook a very general inspection of the facility, but it was not a detailed assessment.

**Senator BARNETT:** What is the capacity of the facility?

**Mr Metcalfe:** From memory, when being utilised it was in the region of 290 to 300 people, but I will check that and correct it on notice. When it was operational several years ago I think it was in the range of that number.

**Senator BARNETT:** Are you looking at expanding it or basically getting it up to its capacity of 290 to 300?

**Mr Metcalfe:** We will need to work through with PNG officials whether that number is sufficient or whether it could be expanded further, bearing in mind that it is within a military base. That is the sort of detailed discussion we would expect to have if and when the PNG cabinet indicates it wishes to proceed.

**Senator BARNETT:** So you are waiting for that decision?

**Mr Metcalfe:** We are waiting for the PNG cabinet.

**Senator BARNETT:** When you come back with answers on notice to Senator Cash, can you advise us of the dates of when those minister-to-minister meetings occurred? You referred to the Prime Minister's meeting with the Prime Minister of PNG. When was that meeting?

**Mr Metcalfe:** I will have to take that on notice.

**Senator BARNETT:** Was it in the last week?

**Mr Metcalfe:** I will have to take that on notice.

**Senator BARNETT:** Was it a meeting or was it a phone call?

**Mr Metcalfe:** I understand that it was a phone call. I do not think they have been in the same place at the same time.

**Senator BARNETT:** If you could clarify that—

**Mr Metcalfe:** I will need to make inquiries through the Department of Prime Minister and Cabinet and see if they are prepared to provide that advice.

**Senator BARNETT:** We are asking for the date, so I am not sure that there is a reason to not provide that.

**Mr Metcalfe:** It is not my information to give you is the only point I am making.

**Senator BARNETT:** Re the figure of \$129.971 million, can you provide further and better particulars as to how you made up that figure? You referred to food costs. I presume there are other recurrent costs. Can you advise us how that figure is made up? It is obviously a very precise figure.

**Mr Metcalfe:** I do not have the exact calculation with me but I can say that it includes charter flights, staff, payments to IOM for the care and food for IMAs and running the facility, and interpreters. They are standard costs that we have, but I do not have the exact calculation with me.

**Senator BARNETT:** How many staff?

**Mr Metcalfe:** Around 30, I think. I need to be careful in answering that because there would be departmental staff, PNG staff and staff of service providers. It would be our normal expectation that, as they did last time, the International Organisation of Migration would essentially operate the facility. So it depends—

**Senator BARNETT:** Mr Metcalfe, we are short on time, so I will be quite particular about this. You have a figure of \$129.971 million. We would like to know exactly how that is made up, what expenditure there is for staff, carers, food, water and power. You must have those figures somewhere and we would like to receive them as soon as possible.

**Mr Sheehan:** I will see what I can do.

**Senator CASH:** Mr Sheehan, can I just confirm your previous evidence. Did you say in relation to the \$129.971 million that if it was not spent in PNG it could also be spent in Australia to deal with IMAs?

**Mr Sheehan:** It is for assessment and processing. As I said a moment ago when you asked me, if PNG did not proceed then as part of our estimates update which we would undertake the next time we were here we would be explaining whether that number had increased or decreased from the budget and, as part of that process, we would be estimating what the overall costs would be.

**Senator CASH:** Okay, but can I just confirm this. If we do not spend the money in PNG, will we definitely spend that money in Australia?

**Mr Sheehan:** I could not say for sure. If PNG does not proceed then obviously the overall estimate would be a different number and we would take that up as part of the additional estimates process.

**Senator CASH:** So the \$129.971 million is not then just for IMAs in Australia?

**Mr Sheehan:** It is difficult to say. If there are additional costs for IMA related activity—

**Senator CASH:** It could be used for those costs?

**Mr Sheehan:** Depending on some negotiations with the department of finance, as is always the case when we have changes in our estimates.

**Senator CASH:** But the money could be spent in Australia, subject to those negotiations?

**Mr Sheehan:** Subject to an agreement with the department of finance and our general calculations and an update process.

**Senator CASH:** Are we talking about a regional processing centre or just a processing centre?

**Mr Metcalfe:** We are talking about a processing centre. PNG has indicated an interest in undertaking or hosting a processing centre. My expectation is that initially the case load would be a referred case load from Australia. The question as to its long-term future and whether it took case loads from elsewhere is not a matter currently under consideration, but it would be part of, and clearly contemplated by, the regional protection framework.

**Senator CASH:** Are we talking here along the lines then of an East Timor type regional processing centre or not?

**Mr Metcalfe:** You know that I have always been a bit uncomfortable about trying to categorise East Timor because until it is negotiated it is not final, but the intention would be that the initial and primary purpose of any centre in PNG would be for a case load referred from Australia to give effect to the clear statement that has been provided by ministers.

**Senator CASH:** In terms of other countries that might have agreed to send their asylum seekers to the centre, have there been any discussions to date?

**Mr Metcalfe:** No, there have not.

**Senator CASH:** Was this money originally factored in for East Timor?

**Mr Metcalfe:** No, I think we answered that before. The announcements in relation to East Timor were made after the budget last year. We are now at the budget this year and the government has indicated it does wish to proceed with an offshore processing arrangement and is awaiting more detailed advice from PNG in this particular case. So the answer is that there was no provision previously. The government has now indicated that there will be a provision.

**Senator CASH:** How big will the money be that has been set aside as such for the processing centre?

**Mr Metcalfe:** Senator Barnett asked a similar question before about how big it was and how big it might be. The size of the centre would obviously be an issue for discussion and negotiation with PNG until it is established as to whether the government of PNG provides in-principle support and clear government commitment to the centre. At that stage we propose to get into some discussions about what might be physically possible in terms of the facilities— if it is Manus, for example, what might be necessarily required. It is a bit early yet to provide an answer.

**Senator BARNETT:** Can I help Senator Cash. Just to give you a guide, based on your own figures, the Pontville detention centre, planned to be established for six months and then to be ripped down again and discarded, is budgeted at \$15 million. That is for up to 400 single

men to go down to Pontville in southern Tasmania for that up-to-six-month period. So that is \$15 million for a capital cost to build, according to Minister Bowen.

**Mr Metcalfe:** Thank you for that.

**Senator CASH:** You can put aside \$129 million, so it is not too early to do that, but it is too early to say how big the detention centre would be. So what is the correlation between the figure of \$129 million and the size of the detention centre? Can we work backwards to how you actually got to \$129 million?

**Mr Metcalfe:** I think we have taken that on notice, haven't we?

**Senator CASH:** Has PNG proposed any time limit on how long people may be held at the centre—a little bit like in East Timor? Certainly they have made comment on that.

**Mr Metcalfe:** Not that I am aware of. The discussions have been more about whether PNG is willing to host a centre. We are waiting for advice on that point, and the operation of the centre, including those issues, would no doubt be the subject of more detailed discussions once an in-principle decision had been taken.

**Senator BARNETT:** Just on that point: are you planning to have Serco manage and operate the centre, or another entity?

**Mr Metcalfe:** Certainly no plans for Serco. My original starting position on this would be to request the International Organisation for Migration to again take on the role that they had when the centre operated some years ago, though that is a matter for IOM as to whether they would be prepared to take on that role, but it is the type of role that they have played.

**Senator BARNETT:** Have you discussed it with them? Have you talked?

**Mr Metcalfe:** We have had broad discussions with them.

**Senator BARNETT:** What have they said?

**Mr Metcalfe:** They have indicated that they are very happy to help Australia in this area. But we would of course then want to get into all the detail.

**Senator BARNETT:** When did you talk to them?

**Mr Metcalfe:** There have been discussions in Geneva and there have been discussions during the course of May with the regional representative.

