



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL AFFAIRS  
LEGISLATION COMMITTEE

**Estimates**

TUESDAY, 24 MAY 2011

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**  
**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**  
**Tuesday, 24 May 2011**

**Senators in attendance:** Senators Abetz, Burnett, Bilyk, Cash, Crossin, Fielding, Furner, Hanson-Young, Parry and Pratt



## IMMIGRATION AND CITIZENSHIP

### In Attendance

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

### 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 bona 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 09:01**

**CHAIR (Senator Crossin):** 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, in particular for the Attorney-General's and Immigration and Citizenship portfolios.

The committee must report to the Senate on 21 June 2011. We have set 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. We have copies of the rules at the committee desk. I particularly want 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, which will be incorporated 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)

The committee will continue examination of the Department of Immigration and Citizenship today. We will start at outcome 4. We will work through the program, but we are anticipating that we will do outcomes 5 and 6 after the dinner break if not before then. I specify again that these are just indicative times, although they seemed to work well yesterday.

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

[09:03]

**CHAIR:** I welcome again Senator the Hon. Kim Carr, Mr Metcalfe and his team.

**Mr Metcalfe:** If it might assist the committee, program 4.1 relates to visa compliance and status resolution. Senator Cash has flagged questions there. Then I suggest it might be convenient for the committee to take programs 4.2 and 4.3 together because they relate to aspects of detention and the processing of asylum seekers. Our experience is collectively that those issues tend to come together in various ways. But we are in the hands of the committee, of course.

**Senator CASH:** That is fine. My understanding was that we would do all of outcome 4 together, but that is not a problem. I am happy to go to—

**Mr Metcalfe:** We have all the officers here.

**Senator CASH:** I am happy to start straight into visa compliance and status resolution if that assists.

**CHAIR:** Senator Cash, over to you.



**Senator CASH:** I want to turn to section 501 of the Migration Act in relation to visa cancellations. During the 2010-11 financial year to date, how many visas have been refused or cancelled by a departmental officer using the delegated powers given by section 501 of the Migration Act?

**Dr Southern:** For the 2010-11 year to date 88 visas have been cancelled by the delegate and two by the minister. Did you ask about refusals as well?

**Senator CASH:** I did, yes. You said 'to date'. What exactly is that date?

**Dr Southern:** The end of March. Again till 31 March there were 77 refusals by the delegate and none by the minister.

**Senator CASH:** So none have been refused by the minister but two have been cancelled by the minister?

**Dr Southern:** That is correct.

**Senator CASH:** How many have been considered by the department in total?

**Dr Southern:** In total there have been 1,388, and that is both refusals and cancellations.

**Senator CASH:** Is it possible to get a breakdown of that number?

**Dr Southern:** There were 585 cancellation considerations and 803 refusal considerations.

**Senator CASH:** And by the minister separately?

**Dr Southern:** The minister considered only the two cases that were cancelled.

**Mr Metcalfe:** So no cases were before the minister that he decided not to cancel or refuse. The only matters he considered were the two that he decided to cancel. All the other activity was undertaken by delegates of the minister or in particular the principal assessor or other staff of the Character Consideration Centre.

**Senator CASH:** Has the department prepared any submissions for the minister in relation to the refusal or cancellation of a visa under his section 501 powers?

**Mr Illingworth:** The department does from time to time prepare submissions for the minister.

**Senator CASH:** Specifically in relation to the use of the section 501 power?

**Mr Illingworth:** Specifically in relation to that, yes.

**Senator CASH:** On what dates was that advice prepared—or how many submissions have been presented to the minister?

**Mr Illingworth:** In terms of formal consideration there were the cases we have mentioned where the minister exercised the power—

**Senator CASH:** So that would be two?

**Mr Illingworth:** We provide a range of advice to the minister around that, but formal considerations are a special case.

**Senator CASH:** In relation to the two submissions, I understand why he would require that. In relation to general advice under section 501, has the department provided the minister with any advice outside of the two that he ultimately cancelled?

**Mr Metcalfe:** Are you talking about casework advice?

**Senator CASH:** Yes, casework advice.

**Mr Illingworth:** We provide advice at various stages of cases in varying degrees of specificity and at any given time there may be cases that are before him at those points. I was referring earlier to the two cases where we had been through a process and the minister had reached a decision.

**Senator CASH:** But, certainly, the department has prepared submissions for the minister in relation to various cases of potential cancellation or refusal under section 501.

**Mr Illingworth:** That is correct.

**Senator CASH:** On how many occasions has that occurred?

**Mr Illingworth:** I do not have that information with me, Senator.

**Senator CASH:** Are you able to provide the committee with that information on notice?

**Mr Illingworth:** Yes.

**Senator CASH:** Thank you very much. Are you able to provide the committee also with information in relation to what case or cases you have provided that advice to the minister?

**Mr Illingworth:** If I could take that on notice—there are some privacy issues, obviously, that we would need to work through. These are cases that relate to individuals, and some of the issues considered, obviously on both sides of the case, go to sometimes quite personal issues.

**Senator CASH:** Specifically, did the minister request a submission on any individuals after the sentencing of three persons in November 2010 involving their involvement in an earlier riot at the Northwest Point detention centre on Christmas Island in late 2009?

**Mr Illingworth:** Senator, we provide general advice to the minister on a range of events that may have a character dimension to them, but I would need to take your specific question on notice.

**Senator CASH:** That may have a range of character—

**Mr Illingworth:** Considerations.

**Senator CASH:** Considerations. What are those character considerations? You are providing a wide range of advice to the minister in relation to cases that may have character considerations. What are those character considerations and when would you provide that advice?

**Mr Illingworth:** It largely depends on the nature of the particular case, but we monitor the media. We monitor court actions. We are, I would hope generally, aware of what is going on in public debate and issues of public concern, so when a case arises that may have allegations of criminality of a person who may have, through their past and present general conduct or criminal behaviour or through their association with people of character concern, themselves raised concerns—or issues of possible concern—then we turn our minds to those issues, to the extent we can, and provide advice to the minister. Sometimes we volunteer that advice and other times it is requested from us.

**Senator CASH:** So where there is a case that potentially involves criminality or past or present conduct, is it on all occasions that you would provide advice to the minister or only on certain occasions?

**Mr Illingworth:** It would be on certain occasions.

**Senator CASH:** I go back to: in relation to the riot at the Northwest Point detention centre on Christmas Island, I would have thought that that potentially involved criminality and past and present conduct. Why can't you recall whether or not you provided advice to the minister?

**Mr Illingworth:** We provide advice on a range of issues, including those sorts of issues.

**Senator CASH:** You have said that several times; I am asking in relation to a specific event. You have said in terms of generalities you would provide advice to the minister in certain circumstances. Those circumstances include where issues of criminality or past or present conduct have arisen. In relation to the very specific case of the sentencing of three persons in November 2010 involving their involvement in an earlier riot at the Northwest Point detention centre on Christmas Island in late 2009, are you telling this committee that you cannot recall and that you need to take on notice whether or not the department has provided the minister advice under section 501? You have to take that on notice.

**Mr Illingworth:** Yes.

**Senator CASH:** Mr Illingworth, are you responsible for providing any of this advice?

**Mr Illingworth:** I am responsible for providing some of it.

**Senator CASH:** What is the process in relation to you providing advice or you delegating someone to write that advice?

**Mr Illingworth:** I do not delegate all of the responsibility. I will provide advice on high-level policy issues and issues going to program management. There is quite a substantial activity in the department which is looking at a range of cases at any one time. There are in the order of a thousand or more cases being considered every year that are referred to a specialised centre in the department which examines cases that may fail the character test and then a subsequent series of actions can take place beyond that.

**Senator CASH:** Did the minister request a submission in relation to the individuals that I have mentioned?

**Mr Illingworth:** I would need to take that on notice.

**Senator CASH:** Did the minister request the department to provide him with a submission in relation to the individuals concerned in the riots in March 2011?

**Mr Illingworth:** There were a number of requests made in relation to information and advice around that time.

**Senator CASH:** Requests made by whom?

**Mr Illingworth:** They sort of developed iteratively but initially—

**Senator CASH:** Sorry I missed that. They were developed—

**Mr Illingworth:** The issues and the advice were developed iteratively as the nature of the requests evolved as further information came to light. But certainly the minister's office was a driving element in that.

**Senator CASH:** So did the minister or his office request a submission on any of the individuals involved in the riots in March 2011?

**Mr Illingworth:** To my knowledge, no case specific submissions have been requested.

**Mr Metcalfe:** The minister has made his views very clear in relation to those issues. Indeed, as I mentioned in my opening statement yesterday, legislation has been introduced to

the parliament on this issue. So the minister is clearly on the record about his expectations as to the implications of criminal or riotous behaviour by individuals. I note that some individuals have been the subject of charges. But there have been, as far as I know, no final decisions by the court, and I think it would be quite inappropriate for the department to get into a discussion which may go to guilt or innocence on particular issues. That is clearly a matter for the courts. But the minister has made very clear his expectations in relation to the administration of the character provisions in this area.

**Senator CASH:** With all due respect, Mr Metcalfe, that is not my question.

**Mr Metcalfe:** No, I was just—

**Senator CASH:** Thank you, but that is not my question.

**Mr Metcalfe:** I was just being helpful, Senator.

**Senator CASH:** Mr Illingworth, did the minister request a submission on any individuals as a result of the Villawood protests and the riots of March 2011?

**Mr Illingworth:** Not as far as I am aware.

**Mr Metcalfe:** But, again, Senator, that answer needs to be added to in that it is quite clear that the minister will receive a submission at an appropriate time.

**Senator CASH:** That was not my question. My question was whether or not the minister requested a submission. It is fundamentally different from whether or not the minister is going to be provided with a submission—unless, of course, you are saying that he has been provided with the submission in relation to requests that he has made, and then Mr Illingworth's evidence would be incorrect. Is that what you were saying?

**Mr Metcalfe:** I was adding to Mr Illingworth's evidence, Senator. The minister has made his perspectives on this issue very clear and he has made it clear that the consideration of any visa matter in relation to those individuals is a matter where character will be taken into account—and he naturally would receive a submission in relation to that matter at the appropriate time.

**Senator CASH:** Again, with all due respect, that was not my question. My question was in relation to whether or not the minister had actually requested submissions. Mr Illingworth, did the minister request a submission in relation to the three passengers on SIEV36, who the Northern Territory coroner found were involved in a plot to scuttle the boat?

**Mr Metcalfe:** I think that issue was considered by a previous minister.

**Senator CASH:** Well, did the previous minister request such a submission?

**Mr Illingworth:** Advice was sought on options for handling the matter. But no specific—

**Senator CASH:** Did it specifically include advice in relation to section 501?

**Mr Illingworth:** Yes.

**Senator CASH:** And that request came directly from the minister?

**Mr Illingworth:** I do not recall whether it was initiated by the minister or by the department.

**Senator CASH:** I need you to be very clear. There is a fundamental difference for me in what I am looking for in relation to whether or not it was initiated by the minister or by the department.

**Mr Illingworth:** The content of the advice was developed by the department, but the initial request was from the minister.

**Senator CASH:** Would you be kind enough to provide us with the date upon which the minister formally asked for the submission?

**Mr Illingworth:** I would have to take that on notice. Just to clarify: this is in relation to the—

**Senator CASH:** The SIEV36, because, in relation to the other three, your evidence is that no request was made by the minister, albeit you have taken on notice my question in relation to the Northwest Point detention centre on Christmas Island.

**Senator Carr:** I am listening carefully to what is being said here. As I understand it, this department handles tens of thousands of cases. It is unreasonable to expect officers to be familiar with each and every case that was discussed with the minister or the minister's office. As I understood the officer's evidence, he was taking on notice the process by which conversations may or may not have been handled with regard to those matters. He was not confirming that advice had been sought or not sought. He was taking on notice whether or not that event had occurred. As I read the situation, you are taking this a step beyond what the evidence actually intended.

**Senator CASH:** My understanding is that Mr Illingworth is taking on notice whether or not the minister requested a submission on section 501 from the department in relation to the Northwest Point detention centre on Christmas Island.

**Senator Carr:** But you said before that the minister had not. You made the assertion that evidence had not been sought.

**Senator CASH:** No. I said the evidence was he had not, in relation to the riots in March 2001. As a result of the Villawood protests and the riots of March 2011, the answer was no, but, in relation to the first issue I raised, it had been taken on notice. I may be incorrect in my summation, Mr Illingworth. Did the minister request a submission in relation to individuals involved in the riot in March 2011 as a result of the Villawood protests?

**Mr Metcalfe:** The minister has established a system where he has the opportunity to see sensitive cases, and I would regard these as falling into that category, in the character consideration process.

**Senator CASH:** Could I stop you there, Mr Metcalfe, because Minister Carr—

**Mr Metcalfe:** Senator, I was trying to answer a question.

**CHAIR:** Senator Cash, just let Mr Metcalfe answer and then you can have your right of reply or rebuttal.

**Mr Metcalfe:** The minister has made it clear that he would expect to receive advice on these matters.

**Senator CASH:** When did he make that expectation clear?

**Mr Metcalfe:** He made numerous media statements about this very issue around the time of those riots.

**Senator CASH:** Was that the riots in relation to the Northwest Point detention centre on Christmas Island?

**Mr Metcalfe:** Yes, and then subsequently the Villawood riots.

**Senator CASH:** You say that these are serious matters. However, Minister Carr has just thrown them in with tens of thousands of matters that come before the department and why should the department be aware of these?

**Mr Metcalfe:** Senator, I think you are trying to confuse the evidence that has been provided to you. Senator Carr has made the correct point. In fact, I do need to correct him. The department does not deal with tens of thousands of cases; we deal with millions of cases.

**Senator Carr:** Sorry.

**Mr Metcalfe:** I am sorry about that. Of course, Senator, we are aware of the importance of these cases, and the minister has made it clear that he expects, and he will, receive advice at the appropriate time in relation to these matters and that that is a key issue that will be decided if in fact any of these people are found to be refugees and if the issue then arises as to whether they should be considered for a protection visa. The minister could not have been clearer on this point.

**Senator CASH:** Mr Illingworth, I do need to confirm your evidence so that I am not verballing you as was suggested by Minister Carr. In relation to the Northwest Point detention centre on Christmas Island, are you taking that question on notice?