**Senator BARNETT:** We are only at 23 May, so not before 1 May?

**Mr Metcalfe:** Not detailed discussions. When it became apparent in the visit that I undertook with Parliamentary Secretary Marles on 3 May, it was at that stage that more detailed discussions commenced with IOM, and contact also with IOM in Geneva. But we cannot advance those discussions—there is no point advancing those discussions—until we know whether PNG—

**Senator BARNETT:** So you have nothing in writing with IOM at this stage?

**Mr Metcalfe:** Not at this stage.

**Senator BARNETT:** No letters expressing—

**Mr Metcalfe:** No.

**Senator BARNETT:** No exchange of letters; nothing like that?

**Mr Metcalfe:** But IOM have been very responsive for Australia over the years, as we saw with their assistance with operating—

**Senator BARNETT:** So there is nothing in writing with them?

**Mr Metcalfe:** In relation to this, no.

**Senator BARNETT:** Okay, thank you.

**Senator CASH:** The next meeting has not actually been arranged to discuss the processing centre?

**Mr Metcalfe:** We are waiting for the PNG government.

**Senator CASH:** How are we able to progress this any further if we do not even know when the next meeting is?

**Mr Metcalfe:** Once we have advice as to whether PNG wishes to host a centre, I am sure that there will then be diplomatic discussions about a more detailed set of arrangements around a draft memorandum of understanding and whatever. That timetable will be established if and when the PNG government—

**Senator BARNETT:** Have you prepared a draft MOU?

**Mr Metcalfe:** Yes.

**Senator BARNETT:** Do you have a copy with you?

**Mr Metcalfe:** No.

**Senator BARNETT:** Can you make it available to us?

**Mr Metcalfe:** I regard it as confidential at this stage.

**Senator BARNETT:** When did you draft it?

**Mr Metcalfe:** I would have to check on that.

**Senator BARNETT:** In the last week?

**Mr Metcalfe:** No, it was prior to that.

**Senator BARNETT:** When can you let us know, Mr Metcalfe?

**Mr Metcalfe:** Let you know what, Senator?

**Senator BARNETT:** When you drafted the draft MOU.

**Mr Metcalfe:** I will have to check on that. If I can answer that question tomorrow, I will.

**Senator BARNETT:** All right. Thank you.

**Senator CASH:** When is it expected that the centre will be open in PNG?

**Mr Metcalfe:** I think it is unwise to speculate upon that until we receive a clear indication that the PNG government does wish to host such a centre. I would then say it would be essential for us to have a detailed survey of the facility, assuming it is Manus, to understand what works might be required. At that stage we would develop a detailed plan. Clearly we will be seeking to move quickly in response to this issue if the opportunity arises.

**Senator CASH:** There is still the possibility that PNG may say no?

**Mr Metcalfe:** It is a matter for the PNG government.

**Senator CASH:** But that is still a possibility that the Australian government is working on?

**Mr Metcalfe:** We are currently waiting for advice from PNG.

**Senator BARNETT:** Have you forwarded the draft MOU to the PNG officials?

**Mr Metcalfe:** A copy has been provided to them.

**Senator BARNETT:** Can you advise when that was?

**Mr Metcalfe:** I can take that on notice.

**Senator BARNETT:** In the last week?

**Mr Metcalfe:** No, I do not think in the last week; probably in the last couple of weeks.

**Senator BARNETT:** You will let us know?

**Mr Metcalfe:** I certainly will.

**Senator BARNETT:** Thank you.

**Senator CASH:** Have there been discussions surrounding how long the processing centre is intended to be maintained?

**Mr Metcalfe:** Not at this stage.

**Senator CASH:** What is the Australian government's perspective on that?

**Mr Metcalfe:** I would rather not be drawn on that at this stage. Essentially, the centre, in our view, would be operative for as long as it is needed. That is an interesting question as to whether boats keep coming.

**Senator CASH:** Yes, it is, given our conversations earlier today.

**Mr Metcalfe:** We spent a lot of time on that today.

**Senator CASH:** We did.

**Mr Metcalfe:** It brings you back to the clear policy objective here: to deny people smugglers the opportunity to say that if you come to Australia you will be processed in Australia.

**Senator CASH:** Have any thoughts been given to whether PNG will be able to veto potential asylum seekers and, if so, on what grounds?

**Mr Metcalfe:** That is an issue that would be the subject of detailed discussions under the MOU, and we are not at that stage.

**Senator CASH:** Would it be intended to transfer any current asylum seekers in detention in Australia to PNG?

**Mr Metcalfe:** Not that I am aware of.

**Senator CASH:** So the asylum seekers that will be transferred will be intercepted—

**Mr Metcalfe:** Essentially, the government's policy position was articulated in the Prime Minister's media statement on 7 May. It was clear that any transfer of persons would occur for people arriving after that time. The minister has re-emphasised that on several occasions. Essentially, people who are currently in the system in Australia who arrived prior to 7 May will continue to be processed under the arrangements that applied prior to 7 May.

**Senator CASH:** An article in the *Australian* on 13 May 2011 stated that the immigration minister wrote to PNG's Foreign Minister, Don Polye, outlining your request to reopen the processing centre in PNG. Is this correct?

**Mr Metcalfe:** Yes. I indicated that the minister had been in correspondence with the foreign minister on it.

**Senator CASH:** Are you able to table a copy of the letter?

**Mr Metcalfe:** I will check with the minister.

**Senator CASH:** Thank you. According to the same article Parliamentary Secretary Richard Marles has been appointed special envoy on this issue. Is that correct?

**Mr Metcalfe:** That is my understanding.

**Senator CASH:** When did that actually happen?

**Mr Metcalfe:** I would have to check that with the foreign affairs portfolio.

**Senator CASH:** Perhaps my questions are better directed there. What is the scope of his role?

**Mr Metcalfe:** It is probably easiest if you ask questions of that portfolio, but certainly Mr Marles has played a very constructive role in discussions between Australia and PNG on this issue.

**Senator BARNETT:** With respect, Mr Metcalfe, his role is a special envoy with respect to the establishment of the centre. That is my understanding. Is that your understanding?

**Mr Metcalfe:** That is my understanding. He is a special envoy of the Prime Minister to advance discussions based upon PNG's indication.

**Senator BARNETT:** How is it possible that you are not fully aware of the terms and conditions of his role?

**Mr Metcalfe:** That is a matter bestowed upon him by the Prime Minister and I am not in the Prime Minister's department.

**Senator BARNETT:** But it is specifically within this portfolio.

**Mr Metcalfe:** He is a parliamentary secretary in the foreign affairs portfolio and was appointed special envoy by the Prime Minister. Neither of those things are within my portfolio.

**Senator BARNETT:** Yes, but he is a special envoy with responsibility for the establishment of this centre, which is specifically within your portfolio.

**Mr Metcalfe:** I personally did not have anything to do with his appointment. I am happy to take it on notice and assist you if I can. I am simply pointing out that, under the administrative arrangements—

**Senator BARNETT:** So we have got a Prime Minister who is making decisions specifically relevant to your portfolio on activities with respect to the establishment of Manus Island and you do not have a specific interest and you are not even aware of the terms and conditions relating to her decision.

**Mr Metcalfe:** Of course I have an interest. Prime Minister 's often get involved in these issues, but I am just saying it is more appropriate for advice on Mr Marles's particular role or the terms of his appointment to come from the portfolio in which he is a parliamentary secretary or from the Prime Minister's portfolio.



**Senator BARNETT:** When you have got a minister who is responsible for your portfolio, why is there a need for a special envoy on this matter?

**Mr Metcalfe:** I would assume that the government thought this was the most effective way to continue discussions on this matter.

**Senator BARNETT:** So Minister Bowen is not up to the job?

**Mr Metcalfe:** I am not saying that at all. I do not think I would agree with that.

**Senator Lundy:** It is completely within the purview of the Prime Minister to appoint Mr Marles as the parliamentary secretary on this. Given his portfolio, it is entirely appropriate and relevant.

**Senator BARNETT:** The obvious question is: why wasn't he or someone else appointed as special envoy for the Malaysia deal? It would be fascinating to get your answer on that.

**Mr Metcalfe:** Minister Bowen has quite clearly been pursuing discussions with his ministerial counterpart, Minister Hishammuddin, in relation to the Malaysia arrangements. Mr Marles's is Parliamentary Secretary for Pacific Affairs. He has extensive contacts and responsibility for issues relating to Papua New Guinea. It was a decision for the Prime Minister that he would be the liaison point with the government of Papua New Guinea. But I can assure you that Minister Bowen has been very closely involved in this issue.

**Senator BARNETT:** You can see the contrasts and contradictions in the argument, though, when you have got a special envoy for Papua New Guinea but not for Malaysia.

**Mr Metcalfe:** I cannot.

**Senator Lundy:** I cannot see it either.

**Senator BARNETT:** I think most of us can, apart from yourself.

**Senator Lundy:** I think you are on your own Senator Barnett.

**Senator BARNETT:** We can draw our own conclusions.

**CHAIR:** Are these also perhaps questions best asked in the foreign affairs portfolio?

**Mr Metcalfe:** That is where this discussion originated.

**CHAIR:** Mr Marles is actually the parliamentary secretary.

**Mr Metcalfe:** It is not up to me to answer questions about the parliamentary secretary in another portfolio, but I can assure you, Senator, that Mr Bowen has been very, very closely involved in all of these matters, as you would expect the immigration minister to be.

**Senator CASH:** Could I just move on briefly to Thailand. Is the government currently in discussions with anybody in Thailand similar to the discussions that it has been having with Malaysia and PNG?

**Mr Metcalfe:** I think you are probably referring to some comments made by Foreign Minister Kasit—

**Senator CASH:** Yes.

**Mr Metcalfe:** in a press conference with Foreign Minister Rudd on 14 May. The Thai foreign minister said:

I think the agreement between Australia and Malaysia on this particular model, based on I think five-to-one ratio, is something that the rest of us would be interested to look at, to study, and look at the possibility of future co-operation.