**Mr Illingworth:** I am sorry, could you repeat that?

**Senator CASH:** Did the minister request a submission on any individuals after the sentencing of three persons in November 2010 involving their involvement in an earlier riot at the Northwest Point detention centre on Christmas Island?

**Mr Illingworth:** That has been taken on notice.

**Senator CASH:** Okay. In relation to the riots in March 2011 and as a result of the Villawood protests and riots of March 2011, my understanding was that your evidence was 'No'. Is that correct?

**Mr Illingworth:** That is correct. No individual case submission has gone to the minister on those cases.

**Mr Metcalfe:** Has yet gone to the minister.

**Senator CASH:** 'Has yet', but—

**Mr Metcalfe:** Senator, your question is in the past tense.

**Senator CASH:** My question is: has the minister requested a submission from the department? If he has, the answer is yes; if he has not, the answer is no.

**Mr Metcalfe:** The minister has established a clear expectation that he will consider these matters, so he has requested—

**Senator CASH:** So you are saying Mr Illingworth is wrong?

**Mr Metcalfe:** Senator, again you are trying to confuse the answers. Your question is in the past tense: has the minister received such a submission?

**Senator CASH:** No, that is not my question at all. My question is: did the minister make a request? It is not whether or not he has received a submission. The minister is very good at issuing media statements stating that he is going to do certain things. I want to know in

relation to these cases whether he has made a specific request, not whether or not he has received something from the department.

**Mr Metcalfe:** The answer—

**CHAIR:** Mr Metcalfe, could I just assist here. Is your answer that the minister does not make a request on each and every incident?

**Mr Metcalfe:** That is correct, Chair.

**CHAIR:** But the department provides him with information on each and every incident?

**Mr Metcalfe:** My advice has been that the minister has made his expectations clear. He has established a system—

**CHAIR:** Which is that he wants information on each and every incident.

**Mr Metcalfe:** When these matters reach an appropriate stage, he will be provided with the advice. I have also outlined my concerns that some of these matters are sub judice; in other words, there are prosecutions pending.

**CHAIR:** So there is an implication that the minister when he first took up the position said, 'I want information about these cases in each and every instance.' Does the department then determine at what appropriate time in that incident the advice goes to the minister?

**Mr Metcalfe:** My evidence, to be quite specific, is that, firstly, I think we have taken on notice the very precise question that Senator Cash has asked in relation to the circumstances of something that occurred about 18 months ago, and, secondly, in relation to the more recent events at North West Point and at Villawood the minister has made very clear his expectations of the department that he will receive advice on these issues. Senator Cash's question has been asked in terms of, 'Has he received the advice?'

**Senator CASH:** That is incorrect.

**Mr Metcalfe:** Sorry, Senator. I would not—

**Senator CASH:** I asked whether or not the minister made a request.

**Mr Metcalfe:** The answer is yes, Senator.

**Senator CASH:** Why have we been sitting here for the last half an hour if that was the answer? Why has Mr Illingworth a) taken one on notice, b) said no in relation to a second one and c) said yes in relation to a third one if the answer is yes?

**Mr Metcalfe:** I think we have been quite clear. Firstly, we have taken the old case on notice. Secondly, in relation to the more recent events you were asking a very specific question, and my answer was that the minister has made it clear that he expects to receive such information.

**Senator CASH:** Did the department provide the minister with any advice on the provision, section 501, relating to the general conduct under section 501 of the act prior to the statement on Friday 18 March, when he said in relation to persons involved in the Christmas Island riots 'there is a more general test that simply goes to someone's conduct, and general conduct and whether that indicates they are of bad character. I will be examining those matters very, very seriously'?

**Mr Metcalfe:** Yes.

**Senator CASH:** On what the dates did the department provide the minister with the advice?

**Mr Metcalfe:** I will have to check the precise dates.

**Senator CASH:** Okay. Do you know how many times the advice has been provided?

**Mr Metcalfe:** I will have to check the number of times, but I personally was involved in discussions with the minister on this point.

**Senator CASH:** You personally were?

**Mr Metcalfe:** Of course, Senator.

**Senator CASH:** But you cannot remember when you had the discussions with the minister—on what dates.

**Mr Metcalfe:** I answered your question, Senator—he was given advice, and it was prior to that matter. I will check the specifics.

**Senator CASH:** I am no longer interested in the advice. You have given evidence that you met with the minister to discuss section 501 matters. On what dates did you meet with the minister?

**Mr Metcalfe:** That is what I have said I will give you advice about. I meet with the—

**Senator CASH:** So did you have conversations in addition to the advice that you provided the minister, or are you saying that the advice was both oral advice and written advice?

**Mr Metcalfe:** I will have to check on that point. The minister and I discuss many, many things—we talk almost daily—and certainly I have a recollection of a discussion on this issue. I will check to find which day that was.

**Senator CASH:** When did the minister decide to amend the Migration Act to strengthen the provisions relating to general criminal conduct currently before the parliament?

**Mr Metcalfe:** There was a provision of specific advice to him at the time that that particular event was occurring where he made clear that he wanted to move beyond his early commitments and to develop specific legislation. My recollection is that that occurred across the Easter weekend, but I would need to check that.

**Senator CASH:** Across the Easter weekend?

**Mr Metcalfe:** I will have to check on that, Senator.

**Senator CASH:** Did the department prior to 5 May 2011 receive any request to provide the minister with any legal advice in relation to the exercise of his powers under section 501 of the Migration Act?

**Mr Metcalfe:** Given you have asked a specific date, I will have to check.

**Senator CASH:** Okay.

*Senator Barnett interjecting—*

**Mr Metcalfe:** I have indicated that I would take that on notice. Senator Cash has asked very closed and specific questions, and it is open to me to give very precise responses. I will do that.



**Senator CASH:** Absolutely. Let us now turn to a more general question. Has the department received in the last 12 months a request from the minister to provide him with any legal advice in relation to the exercise of his powers under section 501 of the Migration Act?

**Mr Metcalfe:** I can confidently say yes.

**Senator CASH:** On how many occasions have you received such a request?

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

**Senator CASH:** Could you also provide when those requests were actually made?

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

**Senator CASH:** I want to confirm that the minister has sought advice from the department regarding the exercise of his power under section 501 of the Migration Act.

**Mr Metcalfe:** It is quite obvious from what we have been talking about this morning.

**Senator CASH:** However, you do not know whether or not it was prior to 5 May 2011.

**Mr Metcalfe:** Clearly the minister has received advice about section 501 of the Migration Act—

**Senator CASH:** He has. I have it in front of me.

**Mr Metcalfe:** because we have been talking about individual cases, systems and incidents, and advice has been provided on numerous occasions. You have asked a quite specific question in relation to 5 May, and I have taken that on notice.

**Senator CASH:** Can the department confirm the key differences between the instructions provided by the minister under direction 41 for the decision relating to section 501 of the act and those provided in direction 21 by Minister Ruddock?

**Mr Metcalfe:** I will have to see if Mr Illingworth has particular recollection of that.

**Mr Illingworth:** Ministerial direction 41 was formulated to reflect a body of concern input raised from organisations such as the ombudsman and the Human Rights Commission around the operation of the preceding ministerial direction—specifically around issues of what I would call getting the balance right between the need to deal quickly and efficiently with people who are non-citizens who represent a risk and, at the same time, reflect that in some cases these people will have spent essentially all of their adult lives and, often, their childhoods in Australia. There was a highly publicised case of an individual who had been removed consequent to a 501 decision and spent a considerable period of time in Serbia. That brought to light some of those issues of people whose country of legal nationality was not a country in which they had grown up or with which they had any contact or familiarity. So one of the key elements in moving from ministerial direction 21 to ministerial direction 41 was to make sure that there was a clear recognition that at some point, where somebody has spent a very long period of time in Australia, essentially they were people who should be allowed to stay or there should be some weight given to that when weighing up the other, adverse elements relating to the case.

The opportunity was also taken to deal with some long-running ambiguity around a concept in the early ministerial direction, which essentially related to community expectations. That was one of the factors that was to be considered and had been pointed out in court judgments. Community expectation is a very amorphous concept. Ask anybody and

they will know what the community expects, but if they have to write it down they will probably have differing views. Some people would say it expects that anybody who has committed a crime should be shipped overseas forthwith. Other people would say Australians believe in a fair go and, if you have served the time, you should have a chance to rehabilitate and the like.

So there was that ambiguity in that test, and we moved to a ministerial direction that placed the decision making about whether or not to cancel or refuse a visa in a risk-assessment framework to weigh up the likely harm that a person who had, for example, served a criminal sentence might present in future to the community, offsetting that by considerations that may warrant Australia accepting some of that harm, at least to an extent—for example, if there are young children who would be adversely affected if the individual's visa were cancelled, if the person had spent almost their entire life in Australia or if it were a one-off sort of incident. There are a lot of countervailing factors that would be weighed up.

**Senator CASH:** Can I confirm then that, under ministerial direction 41, as opposed to ministerial direction 21, you are saying there is no community expectation test?

**Mr Illingworth:** That is correct. The term as it appears in 21 does not appear in 41. But there are a range of other factors as well. There is a heavy focus on particularly serious crimes of violence and an expression in ministerial direction 41 about the abhorrence which the Australian community feels when it confronts those sorts of crimes, how serious that is and how serious it is when crimes are perpetrated against the vulnerable in the community.

**Senator CASH:** But one of the differences is that the community expectation test is not in ministerial direction 41 but is in ministerial direction 21. So that is a fundamental change to the ministerial directives.

**Mr Illingworth:** That is, but, as I pointed out, the community expectation test or terminology was in itself something that was leading to ambiguous and sometimes contradictory application. For example, in a tribunal setting, with the nature of the case one could say the community expects that the person should stay and another person could say the community expects that they should go. It is a term that is difficult to apply consistently.

**Senator CASH:** Is that your interpretation?

**Mr Illingworth:** Yes.

**Senator CASH:** In addition, my understanding is that under the protection of the Australian community mandatory consideration directive 41 abolished the subcriteria that visa refusal or cancellation may prevent or discourage similar conduct, general deterrence as well as specific reference to serious crimes against the Migration Act.

**Mr Illingworth:** It abolished the explicit reference to serious crimes against the Migration Act but picked up those elements in the broader listing of crimes. One of the things that was being found with the early ministerial direction with the focus on the language about crimes against the Migration Act was that, essentially, a person who was organising a fraud that was carefully calculated and involved tens of people in a serious attempt to undermine our border controls was being treated the same as the person who lied about their age or their high school qualifications. So you had potentially a disproportionate impact on people whose crime against the Migration Act, as it were, was providing a piece of false information for which they expressed remorse, it only affected themselves and there may have been other

countervailing factors that warranted them being allowed to stay—for example, if it were a spouse application.

**Senator CASH:** But certainly directive 41 abolished the subcriteria that visa refusal or cancellation may prevent or discourage similar conduct, which was the general deterrence provision.

**Mr Illingworth:** That is right.

**Senator CASH:** Did ministerial directive 41 also abolish references to non-citizens providing bogus documentation or providing a misleading statement or declaration as relevant to the consideration of a person's general conduct when considering whether they are of good character?

**Mr Illingworth:** Yes. There is an issue in drafting documents such as a ministerial direction on character considerations. There is always a tension and it is one that plays out in the courts when they try to interpret documents such as this. There is a temptation on the one hand to say, 'Here are the principles to use in decision-making and, PS, here's a list of the things that are particularly egregious and particularly serious,' but once you start writing a list the challenge is: where do you stop? If you start to have a list then the natural tendency, whether it is a tribunal or a court, is to look to see whether the particular crime or whatever in a particular case is on the list and then either to attach importance or not attach importance, depending on whether something is on the list. Even if you couch that list in terms of 'here are some examples', nonetheless there is a tendency to read it as an exclusive or complete list.

**Mr Metcalfe:** It is the curse of using the *eiusdem generis* rule—that the general is limited by the specific. That is why the direction was amended in this way: to remove the specific so that the general would not be subject to it.

**Senator CASH:** Has the minister expressed any dissatisfaction with the current directive, directive 41, or sought to issue any new direction, other than to take account of the changes to the act currently before the parliament?

**Mr Illingworth:** We are constantly, in our role as policy advisers to the minister, evaluating settings and providing advice to the minister. There is a healthy exchange of views and expectations between the minister's office and us. So it is not an area that is silent. It is being looked at closely along with all the other areas of public policy that we cover.

**Senator CASH:** Perhaps I could restate my question so we could have a more specific answer. Has the current minister expressed any dissatisfaction with the current directive or sought to issue any new direction?

**Mr Illingworth:** I have to take that on notice.

**Senator CASH:** Have you had any conversations with the minister in relation to directive 41?

**Mr Metcalfe:** I want to be careful about not straying into the issue of policy advice to the minister.

**Senator CASH:** I am not asking him for policy advice. I am asking him if he has had any discussions with the minister in relation to directive 41.

**Mr Metcalfe:** That would be in the nature of policy advice. It is hard to have a discussion about that that did not go to the issue of policy advice.

**Senator CASH:** Has the current minister expressed any dissatisfaction with the current directive?

**Mr Metcalfe:** We have taken that on notice and we can check.

**Senator CASH:** This is budget estimates. After yesterday's performance, I have to say: why has the department even bothered turning up today?

**Mr Metcalfe:** Senator, we are very happy to answer your questions.

**Senator Carr:** There is a resolution to that effect.

**Senator CASH:** So that is the only reason they are here—because they certainly have not prepared for budget estimates. It is embarrassing.

**CHAIR:** Senator Cash, you had a number of questions—many, many, many questions—answered yesterday. I think it is very unfair.

**Mr Metcalfe:** This department answers more questions from the committee than any other department.

**Senator CASH:** Let us not get into why that is the case.

**Mr Metcalfe:** It is because you have lots of questions and we do lots of things.

**Senator CASH:** It is because of the massive policy failures.

**Mr Metcalfe:** It is a massive operational area.

**Senator CASH:** Mr Illingworth, do you know who actually drafted direction 41? Were you responsible for drafting direction 41?

**Mr Illingworth:** I was heavily responsible for drafting 41, but it had a range of inputs.

**Mr Metcalfe:** There would have been lawyers all over it.

**Senator CASH:** Are there any plans to restore the community expectation criteria for conduct provided for in direction 21?