We are currently focused on finalising arrangements with Malaysia. We obviously have been in discussions with Papua New Guinea. The question of whether discussions may occur on a formal basis with Thailand is not something that we are pursuing at this stage, but the government has indicated that it is very determined to pursue all possible measures to break the people smugglers' business model.

**Senator CASH:** Has anybody from the department actually been to Thailand to conduct negotiations or even informal discussions?

**Mr Metcalfe:** No. I was in Thailand, from memory, in November last year, and I had some discussions with senior Thai officials about the proposed regional cooperation framework, but there have been no negotiations or discussions about a possible transfer arrangement with Thailand.

**Senator CASH:** Have there been any informal discussions in relation to a possible transfer arrangement?

**Mr Metcalfe:** Not as far as I am aware.

**Senator CASH:** Very briefly, I have a number of questions which I believe are in program 2.1. In relation to the IMAs, I will ask those questions tomorrow.

**Mr Metcalfe:** Program 4.3?

**Senator CASH:** Program 4.3. The number of arrivals to date is under 4.3?

**Mr Metcalfe:** Yes.

**Senator CASH:** Breakdown by nationality, country of origin, age and gender of arrivals for the 2010-11 period to date?

**Mr Metcalfe:** Program 4.3.

**Senator CASH:** Since August 2008, how many IMAs have been returned?

**Mr Metcalfe:** Program 4.1. I suspect, Chair, that when we get to outcome 4 it is probably easiest to take the sub-elements together rather than separately, because we will range across a range of issues.

**Senator CASH:** What is the average processing time for IMAs during the periods 2008-09, 2009-10 and 2010-11 and to date?

**Mr Metcalfe:** That is under outcome 4.

**Senator CASH:** How long is it currently taking for ASIO to make security assessments of offshore entry persons?

**Mr Metcalfe:** Outcome 4.

**Senator CASH:** How many IMAs in the period 2010-11 to date have had ASIO security checks?

**Mr Metcalfe:** Outcome 4.

**Senator CASH:** How many IMAs in the period 2010-11 have had negative assessments?

**Mr Metcalfe:** Outcome 4. All of those operational issues about the processing of irregular maritime arrivals or their detention come under outcome 4.

**Senator CASH:** What about RSA decisions? How many primary RSA decisions were made within the government's stated target of 90 days?

**Mr Metcalfe:** I think it is best if we take it together at outcome 4.

**Senator CASH:** Okay. How many people are awaiting primary decisions?

**Mr Metcalfe:** Four. Sorry—not four; it is outcome 4.

**Senator CASH:** Even though it says program 2.1 on the questions on notice? A lot of these programs are actually taken directly from questions on notice and placed in outcomes. So, even though it says program 2.1, that question is for outcome 4?

**Mr Metcalfe:** There is crossover between them. It is clear that you are expecting—and we are expecting—to have a long discussion about irregular maritime arrivals, their detention and their processing. Essentially the management of offshore asylum seekers comes under program 4.3, detention on shore is 4.2, and so the 4.2 or 4.3 areas are probably the best areas to discuss all of these issues. We are very happy to have that conversation with you at that time.

**Senator CASH:** That is fine. I will take you to the answer to question on notice 274. It says, '... program 2.1, refugee and humanitarian assistance Senator Cash asked ...' Does that mean that I asked it in that program or is the answer being given in that program?

**Mr Metcalfe:** I suspect you asked it there and we have answered it there.

**Senator CASH:** We will ask that tomorrow as well, will we?

**Mr Metcalfe:** Yes.

**Senator CASH:** Okay. I do not have my email unfortunately but I have an email in relation to a statement that the minister has made today. It was a radio interview that he had in terms of the deal with Malaysia. One of the issues that was canvassed by the reporter was the power of veto by Malaysia. Can I just reconfirm, in the light of that radio interview: will the Malaysians have the right of veto over asylum seekers that we send to them that are part of the Malaysian bilateral arrangements?

**Mr Metcalfe:** I do not have a transcript of any radio interview of the minister and I would not propose to vary from what he has said so I refer you to his statements in the radio interview.

**Senator CASH:** *Oceanic Viking* is under program 4. We did receive notification that it was in 2.

**Mr Metcalfe:** No, we are here on the *Oceanic Viking*.

**Senator CASH:** I refer to question on notice 151, which I cannot get up on my screen.

**Mr Metcalfe:** We may have a copy here.

**Senator CASH:** Sorry, it is not question on notice 151. It is actually question on notice 316. I have now got that on my screen. I asked:

What is the cost of providing guards to escort the eldest child to school?

It was stated, 'The child is escorted to and from school along with other children from the facility. The cost associated with providing escorts for this child are equivalent to the other children.'

**Mr Metcalfe:** You will notice that question on notice 316 comes under program 4.2 because it was asked and answered in relation to the onshore detention network.

**Senator CASH:** So that comes under the onshore detention network.

**Mr Metcalfe:** Yes, because we are talking about the—

**Senator CASH:** So with the *Oceanic Viking*, we are talking about the Romanian people.

**Mr Metcalfe:** We are in the right place for these people.

**Senator CASH:** So I possibly am referring to question on notice 151, which I asked at the February 2011 estimates, in which I asked questions relating to the group of 17 asylum seekers who were on board the *Oceanic Viking* who were in the Romanian transit centre. Seven met all visa requirements for Australia and have been resettled to Australia. The remaining 10 did not; they remained in the emergency transit centre in Romania while the UNHCR continues to pursue other possible resettlement options. I then asked:

Is there any move to bring these 10 people to Christmas Island?

**Mr Metcalfe:**

Not at this stage. We are continuing to work with UNHCR in relation to possible resettlement options.

I later asked:

You said that these 10 have received an adverse security assessment.

**Mr Metcalfe:**

That is correct. That is why they have not come to Australia at this stage.

What is the status of those 10 people now?

**Dr Southern:** They have all been resettled.

**Senator CASH:** They have all been resettled. Where have they been resettled to?

**Dr Southern:** A European country.

**Senator CASH:** None of those 10 has come to Australia?

**Dr Southern:** That is correct.

**Senator CASH:** Okay. So the only ones that came to Australia were in relation to the seven that met all the visa requirements?

**Dr Southern:** That is correct.

**Senator BARNETT:** I asked a question earlier today regarding the refugee claimants and the Ugandan woman who had been beaten and raped in Africa because she was a lesbian. An immigration official had accused her of 'adopting the persona of a homosexual to secure a protection visa'. That was on page 2 of *Australian* today.

**Mr Metcalfe:** Yes, you asked that of the tribunal, I think from memory, Senator.

**Senator BARNETT:** That is right and the advice was that that is a matter for the department.

**Mr Metcalfe:** I was not familiar with the case. We have thousands of cases. I think, from memory, the article indicated that the tribunal had overturned the departmental decision.

**Senator BARNETT:** That is right.

**Mr Metcalfe:** I am not sure if anyone has had the opportunity to inquire into that departmental decision and to confirm it. Presumably the *Australian* wrote the story with some reference to facts, but I do not know if we have followed it through. Did you have a question?

**Senator BARNETT:** Yes, I did. I would like to know if it is correct. This is page 2 of the *Australian* today. I referred to it this morning in the RRT and MRT section. It is now nine hours later and, with respect, I would have hoped that the department was listening as there was a reference that it was a matter for the department. It was clearly going to come up with the department. We are now in outcome 2 and I am hoping for an answer.

**Mr Metcalfe:** I do not know of anyone at the table who can assist you.

**Mr Fleming:** No, I did not hear that evidence this morning.

**Senator BARNETT:** That is disappointing and I would like to department to advise.

**Mr Metcalfe:** I apologise, Senator. I did not realise that you were after an answer today.

**Senator BARNETT:** Well, I asked the question of the tribunal and they said it was a matter for the department, and I said I would follow it up with department, so here we are.

**Mr Metcalfe:** We will check overnight, Senator, and see if we can assist you in relation to the veracity of that story. It is probably best that I do not make any further comment until I get some facts.

**Senator BARNETT:** The riots on Christmas Island, is that under outcome 4?

**Mr Metcalfe:** It is under 4.3, Senator.

**Senator CASH:** There will be a bit of crossover here in relation to outcome 3. In relation to the 10 refugees that were in the Romanian transit centre, who have now been resettled into Europe, and had received negative assessments, do those 10 have anything to do with the answer given to question No. 151 from the February additional estimates which states that between 1 July 2010 and 13 April 2011 ASIO had issued 20 adverse security assessments and a number of them had actually been changed.

**Mr Metcalfe:** I am looking at the answer that was provided to question No. 151 and then trying to listen to the question you have just asked.

**Senator CASH:** My understanding is that a number of adverse security assessments were actually reversed. Did any of those 10 have their security assessments reversed by Australian officials?

**Mr Fleming:** There was certainly no adverse security assessments changed. My recollection is that some of the grouping in Romania had received either no or non-prejudicial security assessments following feedback from referral to other countries. If you will recall the US and Canada as an example.