**Mr Illingworth:** As I mentioned earlier, we are constantly looking at the policy settings in this and other areas. There is no specific plan to make the change that you suggested, but we are constantly looking at the impact of directions.

**Senator CASH:** Did you say there were no plans to make the changes that I suggested?

**Mr Illingworth:** I have no specific plans to—

**Senator CASH:** To restore the community expectations criteria?

**Mr Illingworth:** That is correct.

**Senator CASH:** Will the department be providing advice to the minister to reinstate the provisions of ministerial direction 21 and revoke direction 41?

**Mr Illingworth:** That goes to the provision of policy advice.

**Senator CASH:** Given that these directions are binding on decision makers, how will decision makers comply with direction 41 and apply the new character provisions if they are passed into law? Will there not be a direct conflict?

**Mr Illingworth:** I am sorry, Senator; could you repeat the question.

**Mr Metcalfe:** I think you are asking: will the direction need to be updated to take account of the changes?

**Senator CASH:** Exactly, because the directive is binding on the decision makers.

**Mr Metcalfe:** Yes.

**Senator CASH:** And you will have a piece of legislation that—

**Mr Metcalfe:** That is right—which is more binding on the decision maker.

**Senator CASH:** It is more binding. So what will actually happen?

**Mr Metcalfe:** It is a very fair comment.

**Senator CASH:** I am assuming the department has turned its mind to this.

**Mr Metcalfe:** Clearly the direction will need updating if that legislation is passed by the parliament.

**Senator CASH:** Because these directives are binding, is that something that will happen overnight so that there is no cause for concern?

**Mr Metcalfe:** The answer is that, if the act is amended, of course the section 499 direction would need to be updated to equate with the law. You say 'overnight'. I am not sure—

**Senator CASH:** Is there a procedure that is currently put in place in this event? This is legislation that—

**Mr Metcalfe:** Of course we are planning that, if the legislation passes, the entire administrative arrangements, including the 499 direction, would need to reflect the changes to the law.

**Senator CASH:** What type of process do you put in place to ensure that, once the legislation is passed, the directive is updated? How fast is that process?

**Mr Metcalfe:** That is work for Mr Illingworth's branch. As a matter of course, they have been involved in the preparation of the legislation and the supporting material. No doubt if there are hearings before committees of the parliament then we will be participating in that, and we are very conscious of the related action that will need to occur in terms both of advice and directions to decision makers and of the updating of any guidance or binding directions that may exist under 499.

**Senator CASH:** Mr Illingworth, is there a process that your particular section puts in place?

**Mr Metcalfe:** That is just what his job is. The job is to provide policy advice and to then assist in the implementation of decisions taken by government in the developing of drafting instructions, legislation and associated material. So the process is that Mr Illingworth does his job.

**Senator CASH:** I now turn to a different issue. During the 2010-11 financial year to date, how many unlawful non-citizens were located as a result of the department's compliance activities?

**Mr Illingworth:** During the financial year to the end of March, there were 10,323 locations.

**Senator CASH:** That is to 30 March. How many of the 10,323 have been removed, and how many are pending removal?

**Dr Southern:** I suspect we have the number of removals during that period, but it would relate to a population that includes some of those people found this year but also people found the previous year.

**Mr Metcalfe:** It is a dynamic caseload, obviously, so to extract those exact 10,000 people would mean that you would have to go back and see each one—that sort of thing. But we certainly can provide you with aggregate information.

**Senator CASH:** Yes, and I think we have been provided with that before. So, if you have to take it on notice, what I would be looking for is how many of those mentioned have been removed, at what cost and to which countries.

**Dr Southern:** Certainly. To give you the overall number of returns and removals out of the compliance program, it is 7,484 to the end of March this year.

**Senator CASH:** Thank you. How many non-Australian citizens who have been convicted of a serious crime and served more than 12 months imprisonment have been released from prison and into the community?

**Mr Metcalfe:** That is another way of asking how many cases have not been the subject of cancellation or refusal, I suspect.

**Senator CASH:** That was the next part of the question. How many have had their visas cancelled under the provision of the Migration Act to remove them from Australia?

**Dr Southern:** We will have to take that on notice.

**Senator CASH:** Can the department guarantee that the level of compliance bona fide and investigative activity has not been curtailed as a result of the pressure being put on the department by the number of unprecedented irregular maritime arrivals?

**Dr Southern:** The department has certainly continued to conduct onshore compliance operations and to detain people where appropriate. The staff who are dedicated to that activity continue to do that. As you would know, people of interest to compliance include overstayers, cancellées and people who breach their visa conditions. We have maintained the level of effort there.

**Senator CASH:** Have you or anyone from within the compliance area put in a request for additional resources?

**Mr Metcalfe:** We would have to check on that. Again, it is a question of whether anyone has done it. It may have occurred. Whether or not the department and the allocation of resources is seen as a meritorious argument is something that we would have to explain as part of that particular—

**Senator CASH:** Are you satisfied with the number of staff that you have?

**Dr Southern:** :Yes, Senator.

**Senator CASH:** How many staff do you have?

**Mr Illingworth:** In the mainstream compliance part of the service delivery network, we have just on 250 ASL.

**Senator CASH:** Where are they located?

**Mr Illingworth:** I would have to take that on notice. They are distributed across the network.

**Mr Metcalfe:** They are located in state and territory offices and in the national office. If you would like a disaggregation—

**Senator CASH:** A breakdown would be greatly appreciated. How many people have had their citizenship revoked as a result of fraud in the gaining of permanent residency and citizenship?

**Mr Metcalfe:** That would probably be a question under outcome 5, I suspect, under Citizenship.

**Senator CASH:** I refer to the answer given to question on notice 155 from the February additional estimates, which states that the number of people who left Australia subject to compliance related departure who have previously arrived in Australia lawfully and had been found not to be owed protection was 855 in 2008-09 and 999 in 2009-10. Are you able to provide details of the entry visas of these people when they initially entered Australia?

**Mr Metcalfe:** We will obviously have to take that on notice. Again, it will be a question of whether our systems reveal—I imagine the majority would have been by visitor visas. That is just intuitive. Some would have been on student visas.

**Senator CASH:** The specific category I am looking for—and obviously I would like all categories—is visa category 456, which is the one we discussed yesterday. On that Chair, I have three questions on 456 that I was told to ask today and they will be my final three questions on compliance.

**Mr Metcalfe:** We will look at our answer to 155. Your precise question, Senator, is: can we explain the visa categories as they entered Australia?

**Senator CASH:** Yes.

**Mr Metcalfe:** We will obviously have to check on that.

**Senator CASH:** How many 456 visa applicants has the department monitored in each of the last three years and the year to date—and then specifically in relation to immigration condition 8112, where the holder must not engage in work in Australia that might otherwise be carried by an Australian citizen or an Australian permanent resident.

**Dr Southern:** We would have to take that level of detail on notice.

**Senator CASH:** Is the department aware, or have concerns been raised with you, about the use of condition 8112 on the subclass visa?

**Dr Southern:** I can recall one instance that came to our attention, in the last couple of months while I have been in the department, that related to workers on an offshore facility.

**Senator CASH:** But apart from that the department has not been made aware of potential instances of abuse in this particular sub condition?

**Dr Southern:** That is one that I recall, but we could take on notice whether there have been other issues raised with us.

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

**Mr Metcalfe:** The answer is no, but I will double-check. We had quite a discussion yesterday about the 456 visa—

**Senator CASH:** I just thought I would put it to the compliance—

**Mr Metcalfe:** primarily as a sort of a tourism visa with the word being purely incidental. It has been around for many years now, but I will check on that precise point and come back to you.

**Senator CASH:** Thank you. Chair, I believe my compliance related questions are complete.

**Senator PRATT:** With respect to complementary protection legislation that I know is currently before the parliament, I am interested in the motivation and the flaws in the system that we are trying to repair through this legislation. Is it true that applicants who would be eligible for protection under this legislation currently, in the first instance, have to go through the process of applying for a protection visa, being rejected, seeking review, being rejected again and then relying on ministerial intervention?

**Mr Metcalfe:** Yes. Chair, I note that we have sort of gone back to outcome 2, but I do have the officers here who can assist on that issue. It does relate to refugee issues. We are very happy to answer the question, because we have the right people here. The short answer is yes.

**Senator PRATT:** That seems like a lengthy process. What is the average—and I do not need you to take that on notice, I am just after a view about how long that currently takes.

**Mr Fleming:** As a rough guide, you would be looking at somewhere between two and four months for a primary process and then two to four months, possibly longer, for a review process before there was even access to the power in section 417, which is the power typically used to implement our complementary international protection obligations.

**Senator PRATT:** Can I ask how the safeguards need to be improved in terms of why the current arrangements are inadequate? Ultimately it is a question of ministerial discretion at the end point as opposed to a more objective framework provided for by legislation.

**Mr Fleming:** Essentially the key advocates for complementary protection legislation have pointed to two things. The first is, as you pointed out in your previous question, people have to go through a process of applying for something they know they are not eligible for and applying for review of something that they know they are not eligible for to get access to discretion that then allows the assessment of it. The second thing they typically point to is the lack of review and scrutiny, because it is done in the context of the minister's non-delegable public interest discretions, which are not subject to review or a requirement to give reasons.

**Senator PRATT:** Thank you. Can I ask about the character test? There has been some canvassing of this already this morning, but I wanted to ask about the nature of inappropriate and criminal behaviour in detention that the character test is now supposed to pick up. Specifically, I want to ask what changes have been made and how it is envisaged that ranges of behaviours will now be brought into view for that test.

**Mr Metcalfe:** Yes, Senator. It is probably evident from the evidence given to the committee both on this occasion and on previous occasions that there is a very long history to the character provisions in the Migration Act. Indeed, the most recent form of section 501 was introduced, from memory, in 1997. I was the minister's chief of staff at the time. It was largely in response to a case by the name of Lorenzo Ervin, a person who had been a Black



Panther who hijacked a plane to Cuba and managed to come to Australia, where it was found that the provisions at that stage were inadequate to manage his case.

**Senator PRATT:** Extraordinary.

**Mr Metcalfe:** The then government introduced changes to section 501 through a bill called the Migration Legislation Amendment (Strengthening of Provisions Relating to Character and Conduct) Bill. In particular, provisions allowing for the cancellation of visas without notice, without the provision of natural justice but with a 'show cause' process later, were introduced.

Over the years, there have been some fairly controversial cases, and I certainly do not want to waste the committee's time by canvassing all of them, but you may recall the case of Mr Jovicic, the man who had been deported to Serbia who ended up destitute and who eventually was brought back to Australia because he had come here as a two-day-old, I think. Of course, we have seen cases such as that of Dr Haneef, where the provisions of the legislation relating to association were seen as inappropriately applied and tested, and there has been litigation in relation to that.

More recently, we have seen cases where ministers have expressed very great concern about decisions taken by tribunals or courts. One—and there are no privacy issues here because this is very clearly in the public domain—relates to Mr Taufahema, who was involved in the murder of a policeman, Senior Constable Glenn McEnally. The minister cancelled that visa on 31 August 2009; he stepped in and undertook that work.

That is all context for the fact that the provisions are important but have been the subject of contest over the years—and we have discussed with Senator Cash various ministerial directions that have been made in relation to that. It is quite clear from advice that we have and advice that has been provided that, in relation to persons in detention on the basis of their being asylum seekers or failed asylum seekers, in cases where they have engaged in criminal activities of assault, destruction of property or affray, the provisions needed strengthening, and that is the legal basis for the provisions that have been introduced for the parliament's consideration. That is a short summary of the issue.

**Senator PRATT:** Thank you. I have certainly had constituents come to me about this. Clearly, there are a number of cases of people migrating here with their parents where their parents do not take out citizenship for them. All of their formative years are spent here. They may commit criminal offences here. In many instances, I suppose, their lives were already so dysfunctional by the time they turned 18 that, in a sense, the responsibility to think about their citizenship status was not front of mind. Can you comment on the issues behind dealing with those kinds of cases.

**Mr Metcalfe:** Yes. That really goes to the balancing of considerations that weighs very heavily, and the former minister sought to ensure that there was a highly professional approach. That is not in any way suggesting that those who have made those decisions in the past, usually deputy secretaries of the department, have been anything other than highly professional, but we essentially needed someone who was full time weighing up these issues. So we have appointed a principal assessor, whose job it is to make the vast majority of these decisions, with the rare case being referred to the minister because of particular public interest. That principal assessor is a former District Court judge and so has the judicial

capability to weigh evidence and deal with those issues. You are absolutely right: issues such as whether a person spent their formative years in Australia, the nature of the crime, whether or not recidivism is present and they continue to offend, the balancing of issues concerning the rights of the victim or the victim's family, and community standards, together with any relationships that the potential deportee has through marriage or children are all issues that are weighed up.

There is a right of review in relation to decisions taken by the Department with the Administrative Appeals Tribunal. That is usually where a minister strongly disagrees with, or has concerns about, a decision taken by the tribunal or a subsequent litigation. The minister may step in, and we have seen that occur on a couple of occasions in particular cases. Those are the very issues that the various ministerial directions have sought to weigh and balance.

Of course, there are several players in this field; it is not just the views of the government, but interpretations to legislation by the courts, as we saw with Dr Haneef, have been critical in the administration of this area. So in providing advice to government, and in considering that advice, there is a weighing up of the contemporary interpretations. Mr Illingworth made the point before about how sometimes in attempting to be very specific about some things you actually fall into a trap of removing the general. That is one of the issues that was addressed in relation to direction 41, which we were discussing with Senator Cash earlier.

**Senator PRATT:** Thank you. Clearly, we do not expect Australian citizens or permanent residents to run around committing crimes but do you think there is a general awareness amongst permanent residents who do not have citizenship about the implications of their status should a family member at any point find themselves in trouble with the law?

**Mr Metcalfe:** You would be aware that there is a general ability after four years, and after passing the citizenship test and the associated character and police checks and whatever, for people who migrate to Australia to acquire citizenship. However, of course we do find some people who may have come here and then committed offences fairly quickly who are unable to access citizenship.

**Senator PRATT:** And rightly so.

**Mr Metcalfe:** Or we find, of course—sadly—that a significant amount of our caseload are New Zealand nationals who have come in on the particular arrangements we have with New Zealand, where they are not regarded as permanent residents and do not have a pathway to citizenship. Indeed, I chance my arm and say that a fair proportion of the caseload actually relates to New Zealand nationals who commit egregious crimes in Australia.