**Senator CASH:** They said they would take them.

**Mr Fleming:** That is right. They were re-referred to ASIO for a fresh assessment and, as a result of that referral, some of them received adverse security assessments. None of them were the other way round of an adverse assessment being change to a non-prejudicial.

**Senator CASH:** Okay, that is what I wanted to confirm. As far as Australia was concerned those 10 maintained an adverse security assessment.

**Mr Fleming:** My recollection is that they did not have an adverse security assessment, partly because they were going to Romania rather than Australia, but when consideration was being given to them coming to Australia at that point ASIO issued an adverse security assessment.

**Senator CASH:** None of those 10 are in Australia. They are in a European country.

**Mr Metcalfe:** That is correct, Senator.

**Senator CASH:** I believe that is all the questions I had in outcome 2wo. The majority seem to now be in outcome 4.

**Mr Metcalfe:** It will be a big day tomorrow.

**CHAIR:** We will have a break and come back in five minutes at 9.30 with outcome 3.

[21:32]

**CHAIR:** We are ready to tackle outcome three now. Let us reconvene and let us start. We will start with you, Senator Cash.

**Senator CASH:** Thank you. I now refer to the answer that I was given to question 151 on program 3.1, Border Management. I asked how many IMAs from 1 July 2010 to date had received ASIO security checks. I was advised that 1,281 security assessments had been conducted between 1 July 2010 and 13 April 2011. Are you able to update that figure to date?

**Ms Wilson:** I do not have a financial-year-to-date figure to 16 May; 13 April was the last date we had, and we are just trying to get an updated figure for you.

**Senator CASH:** Thank you very much. The answer also stated that the security assessments included 20 adverse assessments and that since 2008 ASIO has provided DIAC with revised security assessments in relation to 11 asylum seekers, that 10 of these were for people on the MV *Oceanic Viking* and the 11th related to the last asylum seeker left on Nauru. When it says 'revised security assessments', were those 11 negative to positive or positive to negative?

**Mr McCairns:** During the February estimates hearings the question was raised of how many revised assessments have been provided to the department. Since 2008, ASIO has provided DIAC with revised security assessments in relation to 11 asylum seekers. I think that is what you said. Ten of these were for people on the MV *Oceanic Viking* and the 11th related to the last asylum seeker left on Nauru. A security assessment remains valid unless it is revoked. It can, however, be superseded by a new assessment, which would take account of all current information, circumstances and factors relevant to the issue of whether an IMA poses a risk to Australian security.

**Senator CASH:** Did these 11 initially receive positive assessments or negative ones, and what were they changed to?

**Ms Wilson:** We do not have with us what the original result was and what it moved to.

**Senator CASH:** Do you know the status of these 10 people on the *Oceanic Viking*?

**Ms Wilson:** I think they were the 10 we were talking about.

**Senator CASH:** Do you mean those 10 who are in Romania?

**Ms Wilson:** Yes.

**Mr Metcalfe:** I think the other one, if the other one was the person on Nauru, was a change from an adverse to a non-prejudicial assessment.

**Mr McCairns:** Yes, that one went the other way around.

**Senator CASH:** That would then explain the 10 who came back here and were given the need of assessment. Thank you for that clarification. What is the current budget for the conduct of compliance activities in the department?

**Mr Metcalfe:** I think that comes under outcome 4.1, Visa Compliance and Status Resolution. I would be happy to answer that under that outcome.

**Senator CASH:** We will talk about compliance activities undertaken et cetera tomorrow.

**Mr Metcalfe:** By that we mean immigration visa compliance—our processes for detecting persons who may be breaching visa conditions or overstaying visas. That is 4.1.

**Senator CASH:** What is the current overstay rate of visitors from overseas posts?

**Mr Metcalfe:** That is under 4.1.

**Senator CASH:** What about the question of how departmental officers verify documents?

**Mr Metcalfe:** I think we are probably in the right place for that.

**Mr McCairns:** It is a very interesting area of the department. I look after a branch called the Identity Branch. In the Identity Branch we have people who do what is called document verification. They do facial recognition, biometric matching of fingerprints and the like and a range of issues around that. The fingerprints are the most reliable, for obvious reasons. You have 10 prints and you have a pretty good record of that. The secretary was saying earlier that for those people who may or may not go back to Malaysia we will make sure we have their biometric information. So if they try to come back in again via another route we would know who they were via their fingerprints. That is a very important science in the department.

Secondly, facial recognition links to document examination if that document is, for example, a passport or a travel document. So in the department we actually have people who are now regarded as expert witnesses. That is not for immigration matters; that is for when courts ask our people for their opinion as an expert witness. Document examination is probably the trickiest area. Documents can be gained from many places and be very like the original and very, very convincing, or there can be a genuine document that has had someone else's details substituted into it. If that document does not have a chip, for example, it can be very, very convincing. There are incidences of us finding such documents at airports and places like that where either the person is fraudulent or the document is fraudulent, or both. So we are continually on guard in this area across the whole portfolio. This is not just in the IMA space, obviously.

**Senator CASH:** It is across the board.

**Mr Metcalfe:** Another way to explain it is to regard ourselves as having a layered approach. All of our officers in visa issuing or airport situations have training in relation to document recognition, and there are a whole range of measures in place to seek to identify what documents may be fraudulent or corruptly-issued genuine documents. That then extends through to the high-end specialist services that Mr McCairns has been describing here. So part of the work of immigration authorities is trying to work out whether you are the person you

claim to be and whether the document is in fact the correct document. There are a range of training and instructional material and advice to work through from various areas. Some particular documents or parts of the world are particularly high risk; others are low risk, and that risk management framework is something that Mr McCairns is very closely involved in in ensuring that we have the best possible arrangements in place.

**Senator CASH:** Is there a general protocol in relation to the verification of documents that the officers follow?

**Mr Metcalfe:** Again, it will depend on the type of document. For example, we rely upon work references or educational documents, so there are particular protocols, including in some posts where we may have high-risk caseloads of direct contact with the deported issuing authority, to ascertain whether or not they are correct through to what you would regard as the most secure documents, which are passports—again, to establish whether or not there has been tampering or fraud in the sorts of capabilities that Mr McCairns described before. So it will depend on the type of document and assessment of risk. That is why we believe it is important to maintain a large network of staff working overseas who are familiar with those documents. Where queries may arise we are assessing officers in Australia who can transfer questions or follow up in relation to that. We have done some quite significant work in the last few years to really build and establish that overall integrity framework, including through a process of ratiocination, to ensure that there is a very strong evidence base for what we are doing.

**Senator CASH:** How many travellers to Australia, say over the last three years, have presented with false or altered documents?

**Mr McCairns:** I need to take that on notice in terms of the total number.

**Mr Metcalfe:** Do you have a particular time frame in mind?

**Senator CASH:** Over the last three years. If you could get that, it would be appreciated. What happens to someone when they do actually arrive in Australia and it is believed they have false documents? What is the procedure that is followed?

**Mr Metcalfe:** It depends where it happens. If the document is detected at the airport on arrival—say, if a person presents with a false passport or one that has been tampered with—there are various checking arrangements. The initial check that the Australian Customs Service undertakes includes examining the passport and checking the face and the photograph. There are standard risk treatments associated with that. If there is a suspicion of concern then the Customs Service refers the individual to our specialist staff who have access to that high-end document examination capability. If it is a forged document or a false document and the person is not who they say they are, we would, in that airport situation, then go through an interview process with the person, seek to establish who they really are and, ordinarily, refuse them entry to Australia and seek their return on the first available flight. However, it is in that circumstance that some persons may assert a claim for asylum or someone may have arrived in Australia and then disposed of the document either on the aircraft or after arrival at the airport, typically by flushing it down the toilet. We are obviously alert to those techniques.

We have a layered approach to border security, including the universal requirement of a visa. We have the ability to ensure that the visa is checked not only at the point of issue but at



the point of departure, of boarding of the aircraft, and a network of airline liaison officers, which we have discussed before, who undertake a role at the last point of embarkation because of the potential in some airports for passengers to swap passports. Imagine being in Singapore where flights are all muddled up together. In Singapore, working with airlines and working with the local immigration authorities is part of our overall layered approach. It is a very extensive series of checks that are part of the very effective arrangements in relation to preventing fraudulent travel. But no system is perfect, and we are constantly on the alert as to how people may seek to circumvent it.

**Senator CASH:** Has anyone been prosecuted for presenting false or altered documents or fraudulent documents?

**Mr Metcalfe:** We have had to check that. If a person presents himself, the ordinary response and the most effective way is to simply refuse him entry into Australia rather than take him off to jail, and that sort of thing. However we have seen some areas of more organised migration malpractice where there have been referrals to the DPP associated with false assertions or false statements being made. Again, something that Mr McCairns has been involved with is some significant strengthening within the department of reorganisation of the high-end investigation capabilities we have at the same time as providing a national management framework for our compliance activity, which we could talk about tomorrow under 4.1 as part of that overall transformation of the organisation that I described on earlier occasions. I am very happy to elaborate on that.