One thing that has been very important, though, is not just the legal and decision-making arrangements but ensuring that the department understands who the caseload is. Therefore, a major effort that we put in place in recent years was to develop very good relationships with the criminal justice and correctional authorities in the various states and territories to identify whom within the caseloads are not citizens and who are therefore potentially liable to character cancellations. We strengthened our own departmental arrangements some years ago, when Senator Vanstone was minister, to create a specialist group of staff—the National Character Consideration Centre—to focus specifically on this. That has been added to in the last couple of years by the addition of the principal assessor as a decision maker.

**Senator PRATT:** It is certainly something that my office, and I suppose many other members of parliament's offices, deals with with reasonable frequency, so I appreciate that insight.

**Senator PRATT:** How do the number of irregular maritime arrivals so far in 2011 compare to those in 2010? I do appreciate that a very different number of months have transpired.

**Mr Metcalfe:** Yes. We will give you that figure. I should also point out that the minister published some statistics yesterday that are now available that will provide some detail in relation to this.

**Mr Moorhouse:** To the end of April this financial year the total number of IMAs has been 4,484. Last year there were 5,615.

**Senator PRATT:** How do these arrival numbers compare to other countries internationally? I suppose it has been a particularly busy year in terms of push factors around the globe, particularly in the Middle East. How does that compare to Italy and other places in the EU?

**Mr Metcalfe:** In my opening statement yesterday morning I provided some information about arrivals in Australia being a very small proportion of the overall number of asylum claims internationally. I think I used the particular example of the Italian island of Lampedusa where many thousands of people, largely Tunisian nationals, have arrived in a short period of time.

**Senator PRATT:** Can you run through the number of asylum seekers? There have been debates about asylum seekers in Malaysia. That has clearly been put on the public record here. I think there are 100,000 or so. What about Thailand and Indonesia? How do we compare in 2011 on that front?

**Mr Fleming:** First of all, the broad global figures generally are: there are 43 million forcibly displaced persons around the world, including about 27 million who are internally displaced, still in their own country; around 15 million who are refugees; and around one million asylum seekers where it is not entirely clear whether they would be technically refugees. That includes 5.5 million refugees who are assessed as being in a protracted refugee situation.

**Senator PRATT:** What does that burden look like in the region?

**Mr Fleming:** In the region there are about four million refugees. That includes refugees in countries such as Malaysia and Thailand that we have talked about.

**Senator PRATT:** Do you have a figure for Thailand?

**Mr Fleming:** I do not think I have that handy. I can get that to you. Malaysia, as we have said, has around 90,000 refugees and asylum seekers. As I said, I do not have the figures for Thailand, but we can get those to you. You also asked about asylum seeker trends. As I said, there are around 43 million forcibly displaced persons. The overwhelming majority of those get to a place of nearby relative safety and security and stay there, as evidenced by around 27 million having not even left their country of nationality, but around 400,000 a year do seek asylum in an industrialised country and around two per cent of those seek asylum in Australia.

**Senator PRATT:** Are you able to give me a bit of an indication—we know we have about 90,000 in Malaysia—about the distribution of the four million in the region?

**Mr Fleming:** I do not have any more detail on precisely where in the region. There are a variety of countries, like Thailand and Malaysia, and a smaller number of asylum seekers are in Indonesia, but we can certainly get all of those details for you.

**Senator PRATT:** Whilst there is a lot of public debate about irregular maritime arrivals, it would seem that it is only a very small number. I suppose that is because we are a fair way away from source countries where people seek asylum.

**Mr Fleming:** It is a combination. Firstly, the overwhelming majority of forcibly displaced persons do not actually seek asylum in an industrialised country, and Australia's number is small for a number of regions, including our physical distance and the difficulty in getting to us.

**Senator PRATT:** Notwithstanding the danger that people undertake to get here.

**Mr Fleming:** That is correct.

**Senator PRATT:** Thank you very much.

**Mr Moorhouse:** Could I just clarify the response I provided before. I did not specify that the number I gave you included crew.

**Senator PRATT:** I am sure that is only a very small proportion.

**Mr Moorhouse:** Crew of 345 were included in that number.

**Senator PRATT:** Thank you very much.

**Senator HANSON-YOUNG:** I want to touch on a number of different areas. Correct me if I am wrong. My understanding is that you are happy for me to go across 4.2 through to 4.4.

**Mr Moorhouse:** That is correct.

**Senator HANSON-YOUNG:** I will start with children. I want to know the number of children who are still being detained in facilities of any kind.

**Ms Lynch-Magor:** I will give them to you by breakdown. The number of unaccompanied minors currently on the mainland is 417.

**Senator HANSON-YOUNG:** There are 417 on the mainland?

**Ms Lynch-Magor:** Yes. The number of accompanied children—so children in family groups—is 631.

**Senator HANSON-YOUNG:** On the mainland?

**Ms Lynch-Magor:** Yes, on the mainland. That is including in community detention.

**Senator HANSON-YOUNG:** How many of those are in community detention?

**Ms Lynch-Magor:** I can add it up for you. I will do that and come back to you in this session.

**Senator HANSON-YOUNG:** Okay; I will come back to you for that one. How about unaccompanied minors on Christmas Island?

**Ms Lynch-Magor:** I can give you those figures. We have 130 unaccompanied minors and 51 accompanied minors on Christmas Island.

**Senator HANSON-YOUNG:** Was that 61 accompanied minors?

**Ms Lynch-Magor:** Yes.

**Senator HANSON-YOUNG:** How many of those either accompanied or unaccompanied minors on Christmas Island are being held in the Bravo compound?

**Mr Moorhouse:** The numbers that we just gave were prior to the Bravo compound being cleared to use for people who have been intercepted since 7 May. In terms of people who are currently in Bravo compound, I will ask Mr Allen to give you a breakdown of those numbers.

**Ms Lynch-Magor:** In the Bravo compound we have nine unaccompanied minors and eight accompanied minors. Do you want me to come back to you on the community detention?

**Senator HANSON-YOUNG:** Yes. Maybe you need to do this calculation at the same time, but I will ask you and you can let me know. Out of the total figures, how many minors are waiting to be moved into community detention—that is, are partway through that clearance process?

**Ms Lynch-Magor:** My colleague, Kate Pope, who is handling the CD program, can answer both of those questions.

**Ms Pope:** As at 23 May the minister had approved 843 people for placement into community detention. Of those 420 are children—305 were accompanied and 115 unaccompanied.

**Senator HANSON-YOUNG:** What was that final figure?

**Ms Pope:** It was 115 unaccompanied. Of those, there are currently 290 children actually living in community detention. That is 224 accompanied and 66 unaccompanied. There are 95 clients approved and currently in transit to community detention. Of those, 36 are children—35 of them are accompanied and one is unaccompanied. When they move, there will be 326 children in community detention—259 accompanied and 67 unaccompanied. In addition, 145 clients have been granted visas since going into community detention. So they have been in and moved through. That includes 94 children—46 accompanied and 48 unaccompanied.

**Senator HANSON-YOUNG:** Thank you for those figures. I would like to move on to some of the other issues—specifically in relation to security clearances. I asked the department during the February estimates hearings how many people were currently being held in immigration detention simply waiting for their ASIO security clearance to be completed before being able to be granted their visa. The figure given to me in February was 900, approximately. I am wondering what the current status is.

**Mr McCairns:** The number as of 16 May is 469.

**Senator HANSON-YOUNG:** I assume it is a combination of people who were originally in that 900 group in February and some new people.

**Mr McCairns:** Yes.

**Senator HANSON-YOUNG:** Out of that 469 figure, is there an average length of time that those people have been held in detention?

**Mr McCairns:** It is very difficult to say. I understand the question. The problem with averages is that some are cleared quite quickly and some take a very long time. An average in and of itself actually disguises the span. Maybe if I could take it on notice then I will give you the span.

**Senator HANSON-YOUNG:** That would be great. The span would be perfect. Drilling down a little bit further, we know that a number of people, Burmese asylum seekers, particularly those being detained in the Darwin facility, have been there for quite some time—some for over two years, I understand—and are still waiting for their security clearance despite having gone through the other processes. You may need to take this on notice. I would like to know how many of those Rohingya Burmese asylum seekers are still waiting for their clearance. What type of advice has been given to them about their current condition?

**Mr McCairns:** I understand, Senator. I will take the numbers on notice. It is a matter for ASIO, obviously. Senators can explore that later in the week. What I am told by my colleagues in ASIO is that some cases require what they term a full investigation. It is more than an advice; it is a full and detailed investigation. Some of these necessarily take quite long times, especially when people's identities are not clear or they are disguising certain elements about themselves. My colleagues in ASIO tell me, and I am sure the Department of Immigration and Citizenship would agree, that national security is paramount and is the primary consideration there. But I will attempt to get you these figures either through the day or on notice.

**Senator HANSON-YOUNG:** While it is a matter for ASIO to complete those security clearances, and we understand the difficulties of that—I have spoken about them in this committee before—at the end of the day it is DIAC caseworkers who are on the ground in the centres having to communicate to these individuals. What is the standard process of communicating that to those individuals who have been detained for long periods of time and who have been given all of their other clearances and are simply waiting to that ASIO clearance?

**Mr McCairns:** I will leave that to my other colleagues.

**Ms Wilson:** In relation to your comments about the Burmese Rohingya in particular, it is probably useful to note that we watch the cohorts coming through. Mr McCairns and I work very closely with ASIO to make sure we are focusing on the group that has been detained for the longest. In recent months there has been quite a bit of movement through that cohort coming through. We are still happy to get you that average. There are some checks we can do, like the health check, in parallel while waiting for other checks, but there are final checks that cannot be done until the clearance comes through, because one of the last things to certify is identity. That comes together right at the end when you have everything else in place.

**Senator HANSON-YOUNG:** Ms Wilson, the next question I wanted to ask was about the process by which these checks are undertaken. My understanding is that you have changed the process—that now ASIO will only conduct that thorough investigation and security clearance once somebody has already had the other criteria fulfilled for refugee protection.

**Ms Wilson:** We discussed this yesterday. The process has changed. In the past all IMAs were referred to ASIO as they started to be processed. The change that has been made is that they are now 1A-met, which means they have gone through the process and been determined to be refugees before they are referred to ASIO. That actually means there is a more targeted, focussed group for ASIO to consider rather than looking at the whole group as they come in—usually in boat order, date order and all those things. What we have now done is funnelled it to only 1A-mets that get referred to ASIO and then they can be the priority focus for their activities, if that makes sense.

**Senator HANSON-YOUNG:** Yes. Does that take into account, though, people who have failed at the first assessment and they are appealing—they would have to wait?

**Ms Wilson:** Yes, they would wait till the appeal, but then they would be put back into that system fairly quickly.

**Senator HANSON-YOUNG:** Thank you, Chair.

**CHAIR:** Will go to a break now. Thank you.

**Proceedings suspended from 10:31 to 10:48**

**Senator HANSON-YOUNG:** How many people currently have been found to be in genuine need of protection but have failed their security clearance and have an adverse finding from ASIO?

**Mr McCairns:** I will just have to clarify that figure. I do not want to give you the wrong number on something so important. For irregular arrivals, the total number of adverse assessments from ASIO for 2010-11 was 20.

**Senator HANSON-YOUNG:** Are any of those children or minors?

**Mr McCairns:** I do not have that information to hand but I will find it out for you. I very much doubt it.

**Senator HANSON-YOUNG:** If that 20 does not include children, are there children accompanied by adults within that group?

**Mr McCairns:** I will find that out for you. I will try and do it during the day.

**Senator HANSON-YOUNG:** Can we go back to community release now?

**Ms Pope:** I have just been in the minister's office getting the latest figures on the submissions that have been signed, so I can update the figures. A further 99 clients have been approved. I will just have to do a quick bit of maths here. That makes 942 in total. That includes 467 adults and 475 children. The breakdown there is 326 accompanied children, and there were 59 unaccompanied minors in the submissions just signed. That takes us to 170 unaccompanied minors.

**Senator HANSON-YOUNG:** Are those submissions that have just been signed people who have been approved to move out but are not out yet?

**Ms Pope:** They have addresses ready. The accommodation is ready for them. We have to have that in place before the minister can sign the agreements for them. That has just happened, so it is now about transport and moving the people.

**Senator HANSON-YOUNG:** The minister set his own timeline of 30 June to remove the majority of what have been deemed to be vulnerable children and family groups. I know that we have spoken in the past about this. Last time I think it was Jackie Wilson who went through the criteria for what makes someone vulnerable. Come 30 June, how many children and family groups will there be remaining in the traditional detention facilities?

**Ms Pope:** That is a little tricky but I will try and project it. On current figures, there are about 6,400 people in detention, and around 4,000 of those are single adult men. The remaining 2,400 are families and their attached adult males plus unaccompanied minors and accompanied children. The minister's announcement was in relation to children. The majority of children would be in community detention as opposed to detention centres. At the moment

there are 1,077 children in detention. My figures are a little more up-to-date than the date that we are using for the rest of the department's figures; therefore the proportion has to be that more than half of those children are living in community detention. We are on track to achieve over 50 per cent of that number by 30 June.

**Senator HANSON-YOUNG:** There could be in the vicinity of 2,000 children or family groups that are still in detention come 30 June.

**Ms Pope:** No, because I am only talking about the children. My estimate for the total number of people who will be in community detention by then—we look at the children and we add the adults—is somewhere between about 1,100 and 1,200 people. That is likely to be around 500 or 600 children and about the same number of adults.

**Senator HANSON-YOUNG:** Okay. What happens from 30 June? If we are still waiting for an announcement from the minister, please tell me. But from the department's perspective, are you planning to continue this process of moving out children and their vulnerable family groups post 30 June?

**Ms Pope:** That is certainly our anticipated position and that is the way we are operating.

**Senator HANSON-YOUNG:** Have you been given a direction from the minister to do that?

**Ms Pope:** I think this may be subject to a cabinet decision, but I am not certain of that. Certainly the indications are that we will be continuing.

**Senator HANSON-YOUNG:** In the budget papers, there are various breakdowns of the costs of the system. What is the budgeted forecast for the community release program and how much is that costing?

**Ms Pope:** That is very difficult to estimate at this point because the program is still new. A range of arrangements are still being put in place and the program is still expanding. We do not have a good figure yet on what we expect it will cost. I can tell you how much it has cost so far, which is in the vicinity of \$2.4 million, but that does not reflect what the mature costs would be. There will be some things that are higher and there will be some economies of scale that we will realise in the longer term when we are operating at what might be some steady state capacity.

**Senator HANSON-YOUNG:** That would explain why there is no specific line item that refers to that.

**Ms Pope:** That is right.

**Ms Wilson:** It is an administered expense in the community detention services line. As you know, the people in community detention are still being detained and, as Ms Pope said, we will be doing a formal evaluation of the costs and the effectiveness of that program. As I think I told you last time, we anticipate that the cost of caring for clients in CD will be comparable to those in detention. Until we get a reasonable number out there and deal with all the start-up costs we are not in a position to talk at that level of detail.

**Senator HANSON-YOUNG:** I think that covers my questions on the community release program, so thank you.

**Mr Metcalfe:** I would like to add something before we leave that line of questioning. In my opening statement yesterday I talked about our appreciation for our various stakeholder



and service provider groups. I think in this area there should be a special note made of the extremely positive work that is being done by our advisory group that comprises members from the Council for Immigration Services and Status Resolution, the Red Cross in particular as the primary service provider and the various faith based, not-for-profit and welfare agencies which are working very closely with the department. This is something that we are very pleased to be doing. It is clearly off to a successful start with more to be done. It is only happening because of the goodwill of many people. I just want to thank them for that.

**Senator HANSON-YOUNG:** I would briefly like to go to the issue of the character test.

**Mr McCairns:** Senator, I do apologise. Of course, children are not subject to security assessments, so the answer is zero. I will find you the answer for the 20.

**Senator HANSON-YOUNG:** Yes. I assumed that was going to be the answer.

**Ms Wilson:** Could I just add to that. Unaccompanied minors, 16- and 17-year-olds, are passed through ASIO for checking, but other children—

**Senator HANSON-YOUNG:** But none of them are in this group of 20?

**Ms Wilson:** We need to find that out for you. We also need to find out which children are connected to parents in that group.

**Senator HANSON-YOUNG:** That would be great. Thank you.

**Mr Metcalfe:** You were going back to the character test—that is, 4.1.

**Senator HANSON-YOUNG:** I wanted to know how many people currently in detention and found to be in genuine need of protection—genuine refugees—have failed the character test.

**Mr Metcalfe:** I think the answer is that at this stage there are none but that there are a number of persons who will be the subject of consideration as to whether they do in fact fail the test.

**Senator HANSON-YOUNG:** Based on changes to legislation?

**Mr Metcalfe:** Based on their actions, based on—

**Senator HANSON-YOUNG:** Under the current legislation or with the—

**Mr Metcalfe:** That is right. Mr Illingworth may be able to explain this. As I was discussing with Senator Cash this morning, the minister has made clear the government's expectations of people's adherence to appropriate behaviour. The issue of the character test only comes following any view that we may have about whether the person is a refugee and as part of the final checks. That is usually late in the stage. There is a consideration, of course, as to whether the person is subject to criminal charges and the outcome of those charges. That can take some time to work through the system as well. I will correct myself on notice if I am wrong, but I think the answer to your question is no, but clearly there are some persons whose behaviour has brought them to the concern of authorities and the aspect of their character will be a key consideration in relation to the visa matters that may be dealt with. The government has indicated that not only does it go to whether or not a visa is granted but the type of visa that might be granted to such a person.

**Senator HANSON-YOUNG:** I accept that. I am unclear, though, as to whether you are talking about the legislation as it currently stands, not as per the amendments that—

**Mr Metcalfe:** The government's intentions are clear. When matters become available for consideration, they will be considered in the context of the law applicable at the time. Obviously, there is legislation currently before the parliament and it would depend on whether it is in effect at that particular time.

**Senator HANSON-YOUNG:** Regarding the statement as to whether there are currently people who may be subject to the character test, as it currently stands, you are not making a judgment on those people.

**Mr Metcalfe:** It is important that I do not prejudge any case. The department may have to either make decisions or provide advice, and we obviously need to be impartial in that aspect. I am just talking in the theoretical sense. The aspect of a person's character will be considered under the applicable law at the time that decision is taken. The government has clearly foreshadowed changes to the law that is currently before the parliament. The minister has also indicated that the existing powers of the act would be used if appropriate, but it is clearly seeking to further strengthen those powers.

**Senator HANSON-YOUNG:** Thank you. I want to touch on a particular service provider, Serco. I am going to finish up at 11:15 so that other senators can ask questions, so I might need to come back to this after lunch. I want to know how many breaches of the contract are currently listed in relation to management and service provision by Serco.

**Ms Lynch-Magor:** The Serco contract provides significant capability for the department to ensure that the contract is appropriately administered, and we certainly have abated Serco over the period of this contract on many occasions for their failure to deliver the contract. With the way that the contract is structured it does not record breaches per incident but it has a series of abatements that apply to certain metrics. Month by month, in the event that Serco are unable to meet all of the things that they need to meet at every centre in the contract, they are abated for those. So they have been abated since the beginning of the contract after they passed acceptance testing. But it is not recorded in a recordable number, as in X number of breaches this financial year, because of the way that the abatements work.

**Senator HANSON-YOUNG:** We have had this discussion before about the lack of data. Surely there must be some way. This is not just a huge system that the department has contracted out; it is also a lot of taxpayer money.

**Ms Lynch-Magor:** Of course.

**Senator HANSON-YOUNG:** We have a budget before us today that is talking in the vicinity of \$1 billion over the forward estimates for these types of facilities being kept operational. If there are breaches, surely you would want to be able to see whether they are systematic.

**Ms Lynch-Magor:** Of course. The contract provides for that, so where there are systematic breaches it triggers continuous failure under the contract and the abatement has a multiplier effect. Where there are continuous breaches—for example, in one particular area that are recorded in a centre time and again—Serco is appropriately abated for that under the contract

**Senator HANSON-YOUNG:** Is failure to have trained staff on the ground a breach of the contract?

**Ms Lynch-Magor:** Serco are required to have appropriate training in place for all of their staff and they are required under the contract to comply with state and territory legislation in that respect. In the break I will check whether or not that was abatable.

**Senator HANSON-YOUNG:** Okay. What is the definition of the required training that Serco staff would need to have completed?

**Ms Lynch-Magor:** It varies. Serco are required to undertake all of the training that they would need to do the business that we ask them to do. For example—

**Senator HANSON-YOUNG:** Do we have set criteria? Does the Australian government say, 'This is the standard which those people we have contracted in our detention centres must adhere to'?

**Ms Lynch-Magor:** We have some criteria that we require. To fulfil particular roles within a detention centre, you have to have the appropriate certification. For example, if you are the cook, you are required to have a food safety handling certificate. If you are a guard, you are required to have a certificate II in guarding. Different things apply depending on what it is that you do in the centre.

**Senator HANSON-YOUNG:** Is that all specified in the contract?

**Ms Lynch-Magor:** It is.

**Senator HANSON-YOUNG:** What happens if there are instances where we have untrained officers?

**Ms Lynch-Magor:** Serco are required to ensure that their officers are trained and properly accredited to do the work that they are required to do. In the event that that does not occur, Serco would need to take remedial action to ensure that it did occur.

**Senator HANSON-YOUNG:** Has the department asked Serco to prove that all of their officers do indeed have the appropriate training?

**Ms Lynch-Magor:** Yes.

**Senator HANSON-YOUNG:** When was the last time that request was made?

**Ms Lynch-Magor:** Earlier this week.

**Senator HANSON-YOUNG:** What is the time frame for a response from Serco to that?

**Ms Lynch-Magor:** Immediate.

**Senator HANSON-YOUNG:** As in today?

**Ms Lynch-Magor:** Immediately at the request.

**Senator HANSON-YOUNG:** What happens if Serco cannot prove that they have got all trained staff on the ground?

**Ms Lynch-Magor:** Serco are required to ensure that all staff have the appropriate training. Those staff who do not are required not to be undertaking duties.

**Senator HANSON-YOUNG:** How many staff were asked to leave?

**Ms Lynch-Magor:** I am not sure.

**Senator HANSON-YOUNG:** Is that something that you request from Serco?

**Ms Lynch-Magor:** No.

**Senator HANSON-YOUNG:** So the department does not know how many untrained staff have been on the ground that required action from you as of earlier this week?

**Mr Moorhouse:** We have ongoing monitoring of the Serco contract, so we have contract managers in each of the facilities. If we were to become aware that a person was not appropriately trained, we would draw that to the attention of Serco and we would expect them to respond immediately.

**Senator HANSON-YOUNG:** How many times has that request been made by the department of Serco?

**Ms Lynch-Magor:** Ongoing monitoring of the contract requires that we ensure certainly with the arrival of new staff and changeover of staff, like with any organisation. We expect Serco to continue to do that. We monitor the contract at the centre level and at a national level. That is something that would occur regularly.

**Senator HANSON-YOUNG:** But you are telling me you have no record of how many times the contract supervisors have had to request that untrained staff be removed?

**Ms Lynch-Magor:** We could take that on notice.

**Senator HANSON-YOUNG:** Thank you. The contract with Serco is not a public document, is it?

**Ms Lynch-Magor:** Parts of the contract are public.

**Senator HANSON-YOUNG:** And which parts are they?

**Ms Lynch-Magor:** There is a document called the *Public version of the Serco contract*, which is available.

**Senator HANSON-YOUNG:** What do the parts that are not public consist of?

**Ms Lynch-Magor:** Necessarily they are things like the maps of the centres and various facilities—for very good reasons those are not made public—and certain commercial-in-confidence material between us and the provider.

**Senator HANSON-YOUNG:** Does that include a list of items that would qualify as a breach of the contract?

**Ms Lynch-Magor:** Our abatements regime, that is right.

**Senator HANSON-YOUNG:** So that is not for public disclosure?

**Ms Lynch-Magor:** No.

**Senator HANSON-YOUNG:** What is the rationale for that?

**Ms Lynch-Magor:** The abatements regime is naturally something which is very commercial for the service provider Serco. It indicates a degree of commercial performance—they are concerned. Some of those things go to the security of the centres and some go to the operational detail at the centres, which would not be appropriate to have in the public domain.

**Senator HANSON-YOUNG:** So a list of the items that would qualify as a breach of the contract is not public and the department does not audit the list of breaches—what breaches happened and how many breaches happened—and none of that is public. At what stage is there any type of transparency—

**Ms Lynch-Magor:** Let me make a correction, Senator. We certainly do audit the list of abatements in the contract and we can certainly quantify the way that the abatements regime works in the contract.

**Senator HANSON-YOUNG:** But you have just told me that you cannot tell me how many breaches—

**Ms Lynch-Magor:** Maybe I am not describing it very well. The abatements regime does not work in the way that there were five particular events occurred and that adds up to five. There are performance metrics and a performance assessment is given across that metric. It is not a tick or a cross, or a pass or a fail; it is a measurement of performance against a number of metrics.

**Senator HANSON-YOUNG:** How often is that measurement of performance publicly disclosed?

**Ms Lynch-Magor:** We formally measure performance of the contract every month.

**Senator HANSON-YOUNG:** And where is that publicly disclosed?

**Ms Lynch-Magor:** It is not publicly disclosed.

**Senator HANSON-YOUNG:** So the contract and the list of requirements that Serco have to fulfil are not publicly disclosed. The possible items that would qualify as breaches are not publicly disclosed. Their service delivery performance, whether they are upholding or breaching, is not publicly disclosed. Where in this process is the public interest and transparency of this contract? It does not exist, does it? If it is up to Senate estimates then we need to see those things tabled. If it is not available for public disclosure, there is no transparency in this process. Yet we know that up to \$1 billion is estimated in the forward estimates to run these facilities. Yet there is no public disclosure.

**Ms Lynch-Magor:** It might be worth noting, Senator, that we do have an extensive program of internal and external auditors who provide advice on our management of the contract.

**Senator HANSON-YOUNG:** I think I have made my point. I will hand over to other senators.

**Ms Pope:** I have a correction. My quick maths failed me when I was speaking earlier. The number of approved cases was correct, 942, but the split on the children is 149 unaccompanied minors, not 170 as I said. I added all the accompanied children into the unaccompanied, and conflated that a bit. My apologies.

**Senator ABETZ:** I have some questions on Pontville in Tasmania, the new detention centre—the temporary detention centre which we were told would only be for six months. When do the six months start; when do the six months finish?

**Mr Moorhouse:** The facility has not been commissioned yet. We are still going through the process of regulatory clearances for the establishment costs—

**Senator ABETZ:** I am aware of all that. At a public meeting at Pontville it was said that the six months was going to start and be all over and out in October.

**Mr Moorhouse:** My understanding was that when the minister made the announcement of that six months it was on the basis that we would be able to stand up the facility very quickly. It has turned out that there are a number of regulatory requirements that have taken some

time. We are still going through those at the present time, including the Aboriginal heritage requirement. That has delayed the establishment of the facility. No decision has been made yet to extend the facility.

**Senator ABETZ:** Why weren't these matters checked up before the announcement was made?

**Ms Lynch-Magor:** Certainly, things are brought forward and once we are able to go and look at them things become apparent that were not so before. So it is appropriate that we would make sure that, for example, heritage, flora and fauna requirements and all of those requirements are appropriately dealt with. These things take time. We did not have an opportunity to do that prior to the announcement.

**Senator ABETZ:** Because this was rushed. This is Commonwealth property. I remember about this from my days as Parliamentary Secretary for Defence. I was aware of a number of heritage issues in relation to the rifle range at Pontville. It was information available to Commonwealth. Did your department liaise with the Department of Defence and did Defence tell you about some of the issues that you might confront?

**Ms Lynch-Magor:** They did. We are not using the rifle range. That is one point to note. In addition to that—

**Senator ABETZ:** The complex there is often referred to as the TC Simpson rifle range, so I stand corrected. But the whole complex is known.

**Mr Metcalfe:** Senator, you are raising one of the difficulties that we face in dealing with this issue. I am not being disingenuous here; as soon as more detailed examination of the facility commences it becomes known, and people naturally become concerned as to what is going on. The approach that has been taken in recent times has been to indicate a desire to use a facility for a particular purpose and to make that clear up front. Clearly, the department was receiving advice from the Department of Defence as to the availability of the facility, and the circumstances were communicated to us. But when it became apparent that the department had an operational need to develop the facility for these purposes a community consultation process commenced. At the same time the more detailed examination of the various heritage and environmental issues commenced as well.