**Senator CASH:** Have any visas being refused or cancelled as a result of applicants presenting fraudulent documents?

**Mr Metcalfe:** Yes, Senator, undoubtedly there would be.

**Senator CASH:** Would you take on notice how many there have been over the last three years?

**Mr Metcalfe:** Yes. We will have to collect that, because that information may well be distributed across overseas posts. Certainly in those posts and all those assessment centres in Australia where we are dealing with applications, one of the key issues is whether we are being told the right story. That is why we have an escalation process of interviewing the personal or claimed employer in relation to the veracity of the particular claims. A good many of refusals of these applications overseas relate to an assessment of the person who is making false claims largely in relation to their intentions of staying in Australia.

**Mr McCairns:** That is right. So their bona fides—and I suppose that is a common term to use—is assessed when people are applying offshore. I am sure that Mr Vardos can tell us more about the whole rollout offshore collection of biometric indicators, facial images and fingerprints, that would go to that bona fides element. Their ID when they are attempting to come to Australia is tested as far away from the physical Australian border as possible. Indeed, people would be refused in certain circumstances. What I am finding interesting—and I do not have the stats in front of me, because it is a very new program—is that we think there is probably quite a large deterrent effect due to the very fact that you have to turn up and provide your fingerprints and your digital photograph, Senator.

**Senator CASH:** How long have we been doing that in terms of the fingerprints and the facial images?

**Mr Metcalfe:** For some time we have been taking biometric measurements of persons entering immigration detention. Since October 2007, we have begun to collect facial images from citizenship applicants and facial images and fingerprints from unlawful noncitizens going into immigration detention. The reason we did that for citizenship applicants was because we combined that with the introduction of the citizenship test back in 2007 and that was a major business process change.

Since December 2008, all persons arriving into detention on Christmas Island have had their biometrics collected and since November 2010 all protection visa applicants nationally have biometric facial images and fingerprints collected. We are also now undertaking a phased implementation of a major pilot in relation to the collection of biometric identifiers of persons in a number of countries overseas, and that was a major initiative in last year's budget. So we are progressively ramping this area up and, as Mr McCairns has indicated, this is a very significant security step in relation to finding out your true identity and being able then to see if we encounter you, or indeed if one of the countries that we cooperate closely with, particularly the US and Canada and the UK, have any awareness of you.

**Senator CASH:** How many times has the department invoked section 91K of the Migration Act in relation to the non-provision of documents? The section states:

Non-citizens to whom this Subdivision applies are unable to make valid applications for certain visas.

**Mr Metcalfe:** I will just check section 91K. You have found the section I do not know.

**Senator CASH:** Sorry, it is 91W.

**Mr Metcalfe:** Section 91W provides documentary evidence of identity, nationality or citizenship. The minister or an officer may request an applicant for a protection visa to produce for inspection by the minister documentary evidence of the applicant's identity, nationality or citizenship. If the applicant has been given such a request and they fail to do so, the minister may draw an inference unfavourable to that person's identity. I think that takes you to the issue of establishing the identity of persons seeking a protection visa, particularly irregular maritime arrivals where in the majority of cases there is no documentary evidence of that.

Again, there is a process that is undertaken to seek to establish that person's identity and this section is applicable in that broad area. I note that in the IMA process the initial work that we are undertaking is a non-statutory process prior to the bar being lifted as opposed to the application for a protection visa. So it needs to be read in that context as well.

**Senator CASH:** Has the department actually invoked 91W in relation to the non-provision of documents?

**Mr Metcalfe:** I do not have information on that.

**Mr Fleming:** We will confirm whether there are any cases. It is certainly not something that we would do commonly if for no other reason than that for refugees often the inability to produce documentation can be a symptom of their refugee status. But we will see what we can get by way of any statistics.

**Senator CASH:** Is there ever a case that there would be a presumption that a person does not have a reasonable explanation for not having documents? In those cases, would the department consider exercising 91W? I accept what you are saying about refugees.

**Mr Metcalfe:** I think there could be such a case. Many people who arrive here and seek refuge in Australia would basically say that the people smuggler had taken their passport away or that it was lost at sea or whatever. Ultimately, whether that is a reasonable or unreasonable explanation is a matter of opinion. We believe it is important, though, in relation to refugee determinations to firstly do everything we possibly can to establish a person's identity and relationships, and also their broader claims. That is where we do go to a significant discussion with people about the credibility of any claims they may make—noting that some people may have had to lie to safely leave a country or that they may be traumatised or have been tortured. So it is quite a delicate area of decision-making, as we will no doubt discuss tomorrow under outcome 4.

**Senator CASH:** Have there been any prosecutions of people who have lied about their age or have there been any visas that have been cancelled for people who have lied about their age?

**Mr Metcalfe:** I will take that on notice. Again, it is an offence to mislead an officer. Whether or not the evidence is that it is a lie as opposed to a person who is confused, you would imagine that the evidence issues here are quite significant in terms of a successful prosecution. But we will take that on notice.

**Senator CASH:** How many unlawful non-citizens have been located in 2009-10 as a result of compliance activities, and in 2010-11 to date?

**Mr Metcalfe:** Outcome 4.1.

**Senator CASH:** So how many have been removed and at what cost is outcome 4.1?

**Mr Metcalfe:** Yes.

**Senator CASH:** Going back to the answer given to question on notice 151 from the February additional estimates, in relation to the 20 adverse security assessments, does 20 adverse security assessments translate to 20 IMAs?

**Mr Metcalfe:** I think so. I am just looking for the question.

**Senator CASH:** The security assessments included 20 adverse assessments.

**Mr Metcalfe:** Your question related to IMAs—

**Senator CASH:** Yes—

**Mr Metcalfe:** so the answer was given in relation to IMAs.

**Senator CASH:** So it is equivalent to 20 IMAs?

**Mr Metcalfe:** That is correct. That is certainly what this answer says.

**Senator CASH:** I do not want to know the details of these people, but in relation to each of the 20 cases, why did they receive an adverse assessment?

**Mr Metcalfe:** That is a matter for ASIO.

**Senator CASH:** It is a matter for ASIO.

**Mr Metcalfe:** Absolutely. The issue of whether or not a person is of a security concern is a matter for ASIO.

**Senator CASH:** Are you able to provide a breakdown of staff engaged by the government to perform immigration functions in each of our overseas posts?

**Mr Metcalfe:** I think we took that on notice this morning. I remember you or Senator Barnett asked us about staffing.

**Senator BARNETT:** I think I might have asked that.

**Mr Metcalfe:** We have undertaken to get back to you on that.

**Senator CASH:** Does the department's requirement to process visa applications in 90 days also include a requirement for an ASIO check to be completed in that time?

**Mr Fleming:** The statutory requirement to process within 90 days, and more importantly explain why cases are taking longer than 90 days, includes needing to explain if the security checking process has tipped the protection visa processing beyond 90 days.

**Senator CASH:** So you are saying that the 90 days does include the ASIO check?

**Mr Fleming:** Notionally, yes. The six monthly report explaining cases beyond 90 days can include a component who are awaiting security assessments.

**Mr Metcalfe:** In fact, from memory, in signing those reports to the minister I think one of the more common explanations for a delay beyond 90 days is that it is awaiting a security check response.

**Senator CASH:** Are you able to provide me with an analysis to date of how many visa applications have been processed within the 90 days and how many were not within the 90 days?

**Mr Fleming:** I will be able to.

**Senator CASH:** It would be updating a previous question on notice, basically.

**Mr Fleming:** Yes.

**Senator CASH:** In an article in the *Sydney Morning Herald* on 3 May 2011, it states that 21 IMAs have received adverse security assessments. It states:

As of April 19, only 21 boat arrivals had received adverse security assessments ...

Do we know where those 21 actually are?

**Mr Metcalfe:** We would do.

**Senator CASH:** Are you able to tell the committee where they are?

**Mr Metcalfe:** They would be in detention. I am happy to talk about detention tomorrow.

**Senator CASH:** In that same article it states that 1,000 were released after a push to clear the backlog.

**Mr Metcalfe:** That is an issue Ms Wilson was talking about this morning. Can we assist? Is there a question there?

**Senator CASH:** I do recall what we discussed this morning. When they say:

Almost 1,000 refugees have been given the green light to leave overcrowded detention centres and receive visas after a push to clear the faltering system's security backlog.

What was the push to clear the faltering system's security backlog?

**Ms Wilson:** I started on that discussion with you earlier today.

**Senator CASH:** Yes.

**Ms Wilson:** I just wanted to make it clear that ASIO's priority and responsibility is to ensure that Australia's security is not compromised. Security assessments therefore have to be thorough and include all of the IMAs, as we talked about earlier today. The process is rigorous and is designed to ensure that ongoing protection of Australia's national interest is the key focus. I wanted to restate that following our discussion this morning. We talked about intelligence-led and risk-managed security assessment, if you recall.