Were we to have attempted to do that before any public announcement it would have become known that the Department of Immigration and Citizenship was interested in the site—there is a lot of public interest in what we do—and the community would have become concerned.

**Senator ABETZ:** As they are now.

**Mr Metcalfe:** As they are now. But you have been a minister and you understand the issues about how you appropriately manage community advice and about being open, transparent and upfront with people. At the same time that means that occasionally we will not have full knowledge of the circumstances we are going into, and we have to then go in to do all those various checks.

**Senator ABETZ:** With respect, there are a whole lot of words there, Mr Metcalfe, but the minister announced—he did not say, 'We are thinking about this, we are considering, we are now going into a process of evaluation'. It was an announcement, and it was an announcement

for a period of six months for a temporary detention centre. When was the decision actually made and finalised that Pontville would be used for this purpose?

**Ms Lynch-Magor:** The government announced the decision on 5 April.

**Senator ABETZ:** Yes, but when was the actual decision made? On the day it was announced?

**Mr Metcalfe:** We would have to check on the precise date.

**Senator ABETZ:** All right, if you could. Then, once the government decided upon this course of action, with whom did they communicate it? I am particularly interested in the Premier, the local mayor and the local federal member, and how much notice was given of the announcement?

**Mr Metcalfe:** There certainly was contact with people, but we will take on notice the precise details, since you have asked for the precise details.

**Senator ABETZ:** And chances are you will have to measure it in minutes and seconds rather than hours or days, but I will look forward to that answer in detail.

**Senator BARNETT:** Just on that point: was that before or after the announcement of communications with the local government, the Premier and the local members?

**Mr Metcalfe:** It is my understanding that it was communication prior to the announcement, but I have undertaken to check the details.

**Senator ABETZ:** I think that one of them was given all of one hour. How was the sum of \$15 million determined? It just seems a very convenient round figure that the Tasmanian community said would be a huge economic boost for Tasmania for the capital cost of establishing this temporary detention centre.

**Mr Metcalfe:** I think that the figure used by the Minister in his media release was about \$15 million.

**Senator ABETZ:** Yes

**Mr Metcalfe:** The more precise budget is \$14.8 million.

**Senator ABETZ:** And how was that determined?

**Mr Metcalfe:** That would have been determined based upon discussions with the Department of Defence as to the state of the facilities, together with the need for appropriate security infrastructure—particularly a fence—to be constructed. We can obtain broad estimates as to those costs, based upon our experience.

**Senator ABETZ:** Have plans being developed as yet for the temporary detention centre?

**Mr Moorhouse:** Yes, they have.

**Senator ABETZ:** When were they finalised?

**Mr Moorhouse:** I am not sure.

**Ms Lynch-Magor:** The plans are currently being finalised. The department engaged—

**Senator ABETZ:** So they are not finalised. Thank you for that.

**Ms Lynch-Magor:** I mean—

**Senator ABETZ:** They are currently being finalised? That is right; that is your evidence?

**Mr Moorhouse:** We have plans.

**Senator ABETZ:** We know that you have plans, but not finalised plans. There is a difference.

**CHAIR:** I am trying to help clarify this. The witness needs a little bit of confidence to get the answer out as best she can before you interrupt.

**Ms Lynch-Magor:** You would be aware, Senator, that in the construction of any facility—any form of construction—you begin with plans, and you end with plans and often that can be an intuitive process as you come across things in your facility—you might be digging a hole and strike some rock. We have plans which are finalised for the construction of the buildings that we need to put in place and the fence that we need to erect, and those plans are well underway.

**Senator ABETZ:** They are well underway but they are finalised? I am sorry; I do not understand the evidence.

**Mr Metcalfe:** Senator, the point the officer is making is that there are plans, but plans will continue to be added to and adapted throughout the process of completion of the works. Indeed, the plans may not be regarded as final until the very last thing has occurred, because, like any building project, plans will continue to be developed. We do have plans. Ms Lynch-Magor has made it clear that there are plans. But she is also being prudent and cautious in saying that, as that work continues, doubtless, like any building project anywhere, there will be variations that develop.

**Senator ABETZ:** And that is what I am trying to get to: do you have a final plan to which any alteration will then be determined to be a variation; or are you still finalising the plan to the extent that you can sign off on it and any changes thereafter will be referred to as variations?

**Mr Moorhouse:** The plans that we have have been submitted to the Public Works Committee, Senator.

**Senator ABETZ:** Right. Does that mean they are finalised?

**Mr Moorhouse:** The confusion with before was that we did draft a plan, and the plan was subject to consultation with the community; changes were made to that plan as a result of those community consultations, and the revised plans have been submitted to the Public Works Committee.

**Senator ABETZ:** When were the plans submitted to the community consultation committee?

**Mr Moorhouse:** In terms of a precise date, I would need to take that on notice.

**Senator ABETZ:** If you could. Could you also tell us on notice who is on the community consultation committee and who determined who would be on it.

**Mr Moorhouse:** We will do that, Senator.

**Senator ABETZ:** So tenders have not been advertised as yet—because we do not have the plans ticked off by the Public Works Committee, I assume?

**Mr Moorhouse:** I am not sure to what extent any tenders at all have been submitted, but I can take that on notice.

**Senator ABETZ:** Right. So has any work started at Pontville?



**Mr Moorhouse:** No.

**Senator ABETZ:** No work, not even on fencing?

**Mr Moorhouse:** I am not aware that any work has started.

**Senator ABETZ:** So no work has started. Thank you. How long is it anticipated that it will take to build the fence, and the facilities so that they are ready for occupancy?

**Ms Lynch-Magor:** I will take that on notice, but we will come back to you on that in this session.

**Senator ABETZ:** Possibly the secretariat would be so kind as to advise me when that happens, because I will not be in the room. Thank you for that. Is it anticipated—

**Ms Lynch-Magor:** Sorry, Senator; my colleague has indicated it will be eight to 10 weeks from the commencement.

**Senator ABETZ:** Eight to 10 weeks. All things being equal, which they never are in this world, when do you think the first sod will be turned?

**Mr Moorhouse:** At this stage, Senator, we are still waiting for the Aboriginal heritage clearance—we have struck a couple of issues in relation to that—and we are still in the consultative process with the PWC; but we are hopeful that we can resolve those issues very quickly.

**Senator ABETZ:** Now, if I can quickly ask about the security fence. At the end of the six-month period that we still have not been able to identify, will the security fence be removed?

**Ms Lynch-Magor:** Yes, it will. We do not require it.

**Senator ABETZ:** And was that factored into the costs, the \$14.8 million, or will that be a new, extra cost?

**Mr Moorhouse:** Can I clarify that, Senator. The security fence will be constructed in a way such that the panels from it can be reused. Also, the new buildings that we were putting on the site will be transportable so that they can also be reused or sold. So the concept behind the facility is that we will be able to construct a facility that will be available as a temporary facility, as a bridge to some of the other facilities we are building, such as at Wickham Point. If we need to dismantle the fence and remove and sell the buildings, it will be possible to do that and it will ensure that some of the costs can be recouped.

**Senator ABETZ:** I was just going to say that next you will be telling us that you are going to make a profit out of it! How much is going to be sourced locally? Are there, for example, local builders or fencing contractors who have the capacity to build the security fence?

**Mr Moorhouse:** It is our practice to use local labour as much as possible—we do seek to encourage our contractors to use local labour. Whether or not there is capacity to construct a fence locally we will take on notice.

**Senator ABETZ:** But it is not a requirement of the contract. I assume there might be a number of tenders. Will it be one job lot to provide the buildings and the fencing and the lighting, or are you going to tender it out separately?

**Ms Lynch-Magor:** I am not aware of a decision that has been made in that space. I should comment that we do try to use local trades and local things as far as possible, but we are very conscious—

**Senator ABETZ:** Everybody says that, but at the end of the day it is usually different, so I am just wanting to know what the contractual requirement is.

**Ms Lynch-Magor:** We are very conscious that sometimes we draw resources from a community that is wishing their resources to be used elsewhere, and often when we are developing these facilities people are actually asking us not to use. So we do try to balance that in consultation with the local community and do the best that we can.

**Mr Moorhouse:** We have a good record in other areas of using local labour to the extent that it is possible.

**Senator ABETZ:** Talking about drawing on resources from the community, and I will unfortunately have to finish on this due to time constraints, what about mental health, doctors and those sorts of services? How are they going to be provided? From that which is available locally?

**Ms Lynch-Magor:** Consultations with the community, including the medical community and our health service provider, have indicated that there are some areas where we want to make sure that we are not taking services away from the local community, and we will provide primary health care for our clients from our health service provider. We always need to ensure that we do not take services away from the local community. In addition to that, where we would be trying to source services at a hospital, for example, we certainly would engage—and in fact we are underway in engaging—with the government to ensure that we fully fund any services that we require.

**Senator ABETZ:** So, coming back to 'six months', what does the government mean by 'six months'? Does it mean from the day of the announcement, from the day that building commences, from the day that the first entrant walks through the gates? How do we measure this 'six months'?

**Mr Moorhouse:** At this stage we can only reflect the minister's statement that the decision was to use the facility for six months.

**Senator ABETZ:** We were told at the public meeting that the manager of the centre, who had been seconded from the department, had been seconded for a period of six months commencing in April, and he indicated to the public meeting that the secondment ends in October of this year. Is it intended to extend that secondment?

**Mr Metcalfe:** I think that the issue of the period of time that a departmental officer works on the issue is not indicative of the period of use of the centre. I think you have raised a good question—that is, the delay that has been occasioned by the various issues that we were unaware of when the site was first publicly identified—and I am sure that there will be further announcements by the government.

**Senator ABETZ:** But is the secondment going to be extended?

**Mr Metcalfe:** I am saying that I do not know that, but I am sure there will be announcements as to the—

**Senator ABETZ:** Do you need to check with the secretary of the department to find that out or not?

**Mr Metcalfe:** He is a very, very smart and intelligent man, and I have no doubt he will reflect upon this matter.

**Senator ABETZ:** Touche! Well done!

**Mr Metcalfe:** Thank you, Senator.

**CHAIR:** Mr Metcalfe has probably been around longer than you, Senator Abetz, I think!

**Senator BARNETT:** To follow-up on some of those questions, when was the development submitted to the Public Works Committee?

**Mr Moorhouse:** We would need to come back with the precise dates.

**Senator BARNETT:** Can you do that today?

**Mr Moorhouse:** Yes, definitely.

**Senator BARNETT:** Thank you. I assume it was submitted to the Public Works Committee for approval.

**Mr Metcalfe:** For notification, Senator. It is under the threshold of a mandatory referral.

**Senator BARNETT:** Yes—which is \$15 million.

**Mr Metcalfe:** That is correct.

**Senator BARNETT:** If it goes over the \$15 million, does it have to be submitted to the Public Works Committee? That is \$14.8 million.

**Mr Metcalfe:** That is the budget, Senator.

**Senator BARNETT:** So it is simply for notification at this stage?

**Mr Metcalfe:** Departmental officials have appeared before the committee. Certainly it is our expectation that it is a notification process. The committee is considering that and I understand is yet to finalise its consideration of the matter.

**Senator BARNETT:** When did you appear before the committee?

**Mr Moorhouse:** If I can just clarify: the date it was submitted was 11 April and we appeared before the committee within the last two weeks. I will be precise.

**Senator BARNETT:** So you will let us know. Thank you. When you submitted it was it a \$4.8 million development as you have described to us today?

**Senator MOORE:** \$14.8 million.

**Senator BARNETT:** Have you got the list of who is on the community consultation committee?

**Mr Moorhouse:** We can get that for you today, Senator.

**Senator BARNETT:** And could you tell us when that committee was appointed and who appointed that committee? Under the Public Works Committee they normally take nine weeks for approval. So if it is just a notification obviously that is a separate matter. I wanted to ask you about the Aboriginal heritage permit. Clearly this is a sticking point. Is the sticking point that you cannot find anybody in Tasmania to undertake the assessment?

**Mr Moorhouse:** We were advised late last night that there is an issue with finding an Indigenous person to be part of the audit. We have archaeologists who are prepared to do it but it appears that there has been some controversy in relation to the road that has been constructed nearby and, as a consequence of that controversy, we are having difficulty finding an Indigenous person to be part of the audit that we are organising. We were only notified of that very recently, so we are still looking into what options are available to us.

**Senator BARNETT:** My understanding is that you do require an Indigenous person to be part of the approval process for the provision of an Aboriginal permit. Is that your understanding?

**Mr Moorhouse:** It is my understanding that that was our plan.

**Senator BARNETT:** Under the law you do require that person to be part of the permit process and to obtain the permit. You indicated that you received that advice last night. What is the plan of the department to progress this matter?

**Mr Metcalfe:** This is pretty late-breaking news, Senator, and officers have been here, frankly, in the committee. So my expectation is that we are currently considering the best way forward to manage this appropriately.

**Senator BARNETT:** Let us go back to the advice you say you received last night, which is late-breaking news, according to you—that is, you do not have anybody on the ground in Tasmania that can undertake that assessment as an Indigenous person to obtain the Aboriginal heritage permit. Is that correct?

**Senator MOORE:** That was the advice we received.

**Senator BARNETT:** Why would you be getting this advice on the evening of 23 May when the minister made the announcement on 5 April? Why wouldn't you be aware of the need for an Aboriginal heritage permit on 5 April and, indeed, environmental and other permits?

**Mr Moorhouse:** At the time of the announcement we were led to believe that an Aboriginal heritage audit had been done. It turned out that it was done some time ago and, as a matter of good practice, we agreed that we would undertake a new—

**Senator BARNETT:** When was it done?

**Mr Moorhouse:** I need to take that on notice.

**Senator BARNETT:** Are you talking years ago or months ago?

**Mr Moorhouse:** Some years ago, yes.

**Senator BARNETT:** Will you let us know on notice?

**Mr Moorhouse:** We will.

**Senator BARNETT:** I am advised and aware that apparently an Indigenous person was to fly down from interstate over the weekend to undertake the approval process. Is that correct? Did you put instructions in place to make that happen?