In terms of your question about the thousand number that you were using, between 15 March and 16 May over 1,600 IMAs were considered under the security framework. As I also mentioned, we changed the process around a bit at the start of March, where only one AMET IMAs were referred to ASIO. So the people who were getting ticked as meeting the refugee criteria were going forward to ASIO to be considered. That translated into about 712 IMA clients who have already been granted a visa and been released into the community. There are another 600 clients who are basically waiting for some final checks. They have to do a health check, they have to do some systems MAL checks, and they have to do a few other identity checks before they can go up in a submission to the minister for the bar to be listed and to be granted a visa.

**Senator CASH:** Is the department satisfied that from its perspective national security has not been compromised with this increase in the processing of IMAs?

**Mr Metcalfe:** Yes, Senator, and of course we look to ASIO to provide that reassurance to us. But they are the experts on that.

**Senator CASH:** Did the minister or the department actually put pressure on ASIO to clear these cases?

**Mr Metcalfe:** We have certainly been in discussions for a long time with ASIO about the additional workload that we, of course, were seeing—we had many more refugee decisions to consider—and that they were seeing in terms of security assessments. There have been numerous discussions. I would not regard it as putting pressure; I would regard it as two agencies who are involved in a process working in a constructive way to deal with a very large increase in workload and working out the best ways to manage that workload. That is, frankly, something you would expect as part of good ongoing administration. We will continue to look at our own processes—and I am sure ASIO is looking at its processes—to see how we can get the right quality decision making occurring in the fastest possible time.

**Senator CASH:** Can I now turn to question on notice No. 125 in relation to question No. 123 from the October estimates. It was in relation to the number of IMAs arriving in Australia who do so by flying into Indonesia by plane. Are you able to give the 2011 figure to date? So it basically updating the question on notice. So the total and the IMAs who entered Indonesia by air and how that translates.

**Mr Metcalfe:** I think this is, again, taking us to 4.3. Has this been answered under outcome 3?

**Senator CASH:** 3.1.

**Mr Metcalfe:** So it was probably asked and answered under 3.1.

**Dr Southern:** We would have to take that on notice to bring those figures up to date.

**Senator CASH:** If you could. Could you also then please update how many state that they had documents when they flew into Indonesia but do not have documents when they arrive in Australia? It is updating another one of the questions on notice.

**Mr Metcalfe:** Again, to the extent that we can have knowledge of that, of course, Senator.

**Senator CASH:** How many onshore visa applications have been lodged by people other than IMAs who arrive without visas or documentation?

**Dr Southern:** This is protection visa applicants.

**Mr Fleming:** There have been just over 30 people who have raised protection claims at airports. I think that is the cohort that you are after. So 30 to 35.

**Mr Metcalfe:** So that we are absolutely clear, that was raising claims at airports. I thought your question was slightly broader.

**Senator CASH:** Onshore visa applications.

**Mr Metcalfe:** Yes, so there may well be people who have arrived, entered and then subsequently—

**Senator CASH:** And then subsequently applied. Do you have that figure as well?

**Mr Fleming:** No, I do not. I will see what I can get.

**Senator CASH:** So if we have 30 people at airports—

**Mr Metcalfe:** That would essentially be the case load of protection visa applicants, which then are subject to decisions by us and refusals, which lead through to the RRT, as opposed to the IMA case load. As you know, I do not want to confuse things, but if we believe they are refugees, they would ultimately become protection visa applicants. But the processing would have all been done. We will just need to make sure we give you a careful response to that.

**Mr Fleming:** Sorry if I misunderstood, Senator, but you also had a component to your question about irregular documentation.

**Senator CASH:** Yes, who arrived without visas or documentation.

**Mr Fleming:** Obviously those we pick up before immigration clearance, so the claimants at airports, are ones where we know they do not have proper documentation.

**Senator CASH:** Are we able to get figures around those that do and then put forward a claim?

**Mr Metcalfe:** By definition, if they arrive without a visa or proper documentation they will be picked up at the airport.

**Senator CASH:** And that is the 30 people that we are talking about.

**Mr Metcalfe:** There will of course be a large number of other people. Mr O'Brien was talking about some of his case load this morning, in relation to people who will arrive with a proper documents and visas who then subsequently seek refugee status in Australia. That is a separate line of activity in relation to them. Then, to be absolutely clear, there are the people who may bypass immigration clearance by stowing away, and we see a handful of those cases every year. But it is possible.

**Senator CASH:** How many people who arrive by air present as undocumented, either at the airport or, after immigration clearance, they lose their documents?

**Dr Southern:** The number we have for the 2010-11 year to date is 79, and these are people who we call inappropriately documented arrivals.

**Senator CASH:** What does that exactly mean?

**Dr Southern:** This number is persons who have been refused immigration clearance and who arrive without a travel document, without a travel document that was current, with a bogus travel document or with a travel document that had been issued to someone else. So it covers that range of fraudulent documents that we were talking about earlier.

**Senator CASH:** So that is 79 in the year to date?

**Dr Southern:** That is correct, as at 30 April.

**Senator CASH:** Everything else I want to deal with will now come under outcome 4 tomorrow.

**CHAIR:** Or tonight. We will go to Senator Barnett with questions on outcome 3.

[22:07]

**Senator BARNETT:** I wanted to ask some questions about the movement alert list. In a way it follows up Senator Cash's final question about the inappropriately arriving people, and we were advised that there were some 79 people. What is the difference between those arriving 'inappropriately' and those that are on the movement alert list?

**Mr Metcalfe:** The movement alert list is a database of many hundreds of thousands of names of individuals as well as some millions of documents reported as lost or stolen, and the movement alert list is a central part of the department's board of management infrastructure, which is available at all stages of the visa process in the journey to Australia. That is what its purpose is. The persons who were inappropriately documented are persons who have managed to bypass or beat that system by either arriving on a false document in the name of someone else or on a document that is only discovered to have been tampered with or improperly issued. Seventy-nine people out of about 14 million people is about the number that we have seen in the last nine months.

**Senator BARNETT:** And you would say that is a pretty good effort compared to the previous year?

**Mr Metcalfe:** In global terms that is an extraordinary effort for any country. That is where the department has long held the view that our universal visa system and the layered approach to border management, which means that the Australian immigration border extends from the time a person makes an application for a visa to the airport of embarkation for Australia as well as to the actual border upon arrival in Australia. That is why it is a highly facilitative measure. Genuine passengers can travel very confidently but it makes it much more difficult than the sort of no-visa systems operated by some countries.

**Senator BARNETT:** Based on my research I understand you had 630,000 people of interest identified on the movement alert list as at 30 June last year. You had 1.8 million documents on the movement alert list at the same time.

**Mr Metcalfe:** That sounds right. I can check on that but your research sounds right.

**Senator BARNETT:** Let us go to the people of identity. Does that go up and down? You must have a lot of input and output.

**Mr Metcalfe:** That is a dynamic number. It is informed by a variety of sources. It is not just people of immigration concern. The Australian Security Intelligence Organisation and the Australian Federal Police are also significant contributors of information to that. It contains not only the person's name but known aliases as well. It is intended to be a very wide net that is cast to pick up persons who would be of concern. It is not a decision-making tool. It does not automatically lead to the refusal of a visa but it simply means that there has to be an intervention. An Australian officer would then very carefully consider the case.

**Senator BARNETT:** How many officers or staff in your department would be either involved full-time or part-time in inputting information to the movement alert list, changing it or rectifying it?

**Mr Metcalfe:** The task of entering the material occurs within our border operation centre, which is a 24 hours a day, 365 days a year facility. Around 60 staff are employed in that centre on shiftwork arrangements. They are the persons physically involved in entering that data, but of course that data is collected from a range of sources.

**Senator BARNETT:** To summarise the range of sources, I assume it is AFP, ASIO and your own department—

**Mr Metcalfe:** That is right.

**Senator BARNETT:** and state and territory—

**Mr Metcalfe:** Interpol red alerts on criminals fleeing justice et cetera. We would be very happy, if you would like a more detailed briefing, with the minister's agreement, to provide a briefing or to provide a more fulsome response.

**Senator BARNETT:** Thank you for that offer. I want to drill down now to health concerns because I understand that is part of the process in the movement alert list. You do pick up people who are coming into the country with health concerns; is that correct? I am thinking of TB in particular.

**Mr Metcalfe:** Certainly our visa requirements in some cases do require a health check to be undertaken. We have a major processing centre based in Sydney, which employs a number of medical practitioners. We have a chief medical officer. For a range of visas, particularly where a person may be entering a study situation, intending to work in a hospital or coming to Australia as a migrant, there are health checks required of that person. If a person fails that medical then that usually results in the failure of the visa.

**Senator BARNETT:** I am thinking of Northern Australia. My advice is that there are people coming down from the various islands in the Timor Sea and Papua New Guinea. Are those people being monitored, assessed and apprehended in the process? I understand there is a concern regarding TB in Northern Australia. If so, can you explain the extent of that concern?

**Mr Metcalfe:** Any person coming into immigration detention is the subject of health checks. You mentioned Timor. That is more likely to be illegal foreign fishers who are apprehended by Australian authorities and who end up in the immigration detention process. In relation to the traditional movement of people between the villages covered by the Australia-PNG treaty, largely they come as family or traditional visitors pursuant to those arrangements that apply to the north of Thursday Island in islands in the Torres Strait.



There has been concern. Certainly the Queensland health department has had concerns about the entry of people seeking medical treatment and possibly with disease. That is an issue that is very carefully attended to in the context of that traditional movement. People from those treaty villages who undertake traditional activities by travelling to islands in the Torres Strait do not require a pre-approved visa. That is one of the few exceptions to the overall visa arrangement, because the treaty allows for the traditional movement of people, who are doing what they have done for thousands of years within that particular area. But if a person is known as a health concern non-citizen, which is a particular term under the act, then their entry is prohibited. The issue of their medical condition and situation is a subject that we obviously work closely with Queensland Health on.

**Senator BARNETT:** How many are entering Australia with health concerns?

**Mr Metcalfe:** I would have to check on that. I do not know if we have an answer here. There are some thousands of movements pursuant to the treaty each year. It is long-established. Largely, those movements are into the northern most islands, Saibai and Boigu, but also to some of the other islands within the Torres Strait.

**Senator BARNETT:** I am just letting you know that I have had feedback in that regard. To what extent is it a problem? Do you have any numbers in terms of, say, the last 12 months or the latest figures available?

**Mr Metcalfe:** I will certainly take that on notice. I am aware that it is an issue. It is an issue that we have been closely involved in. We have discussed with the Queensland health authorities the most effective management of that issue, together with the Torres Strait authorities. I am happy to provide you with an answer as to the precise number of people.

**Mr Fleming:** We have been in active discussions with the Queensland department of health, because to answer your questions relies on marrying some of our statistics and movement records with some of their health records. We are working out how best to do that.

**Senator BARNETT:** All right. If you can provide further and better particulars on notice, I am happy with that. Secondly, the other area of interest regarding the movement alert list is to do with boat arrivals. How many of those are identified on the movement alert list? Do you have those figures?

**Mr Metcalfe:** I would have to check on that. It would be unusual for any of those persons to have—

**Senator BARNETT:** It is probably unusual, but I would like to know the number, if you have it. These people—

**Mr Metcalfe:** It is certainly one of the checks that we do. We check to see whether the person is registered on the movement alert list. I will have to check as to whether we have an answer as to whether any have hit against the movement alert list.

**Mr Fleming:** We all think that it is low to zero. We will verify that that is the case.

**Senator BARNETT:** Okay. My final area of interest is with the identification through the airport system. It is probably more to do with Customs rather than you. Instead of your passport, you have the iris system. Is that being used? How effective is it?

**Mr Metcalfe:** The SmartGate system used by Customs relies on facial geometry as opposed to an iris scan. The iris scan is probably the most invasive of the various biometric

collection technologies. The arrangements that Customs have been trialling relate to the biometrics of your face, which I am told do not change. The position of your eyes, your nose and your mouth on your head do not change. Other bits of us may change, but some of it does not change.

**Senator BARNETT:** Is that being used? If so, to what extent? Or is that a matter for Customs?

**Mr Metcalfe:** That is a matter for Customs. I am sure that they will be happy to talk to you about it.

**Senator BARNETT:** I understood that as one gets older your ears grow and your nose does.

**Mr Metcalfe:** My nose would never grow, Senator.

**CHAIR:** Especially at estimates.

**Senator BARNETT:** I have seen a few cartoons. I am not sure if it was you or the Prime Minister. Thank you very much.

**CHAIR:** Nothing else on outcome 3? All right, I can suggest two courses of action. One is we finish for the night and start tomorrow with outcome 4.

**Mr Metcalfe:** Do we get a vote?

**Senator CASH:** I could ask a number of questions in relation to Serco and get them out of the way if there are people here who can answer the questions, just so I do not go over time tomorrow.

**CHAIR:** You reckon you can do the Serco questions by 11?

**Senator CASH:** Within reason.

[22:21]

**Mr Metcalfe:** So we are moving to outcome 4?

**Senator CASH:** Yes. I will do questions in relation to Serco.

**Mr Metcalfe:** Thank you, Chair, for trying.

**CHAIR:** If there are scones and jam and cream left, have one of those.

**Mr Metcalfe:** I know that, just as a general observation, we are certainly not subject to the very late and early morning estimates that we had some years ago, but turning up fresh again tomorrow after many hours in the chair here today is always a bit of a struggle for yours truly. But we will share the joy around.

**CHAIR:** It might mean we finish early tomorrow night.

**Mr Metcalfe:** We live in hope.

**Senator CASH:** I have a number of questions that I had earmarked for this morning but I was asked to refer to outcome 4 in relation to Serco. Can I commence by looking at incidents of abuse against staff. Has the department been advised of any incidents of physical abuse or threats made against Serco staff within the detention network by detainees or other persons in each of the past four years?

**Mr Moorhouse:** The answer to that is yes.

**Senator CASH:** How many incidents has the department been made aware of?

**Mr Moorhouse:** If you will just excuse me, I will look for the data for you.

**Senator CASH:** Thank you very much. I will also then ask you on what date was the department made aware of the incidents and in which centres did these incidents occur?

**Mr Moorhouse:** I am not sure that we have that amount of detail with us, but I can give you the overall details; just one moment. Just clarifying: the information we have is in relation to assaults rather than threats—were you after threats or assaults?

**Senator CASH:** Any incidents of physical abuse and/or threats made against Serco staff within the detention network by detainees or other persons in each of the past four years.

**Mr Moorhouse:** I will ask my colleague Ms Lynch-Mago to answer that, if that is okay.

**Ms Lynch-Mago:** During the financial year to date, 1 July 2010 to 16 May 2011, there were 329 allegations of assault but they were not particular to Serco. They included 252 allegations of assault between clients, 73 allegations of clients assaulting the detention service provider officers—

**Senator CASH:** Sorry—what was that last one?

**Ms Lynch-Mago:** Seventy-three allegations of clients assaulting detention service provider officers.

**CHAIR:** Mr Metcalfe, have your officers from outcome 3 gone?

**Mr Metcalfe:** Did Senator Trood have a question?

**Senator TROOD:** Chair, it is very generous of you. I realise that I have missed dealing with that; I was caught up in another committee.

**CHAIR:** We know. I am just trying to ascertain if officers from outcome 3 are still around.

**Mr Metcalfe:** Some of them may have left, but if the senator wants to ask the question I could see whether I could answer it or whether there is an officer available.

**CHAIR:** We did try and get to it. Senator Trood was caught up in another committee, that is all.

**Mr Metcalfe:** Alternatively if the officer is not here now I can ask the officer to come back in the morning.

**CHAIR:** Do you have many questions, Senator Trood?

**Senator TROOD:** I have a couple of matters.

**CHAIR:** Come on—let us give it a go.

**Senator CASH:** Yes, we are better working to this outcome now if we can and then doing outcome 4 tomorrow.

**Senator TROOD:** I have a couple of matters I wanted to pick up, Mr Metcalfe. One related to the APEC Business Travel Card Scheme which I raised with you last time.

**Mr Metcalfe:** I recall that. I think Mr Fleming is able to assist us on the APEC business travel cards. I think we have a better story to tell than we did last time.

**Senator TROOD:** I should hope so, Mr Metcalfe, because what you told me last time was a very unsatisfactory story, if I may say so.

**Mr Metcalfe:** I readily concede that point.

**Senator TROOD:** I am glad you do. In answer to a question that I asked on notice, which was 39, you answered that you decided to revise the criteria for the card because it represented 30 per cent of all cardholders in the ABTC Scheme—is that right, Mr Vardos?

**Mr Vardos:** Yes, Australian holders represented about 30 per cent of all ABTC cardholders as at about February 2010.

**Senator TROOD:** My question is: were the other members of the scheme pressing the Australian government to change the rules or the criteria?

**Mr Vardos:** I was not involved at the time but my understanding from my briefing is that other member countries of APEC were concerned that Australia's standards were not in keeping with the standards set broadly by the rest of the APEC member countries and that we were perhaps being a bit too generous in the way we were granting cards.

**Senator TROOD:** No. There may have been differences about the criteria, but did the Australian government receive any active complaints about the number of cards that it had issued?

**Mr Vardos:** I cannot specifically respond to that question without asking people who may have been involved at the time. I cannot answer that question.

**Senator TROOD:** Is anybody able to answer that question?

**Mr Fleming:** There were certainly discussions within APEC about the rate of growth in Australian cardholders, and that led to the changes being made.