**Mr Moorhouse:** I would need to check that and come back to you.

**Senator BARNETT:** You will take that on notice. So you do require somebody from interstate to obtain the permit?

**Mr Metcalfe:** My understanding—and we will check this—is that we had sourced an archaeologist. Whether that person is Indigenous or not, we can check. You have referred to the other issue about local Indigenous knowledge. This issue has come to the fore because I think the new highway bypass near Brighton has uncovered some artefacts and that clearly led to the need to update the assessment that had been done some time ago.

**Senator BARNETT:** When did you become aware of that Brighton road bypass issue?

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

**Senator BARNETT:** Were you aware of that last night?

**Mr Moorhouse:** No. We were aware that it was controversial and we wanted to make sure that we approached things in the correct way; hence the undertaking of the new Aboriginal heritage audit.

**Senator BARNETT:** Let me ask it another way. When did you first become aware that you could not obtain a Tasmanian Aboriginal heritage permit?

**Mr Moorhouse:** I would need to take that on notice.

**Senator BARNETT:** Before last night or last night?

**Mr Metcalfe:** Certainly we had been in the process of seeking to obtain such a permit. We were confident that that would be dealt with. This late-breaking issue about the availability of appropriate local knowledge is something that we will deal with.

**Senator BARNETT:** What is this late-breaking issue? Is it the fact that there is nobody in Tasmania who will undertake the work for you and you need somebody from the mainland?

**Mr Metcalfe:** It is precisely what you have raised. It is information received last night about the local knowledge.

**Senator BARNETT:** Who from?

**Mr Thompson:** I cannot tell you that. One of my staff advised me last night.

**Senator BARNETT:** All right. Can I advise you that everybody in Tasmania knows and has known for weeks and months that there is a ban in Tasmania on the provision of Tasmanian Aboriginal heritage permits. That has been in place for months, well in advance of the minister's announcement on 5 April. So you are confirming that the minister did not know and you did not know that there was a ban on the provision of those heritage permits on 5 April. Is that correct?

**Mr Metcalfe:** We will carefully review what we have said and make any changes, but what we have indicated is that we were provided with access to a small part of the Pontville Small Arms Range complex by the Department of Defence. Our area is about five hectares out of a site of about 170 hectares. We were advised that it would be available for immediate works. Upon then moving in and starting to take direct responsibility for the issue, the department has obviously sought advice as to the appropriate way to manage local issues relating to biodiversity and Aboriginal issues, and the department is pressing on with dealing with those issues.

**Senator BARNETT:** What happens if you do not get an Aboriginal heritage permit? What will the department do? Will you put the centre on ice, as it were?

**Mr Metcalfe:** I would not want to be drawn on that at this stage. We will carefully review our situation.

**Senator BARNETT:** But do you think legally you are able to proceed without an Aboriginal heritage permit?

**Mr Metcalfe:** That is exactly what I want to check.

**Senator BARNETT:** You do not know at this stage.

**Mr Metcalfe:** That is exactly what I want to check.

**Senator BARNETT:** The development could, in fact, not proceed if legally you do not have an Aboriginal heritage permit, and that is something you are going to check?

**Mr Metcalfe:** That is right.

**Senator BARNETT:** Okay. That is a real live issue, I suspect, and I am very keen for you to feed back to this committee and to the Tasmanian public whether this development is proceeding or being blocked as a result of the ban on Tasmanian Aboriginal heritage permits.

**Mr Metcalfe:** Yes. We are certainly anxious for it. We believe the facility is needed and we are determined to press on.

**Senator BARNETT:** Let me read to you what was reported as said by an immigration spokesman on Sunday, 22 May in the *Examiner*. The last two paragraphs say:

An immigration spokesman said the government would soon begin advertising for contractors and expected to begin the six-week build before the end of the month.

He said a number of the issues relating to heritage and environment on the site had arisen since the minister's announcement.

So you are advising that it is eight to 10 weeks to build, but an immigration spokesman has reported it as six weeks, and advertising contracts will begin soon. So this is the question. There is obviously a conflict there but, putting that to one side, will there be an open tender process and when will advertising for contractors commence?

**Mr Moorhouse:** In relation to the period, there will be two stages to the construction of the centre. The first stage would be available within six weeks after all approvals are received, and the second stage would be available within eight to 10 weeks.

**Senator BARNETT:** So describe the first stage and then we will go to the second stage. What is the first stage?

**Mr Moorhouse:** That would see us being able to move some 140 clients into the existing accommodation blocks on the site. The final completion would be, we would expect, to be in approximately—these are always approximate dates because they involve construction—eight to 10 weeks after commencement.

**Senator BARNETT:** And how many clients then?

**Mr Moorhouse:** That is the balance of 260, kicking it up to a total of 400.

**Senator BARNETT:** So when does the first stage start? You have to advertise for contractors and so on. Can you tell us when you are going to advertise and when the contractors are going to start? Is it going to open tender or is it a direct tender?

**Ms Lynch-Magor:** We need to get our approvals in place before we can approach the market.

**Senator BARNETT:** I understand that. Let us say you have your approvals in place. What happens then? You must have a plan.

**Ms Lynch-Magor:** Yes. We will undertake a tender process which may be a select tender or an open tender.

**Senator BARNETT:** So you have not decided if it is a select tender or open tender at this stage.

**Ms Lynch-Magor:** Not that I am aware of.

**Senator BARNETT:** If it is a select tender you obviously have to receive information from tenderers and review it. That takes not just days but, I assume, many days or weeks. How long does it normally take for the department to do that? Obviously, if it is an open tender, it will take much longer.

**Ms Lynch-Magor:** We have significant experience in this space and we undertake this work regularly. We have a number of staff with us who are very used to doing these processes and who have a great deal of expertise in such constructions. So assessments of tenders are relatively routine work.

**Senator BARNETT:** All right. It is routine work, but it takes days and weeks to do it, so the question is when this process is going to start, when the centre is going to open and when it will close—six months later? We await those answers.

**Mr Moorhouse:** I thought they were questions, so I was going to answer the questions. When it will start is when we have the appropriate clearances.

**Senator BARNETT:** If you get them.

**Mr Moorhouse:** When we finalise is approximately eight to 10 weeks after the commencement.

**Senator BARNETT:** I will leave it there now and look forward to the answers later today, as soon as convenient, subject to you getting that back to us. I look forward to following up at that time. Thank you.

**CHAIR:** Senator Cash, you are now doing 4.2 and 4.3.

**Senator CASH:** I go back to the number of IMAs. This morning, in answer to a question by Senator Pratt, the figure given in relation to IMAs and crew as at 30 April 2011 was 4,484, including crew of 345.

**Mr Moorhouse:** I think that was the number that I gave. I can check that again for you.

**Senator CASH:** Would you mind? I have some follow-on questions.

**Mr Moorhouse:** Perhaps I can give you a little bit of an explanation. Yesterday evening you indicated that you would want a breakdown of IMA arrivals by nationality, by gender and by age, and so I wanted to make sure that we had that information for you. So I commissioned some work last night for people to have that information available for you. The information that we are able to produce with all of those details was from 30 April. I do have more recent details in terms of the numbers of IMA arrivals and I am happy to give you those, but if you would like me to give you the breakdown it will be from 30 April.

**Senator CASH:** That is okay. I will first ask my questions that follow on from Senator Pratt's questioning. So the figure of 4,484, including crew, that have arrived in the financial year to date is correct?

**Mr Moorhouse:** No, that was until 30 April.

**Senator CASH:** What are the department's projections to 30 June 2011?

**Mr Moorhouse:** We do not have projections.

**Senator CASH:** When I asked in February I was given projections. I was given the budgeted number in May last year. I was given the amount as at February, when I asked. When I asked what the projections were to 30 June, I was also provided with that figure.

**Mr Metcalfe:** I think we are probably entering a familiar area of our discussion, which is about whether there is an operational projection based upon realisable intelligence feeds as opposed to financial estimates based upon past experience. Of course, on 7 May there was a major policy announcement which was designed to significantly impact on future arrivals.

**Senator CASH:** So what was the information I was actually provided in February, in relation to the estimated protections?

**Mr Metcalfe:** Do you have a question number, Senator?

**Senator CASH:** It was not a question, actually; it was on the *Hansard*. Do you want me to get the *Hansard*?

**Mr Metcalfe:** Perhaps there is a page number or something that you could refer to. I am trying to be helpful here, but we have had this discussion over several estimates as to what is in the finances and how are they derived, as opposed to the point I have consistently made—that I do not believe it is appropriate or possible for us to provide projections of the movement of people through the world who may end up in Australia with any degree of proper estimation.

**Senator CASH:** My staff will email it to you shortly. In terms of the budget for next year, how many IMAs has that budget been predicated upon?

**Mr Metcalfe:** Mr Sheehan can assist us with that.

**Mr Sheehan:** The IMA estimate for 2011-12 is 750.

**Senator CASH:** Seven hundred and fifty! How did you make that estimation?

**Mr Sheehan:** The 750 is based on the impact of the policy decision that was recently announced and reflects arrival rates a decade or so ago.

**Ms Wilson:** I will add that it reflects average occupancy. The average occupancy in the numbers in the budget is 6,556. So there are two measures: average occupancy expected over the course of the year, as well as new arrival numbers. The occupancy is actually a very important number because—

**Senator CASH:** What is average occupancy?

**Mr Metcalfe:** Let me just try and help. The budget measure comprises the people we know are here—the people who have arrived and will be required—

**Senator CASH:** So the 4,484 is to 30 April?

**Mr Metcalfe:** Hang on a tick. That is a different number. That is the number of arrivals that have occurred this year. The figure that Ms Wilson is talking about is the expected occupancy of facilities based upon arrivals that have occurred. We are happy to explain how that is derived. The other figure that Mr Sheehan has indicated is in the budget estimates for next year is an expectation that, as a result of the policy measures the government has put in place, estimated arrival numbers will be 750. That was purely, as we have discussed on many occasions, a figure that has been identified for financial planning purposes. It is exactly the same number of people who arrived in 2002, following major policy changes by the then government.

**Senator CASH:** What happened to the five-year rolling average that we have discussed at previous estimates?



**Mr Metcalfe:** There has been a major policy change since then.

**Senator CASH:** Very interesting. I asked that question in the February estimates in relation to whether or not there would actually be a policy change and would the five-year rolling average be changed to reflect the years where the coalition had the boats down to zero, and the answer I was given was no.

**Mr Metcalfe:** I could not anticipate that the government would be making further decisions on 7 May when I gave advice in February. Sadly, I am not clairvoyant.

**Senator CASH:** Clearly not. Does that 750 include or exclude the 800 that are going to be sent to Malaysia? Is it really 1,550?

**Mr Sheehan:** It does not include the—

**Senator CASH:** So it is 800 plus 750? The actual figure, because we are paying for all of the people to be sent to Malaysia—

**Mr Metcalfe:** I cannot let you fall into the trap again of assuming that figures that have been included in the budget as a possible indication of possible costs do not represent an informed intelligence assessment by the Australian government of the number of arrivals.

**Senator CASH:** Believe me, I am not going to fall into that trap now that I have been told that your estimate is 750!

**Mr Metcalfe:** That is an estimate—

**Senator CASH:** It is definitely an estimate!

**Mr Metcalfe:** and it is based on the best historical analogy we could find, which was as a result of the change of policy in 2001.

**Senator CASH:** So this means that you put an estimate of 750 based on the policy change?

**Mr Metcalfe:** Yes, and it is a purely nominal figure.

**Senator CASH:** But the estimate is based on 750 after 800 have been sent to Malaysia?

**Ms Wilson:** Can I clarify: the 800 who go to Malaysia might be in Christmas Island for a few days or a few weeks. That would be taken into account in that program line for costs, but for all intents and purposes they will be moving to Malaysia.

**Senator CASH:** What I want to establish is, if you add 800 and 750, crudely you get 1,550.

**Mr Metcalfe:** Yes, but what you are trying to do is turn apples into something completely different, some sort of fruit I cannot even describe. It is way past oranges.

**Senator CASH:** I really look forward to the next estimates hearing. I will make sure I have the *Hansard* here and we will go through it together.

**Mr Metcalfe:** I look forward to that. It is going to be terrific.

**Senator CASH:** The point is you are expecting 750 after you have used up the five-for-one Malaysia swap.

**Mr Metcalfe:** For a figure to be included in the budget forward estimates, a nominal figure of 750 has been identified. That is a different issue to the expectation of the effect of

the policy change. It is an indication that the government is confident that the policy change as announced on 7 May will have a major effect in deterring future arrivals.

**Senator CASH:** Mr Metcalfe, in October estimates and in February estimates, the evidence that you continued to give me was that the government was confident that a regional processing centre would go ahead in East Timor. Based on that level of confidence, I am going to add a zero to the 750. That is the level of confidence that I have in that estimation.

**Mr Metcalfe:** Time will tell.

**Senator CASH:** Time will tell. In recent years you have always been happy to increase the appropriation. Why is this any different? If you think there is no-one coming, isn't that what you are budgeting for?

**Mr Metcalfe:** Essentially the government has prudently taken the approach that the previous government took in the actual number of people who arrived after policy changes in 2001.

**Senator CASH:** That is interesting. So estimates are based on the recognition of pull factors. If Australian policy announcements have a dramatic impact on asylum seekers making the decision to come to Australia, is the government intending to recant the assertions that it has made over the last few years that government policy in no way impacted on the number of asylum seekers coming to Australia?

**Mr Metcalfe:** I think that is the political question.

**Senator CASH:** Minister, does the government intend to recant the assertions that it has made over a number of years that pull factors were not the reason that asylum seekers came to Australia, given the evidence that has just been given that a major policy change undertaken by this government, to quote Mr Metcalfe yesterday, 'will stop the boats'?

**Mr Metcalfe:** I do not think I used that word.

**Senator Carr:** First, I do not repudiate and the government will not be repudiating comments it has made. What we have indicated is that this new initiative, which we believe to be an effective measure, will undermine the capacity for people smugglers to organise a hideous trade for their own commercial gain by highlighting to people that it is not going to be worth their effort. We have made that point time and time again. But we do not change our view that we have to treat people properly, and that is why we have ensured that the processes that are in place for the first time allow the UN Human Rights Commission to have a serious engagement with the Malaysian government. We think this is quite a clever balance to ensure the policy objectives that the government has pursued.