**Senator TROOD:** So, Mr Fleming, you were responding to some concerns that were being mentioned within the APEC group. Is that right?

**Mr Fleming:** The department was; again, I was not involved at the time. Certainly, subsequent to last estimates—if you would like me to talk about further changes—we have undertaken consultation—

**Senator TROOD:** We will get to that. But I am interested in the original decision because I did not think there was an adequate explanation provided the last time we met as to why you had decided to change the criteria at all. I am still not persuaded that you received any kind of complaint or any kind of representations or that you were responding to some very direct concerns that were being suggested by other APEC members.

**Mr Fleming:** There is probably not much more I can add than to say that it was done in response to active discussions in the APEC Business Mobility Group.

**Senator TROOD:** So you changed the criteria, and then you failed to advise anybody of the fact that you had changed these criteria. That correct, isn't it?

**Mr Fleming:** I do not think that is quite correct. People were advised as an existing APEC business travel card was expiring that, were they to apply again, new criteria would apply and what those criteria were.

**Senator TROOD:** But it was on the basis that, if an individual was seeking a renewal of their card, they were going to be told that in fact the criteria had changed and they may no longer be eligible. Is that right?

**Mr Fleming:** It did not actually await their applying for renewal; there was a program of telling them about six months before an existing card expired.

**Senator TROOD:** So you were foreshadowing the possibility that their cards might expire?

**Mr Fleming:** Their cards were due to expire.

**Senator TROOD:** So you were expecting those cards to expire and you were giving notice of the change?

**Mr Fleming:** That is correct.

**Senator TROOD:** But you did not take any steps, did you, to advise the business councils or those who are most directly concerned with the operation of the card in Australia?

**Mr Fleming:** That is correct; there was no direct engagement. So other than—

**Senator TROOD:** Why was that?

**Mr Fleming:** I am not sure. If that is happening—

**Mr Metcalfe:** I think we have acknowledged, Senator, that that was a failure by the department to engage appropriately, and since you highlighted this issue at the last round of estimates we have sought to engage far more effectively with peak bodies associated with this issue. But I have conceded and I again accept that the department's actions at that time were not what I would regard as in keeping with our commitment to proper stakeholder engagement.

**Mr Vardos:** I can confirm that since the last estimates 23 organisations have been consulted—peak business bodies, business councils and chambers of commerce.

**Senator TROOD:** So, Mr Vardos, this is about the review you are undertaking. Is that right?

**Mr Vardos:** About the eligibility criteria.

**Senator TROOD:** Yes. So did you respond to the concerns that I raised in estimates on the last occasion and then decide that you should advise the peak bodies of changes that had been made, or was this in relation to the review that I understand the department is undertaking in relation to the cards?

**Mr Fleming:** It is the review and consultation we had initiated just prior to the last estimates that we foreshadowed to you in the last estimates.

**Senator TROOD:** So the 23 consultations are in relation to the review. Is that correct?

**Mr Fleming:** That is correct.

**Senator TROOD:** Has the review been completed, Mr Fleming?

**Mr Fleming:** No; it is close to complete. We have finished consultations. As a result of that, we are evaluating possible further changes to the criteria that would 'loosen it up', for want of a better term, and once those have been given preliminary consideration by government our intention is to do a validation process with the peak bodies that we have consulted with. Our take, based on our consultation with them and after discussing concepts with them, is that those changes will be acceptable to those peak bodies. But we do want to do a validation process with them to check. I would also say that as part of those consultations we have proposed and committed to a program of annual consultation with those business representatives so that we do not again have a problem with not engaging with our stakeholders in the way that we would like to in the way that we do our business.

**Senator TROOD:** Are the changes you are contemplating going to return the eligibility criteria to something closer to those that existed previously?

**Mr Fleming:** Yes, I think they are closer to the previous assessment criteria than the ones that we changed to last year. But once those had preliminary assessment by government we shared them and others will judge—

**Senator TROOD:** Have you determined whether the changed criteria, which I acknowledge have not been finalised, will mean that there will be a greater entitlement to the card amongst Australian businesspeople?

**Mr Fleming:** Yes, that is correct.

**Senator TROOD:** Have you done any kind of computation as to the extent to which the eligibility will increase?

**Mr Fleming:** Broadly we have assessed that it will see us with less than the sharp growth that we had before the changes last year and that the changes last year certainly saw a drop off in approval rates that were far greater than we had anticipated. Certainly we think this will take us back to about the level prior to the last lot of changes, with some modest growth.

**Senator TROOD:** Are you confident that this is not going to create any anxiety amongst APEC members?

**Mr Fleming:** I do not think so given that what we are comparing with is an annual growth rate of 21 per cent or so that we were seeing before the changes. We do not anticipate that the modifications will get us to that sort of quantum.

**Senator TROOD:** How many businesspeople will have been excluded as a result of these changes? Do you know that?

**Mr Fleming:** No, I do not know that.

**Senator TROOD:** Can you give the committee any assurance that any of those people who previously held cards who were no longer eligible to hold the cards as a result of the original changes you made will now be entitled to cards?

**Mr Fleming:** Certainly a number of them will now be eligible—for example, those who were excluded by the requirement to be in the top two tiers in a small to medium sized enterprise. I do not think we will see that requirement.

**Senator TROOD:** So you have eased the criteria so that it reaches further into the organisation; is that right?

**Mr Fleming:** That is right. It potentially does, and it looks more directly at frequency of travel and certified need to travel.

**Senator TROOD:** Have you had that easing of the criteria approved by the peak bodies?

**Mr Fleming:** They are the sort of concepts we discussed in our series of consultations over the last couple of months. Our sense was that they met with general approval in the discussions. But, as I said, we want to do a validation process to check that we have read the feedback and the mood of the discussions correctly.

**Senator TROOD:** Just to finish this, when do you expect this process to be completed?

**Mr Fleming:** Certainly by the end of this financial year.

**Senator TROOD:** So by the end of June?

**Mr Fleming:** Yes.

**Senator TROOD:** You expect the consultations to be completed, the new criteria—

**Mr Fleming:** We have effectively completed that preliminary consultation. We have proposed some changes for consideration by government. Once we have those, it is then a fairly quick process of just validating that with the peak bodies. Achieving that is a matter of weeks rather than months.

**Senator TROOD:** I see. It is a sorry saga, I have to say. I am grateful to you, Mr Metcalfe, for acknowledging that—

**Mr Metcalfe:** I think we have to be quite honest about that, and I thank you for drawing it to my attention, because I had not been personally aware of it before. So I thank you for that. I have asked Mr Fleming to ensure that we do everything we can to engage properly with the many chambers of commerce and peak bodies as we seek to negotiate the best possible outcome for Australian businesspeople.

**Senator TROOD:** I have some other questions. On the last occasion we were here, I asked some questions about the visas granted to members of Hizb ut-Tahrir in Britain who came to Australia as part of a conference.

**Mr Metcalfe:** Yes, I recall that.

**Senator TROOD:** I placed some questions on notice, to which I received some responses. This is question on notice No. 36. The department's advice was that the individuals concerned were not on the Movement Alert List.

**Mr Metcalfe:** The question 36 I have from last time was Senator Cash asking a question about 457 visas. Normally our response would have a number in brackets about four lines down indicating the program number and the question that was asked. Perhaps if you could read the answer we will respond.

**Senator TROOD:** The answer was that the two individuals about whom I was asking questions were not on the Movement Alert List.

**Mr Metcalfe:** I think we may be talking about question 139, according to our notes.

**Senator TROOD:** I beg your pardon.

**Mr Metcalfe:** You asked:

What were the circumstances surrounding the grant of a visa to Mr Burnham Hanif and Mr Salim Atchia for the purpose of participating in the Conference, 'The struggle of Islam in the West' in July 2010.

**Senator TROOD:** I think your response to that, and also to question 131, was that these individuals were not on the movement alert list.

**Mr Metcalfe:** Our answer, I think, is 139. We indicated that they applied for electronic travel authorities, they were not included on the Movement Alert List and they were not referred for ASIO checking.

**Senator TROOD:** If they are not on the Movement Alert List, you do not send them to ASIO for further—

**Mr Metcalfe:** There are nationals of certain countries—and I have answer 131 here as well—where, according to the security checking handbook, there is a referral to ASIO that is

required. That occurs through an electronic system called the security referral service. These particular men were not of a nationality that would require such a referral and they were not included on the Movement Alert List as persons otherwise of concern. They applied for and were granted visas, arrived here and spent a few days in Australia in the middle of last year.

**Senator TROOD:** Just to finish this off, Mr Metcalfe: have these individuals been added to the movement alert list since that conference in view of their performance here?

**Mr Metcalfe:** I would have to check on that point.

**Senator TROOD:** Perhaps you could take that on notice.

**Mr Metcalfe:** I will take that on notice.

**CHAIR:** There being no further questions, we will recommence tomorrow at 9 am.

**Committee adjourned at 22:45**