**Senator CASH:** I almost believe you are reading a speech I gave in the Senate the other day about stopping the boats.

**Senator Carr:** You asked a question and you got an answer. I am sorry it is not the answer you want.

**Senator CASH:** Mr Metcalfe, I will read from your evidence at the February estimates:

As we have discussed on many occasions, we try and predict what will happen in the future in such an unpredictable area. In 2000 the numbers were very high—the numbers went up and the numbers went down. That is a feature of this area. For the accountants among us, our budget rules require that we provide forward estimates. They are not a government statement as to what will happen in the future. ...

We know with certainty some of the estimates—because it depends upon the number of people who are already here and who will continue to be in detention ...

I then say:

There is nothing new in the information that has been provided tonight. We already know what the figures are—the fact that it was budgeted for 2,000—

which was the figure I was given for 2010-11. We were now looking at approximately 3½ thousand in February and I was given a figure for what you budgeted for at the end of the financial year. The evidence I was given by Mr Sheehan or Mr Correll was 6,600. So you were able to give me in February the estimate for 30 June this year. Has that changed?

**Mr Metcalfe:** Firstly, there has been a significant policy announcement which I did not have knowledge of, even though work was obviously underway and we discussed it at length yesterday. The inclusion of figures of cost in the forward estimates was a process undertaken by my department and the Department of Finance and Deregulation where provisions that had been made for some years for arrival numbers of, I think, 200 were clearly no longer applicable. We were clearly seeing much larger numbers of people arriving and the estimates needed to be adjusted accordingly. As Ms Wilson has described, the figure is derived from what we relatively know—which is the people who are here, their processing times and their likely outcomes—together with an estimation of what might be coming in the future.

I have been at pains to point out, and I am sure that you will agree with me, that the inclusion and derivation of those figures is not an informed view from an intelligence perspective about actual arrivals; it is a formulation that has been derived. The Department of Finance and Deregulation believed that a more realistic forward estimate needed to be provided and hence the concept of the five-year rolling average. So we have been through that at length.

**Senator CASH:** Can I confirm that the five-year rolling average has been abandoned for the 2011-12 estimates?

**Mr Metcalfe:** Yes, because the government has now made some major policy changes. Because they have a political ring to them, I have not used the words, 'Stop the boats' but I have frequently used words about breaking the people smugglers' business model. Those are words used in the regional co-operation framework. The government believes that these policy measures will be effective and therefore has sought to significantly reduce the estimates of future arrivals, which is what occurred 10 years ago.

**Senator CASH:** But basically the figure provided for 2011-12 is no longer based on the five-year rolling average, as we discussed in February?

**Mr Metcalfe:** That is quite correct.

**Senator CASH:** Also, the 750 does not include the 800 that are earmarked to go to Malaysia under the five-for-one swap deal?

**Mr Metcalfe:** The 800 are only if they are required. We will not send people to Malaysia if there is no-one to send. That would be a difficult thing for us to achieve.

**Senator CASH:** But the 750 does not include the 800?

**Mr Sheehan:** No, one number is lower than the other.

**Senator CASH:** I just want to make sure that you are sending 800 to Malaysia. What have you budgeted for in the budget? The 750?

**Mr Sheehan:** For the 750 arrivals and an average occupancy of around 6½ thousand.

**Senator CASH:** You cannot give me now the expected number of arrivals until 30 June. Does that mean that the figure—

**Mr Sheehan:** The number for the 2010-11 year?

**Senator CASH:** Yes, in February I was given the number of 6,600.

**Mr Sheehan:** It is still the same number.

**Senator CASH:** I just need to work through this. There were 4,484 arrivals as at 30 April 2011. You have stated that the expectation is still 6,600 before the end of June. That is over 1,000 arriving—

**Mr Metcalfe:** No, this is where you are confused. The material that is in the budget does not represent an informed view about what will occur in the next four weeks.

**Senator CASH:** Is that because of the major policy change?

**Mr Metcalfe:** There is no suggestion that we are expecting 1,500 people in the next four weeks. We have had a major policy change and a great deal of work is being done to put that into effect and to make Australia's determination in this area known. As we saw with a not dissimilar measure in 2001-02, it does have the capacity to have a major impact on the people-smuggling business model.

**Senator CASH:** You budgeted for 750 in the 2011-12 budget. Can you just remind me where the 800 for Malaysia are budgeted for in the budget papers?

**Mr Sheehan:** It is in the front part of the DIAC budget statements, Senator, on page 17, under program 4.3. There is \$26.342 million in 2011-12, \$16.267 million—can you see that number, Senator?

**Senator CASH:** No, I do not have it in front of me. I wanted you to actually take us through it.

**Mr Sheehan:** There is \$16.267 million in 2012-13 and \$11.769 million—

**Mr Metcalfe:** We can read it into the *Hansard*, Senator, if that is what you want.

**Senator CASH:** Yes.

**Mr Sheehan:** in 2013-14 and \$11.303 million in 2014-15. In addition, there are other departmental expenses—about four lines from the bottom on page 18. The line for 'Regional Cooperation Framework—Transfer of Irregular Maritime Arrivals to Malaysia', program 4.3, sets out \$2.507 million for 2011-12; \$1.95 million for 2012-13; \$3.843 million for 2013-14; and \$1.947 million for 2014-15.

**Senator CASH:** Thank you very much. Just to confirm once more: the amounts you have budgeted for in 2011-12 are for 750 arrivals.

**Mr Metcalfe:** That is correct. The government believes its policies will work.

**Senator CASH:** Does that include the number of crew arriving?

**Mr Metcalfe:** That would incorporate crews.

**Mr Sheehan:** That is total arrivals estimated, Senator.

**Senator CASH:** Okay. If there are additional arrivals over that number, will there be budgetary applications?

**Mr Sheehan:** IMAs, no win, no loss—we will be here at the next Senate estimates, potentially looking at variations to that.

**Senator CASH:** Very briefly, since August 2008, how many IMAs have been returned?

**Mr Metcalfe:** We will just get Mr Illingworth to come and assistance, Senator. I think we discussed some of these figures yesterday.

**Senator CASH:** We did. Some I have taken from what I was told to ask today, and there might be a bit of overlap.

**Mr Metcalfe:** Right. But you have a specific figure of August 2008, have you?

**Senator CASH:** Yes, since August 2008, if you have that.

**Mr Illingworth:** Senator, to 16 May this year, there have been 217 passengers and 72 crew.

**Senator CASH:** That have been returned?

**Mr Illingworth:** Yes.

**Senator CASH:** Mr Sheehan, can I just go back to the IMAs and the estimates there. Can I just confirm that you are saying there will be people to send to Malaysia because you are budgeting for an overflow of 750 beyond the 800?

**Mr Sheehan:** We are budgeting for 750 arrivals in 2011-12 as part of our modelling cost estimations for program costs.

**Senator CASH:** Do the 750 include anyone who might be sent to Manus Island?

**Mr Sheehan:** No, not arrivals.

**Senator CASH:** Not arrivals?

**Mr Sheehan:** Not arrivals—but, in terms of average occupancy, where someone comes to the island for two or three days and there are costs involved, that would be included as part of the complex formula for overall costs, because that is part of our average occupancy, if you follow me. It would be three days at one-365<sup>th</sup>.

**Mr Metcalfe:** Senator, could I just clarify the response that was provided. I think you asked if the 750 would include people who might be transferred to an offshore processing facility like Manus Island. My understanding is that it is all in one budget line and that it is that budget line that would be impacted by any transfers to an overseas processing centre. So that 750 would be included as part of those transfers.

**Senator CASH:** Perhaps I could phrase it slightly differently: the 750 does not include anyone sent to Malaysia or to Manus Island?

**Mr Sheehan:** Manus Island is included in the 750.

**Senator CASH:** So Manus Island is included in the 750?

**Mr Sheehan:** Yes, but not Malaysia.

**Senator CASH:** But Malaysia is not included in the 750?

**Mr Metcalfe:** Be very careful. It may or may not be Manus Island. We discussed that yesterday. It is a shorthand way that you are describing transfer to a processing centre in a third country.

**Senator CASH:** I understand that last night the evidence was that if Manus Island did not go ahead, we would need to revise the budget down. Was that my understanding?

**Mr Metcalfe:** I think the advice was that there is no capital provision for the establishment of an offshore centre because those costs could only be determined on more precise information about where such a centre might be. As we discussed at length yesterday, we are awaiting further advice from the Papua New Guinea government in relation to that matter. Is that the point you were raising, Senator?

**Senator CASH:** Yes.

**Mr Metcalfe:** The distinction being between the processing and accommodation costs, which, as Mr Sheehan explained last night, are within the one line item of offshore arrivals under 4.3. The thing that is not provided for in the budget is the capital cost of establishing a centre, for the reasons we explained last night.

**Senator CASH:** If the Manus Island processing centre were to go ahead, is the Manus Island provision within the budget just a simple transfer of Australian expenses to PNG? That is really what it is.

**Mr Metcalfe:** Essentially, it is being treated within 4.3. We drew your attention to the particular element of the PBS last night. The cost would be treated as if the persons were in Australia because it would be processing, we would expect, by Australian officials and those sorts of arrangements would be applicable. They are quite different to the Malaysian arrangements we described. The thing that is not in the budget, and which would need to be the subject of a separate request for funding, is the issue of any capital cost, and we discussed that last night. I am getting nods from my chief finance officer. I said last night that I do not get out of bed without talking to the lawyer; but I do not get into bed without checking with the finance officer. It is very important to have his agreement!

**Senator CASH:** Then there is no real provision for Manus Island if we are really just transferring Australian expenses over to PNG? There is no real provision for Manus Island?

**Mr Metcalfe:** Yes there is. As we have said, it is within that 4.39 line.

**Senator CASH:** Even if the Manus Island provision is just a simple transfer of Australian expenses to PNG in the event that it goes ahead?

**Mr Sheehan:** Which is what I was explaining last night. In our modelling we looked at average costs based on the processing at Christmas Island.

**Mr Metcalfe:** We could take you back to that line item if that would help.

**Mr Sheehan:** On page 53, where we started the administrative component of \$709,376,000 and also \$186,000 which are the departmental expenses that go with it, that is where you would find a generic assessment and processing centre.

**Senator CASH:** If Manus Island does not go ahead, will that money that is allocated in the budget still be spent?

**Mr Metcalfe:** Essentially, that money assumes that some people may come to Australia. Some of that money, as we have just been discussing, is for the people who are already here.

They are here, we have to pay for them and we have to process them. An estimate of arrivals next year incorporates 750. That is purely an estimate; it is not a government statement about what will happen. That does include the provision for processing of those persons either in Australia or in an offshore place. It is a more similar type of activity because, as we saw in the past with countries under the Pacific strategy, those costs will flow to Australia. It is quite a separate concept to the transfer agreement with Malaysia that we have been discussing. That is how that forward estimate of 750 has been nominally employed. However, if the government's policy position is successful and works in the way that some of the measures, particularly the tow-backs that occurred in 2001-02, severely disrupted the people-smuggling business model by making it no longer attractive for people to risk their lives coming to Australia then of course the numbers could be different. As I have said before, time will tell in relation to that.

**Senator CASH:** The 750 includes Manus Island but not Malaysia. If Manus Island does not go ahead—and the evidence we had yesterday is that we are still waiting for official confirmation from PNG as to whether they will proceed with a processing centre—the money will be spent in Australia, and that is why it has not been announced as a new budget measure. It is money that will be spent in Australia.

**Mr Sheehan:** It could be spent in Australia.

**Mr Metcalfe:** It will not be spent if it is not needed.

**Mr Sheehan:** Yes, if it is not needed.

**Senator CASH:** I am glad to hear that. I have some questions in relation to those who have arrived since the Malaysian deal was announced.

**Mr Metcalfe:** Yes, I will get the right officers to the table.

**Senator CASH:** Since 7 May 2011, how many boats have been intercepted and how many asylum seekers were on board?

**Mr Allen:** There have been three boats intercepted since the announcement. They carried a total of 110 people, minus six crew.

**Senator CASH:** Could you provide me with the number of men, women and children?

**Mr Allen:** I might go boat by boat and I will start with SIEV247. That had a total of 33 persons on board. They comprised one Indonesian crew member, 24 Afghans, six Pakistanis and two Iranians. Of this group there were 23 single adult males and nine unaccompanied minors. There were no women on board that boat. SIEV248 had a total of 56 persons on board, comprising two Indonesian crew members, 15 stateless persons and 39 Iranians. Of this group, there were nine family groups, comprising eight males, seven females, five boys, three girls, three unaccompanied females and 28 single adult males. The final boat, SIEV249, which was intercepted and has not yet reached Christmas Island, had 21 people on board. They comprised one crew member, 19 single adult males and one unaccompanied minor, who was also male.

**Senator CASH:** I thought you said SIEV249 had not actually reached Christmas Island.

**Mr Allen:** No, that is still in transit.

**Senator CASH:** Have any of these individuals engaged Australia's non-return obligations?

**Mr Metcalfe:** No. They cannot because we are not going to process them.

**Senator CASH:** Have any of them raised that, though? I understand you are saying that our response to them will be no, but have any of these 110 people raised protection claims or our non-return obligations?

**Mr Allen:** I am advised that some of the clients have raised a desire for protection, yes.

**Senator CASH:** Do you have figures as to how many have raised a protection claim?

**Mr Allen:** I would have to take that on notice.

**Senator CASH:** Do you know if these clients are currently located on Christmas Island from SIEV247 and 248, or are they asylum seekers on SIEV249, which has not actually made it to Christmas Island?

**Mr Allen:** I believe that the claims are in relation to the people who are already at Phosphate Hill—so the two boats that have arrived, yes.

**Senator CASH:** The ones that have made it to Christmas Island?

**Mr Metcalfe:** Normally that would occur when the department takes responsibility following the transfer from the Customs Service and, as we discussed last night, when identity and health checks are done. I am pretty sure the motivation that people would have in coming here would be to seek asylum, so it is not surprising that some would have raised that issue with us.

**Senator CASH:** But certainly the evidence is that there are asylum seekers that have raised protection claims with us?

**Mr Metcalfe:** They are asylum seekers, yes.

**Senator CASH:** Have any of these asylum seekers—and we are talking about the 110—received any financial payment on behalf of the Australian government?

**Mr Allen:** Just to be precise, the 110 includes crew. So, if you are talking about asylum seekers in the broad, it is a smaller number.

**Senator CASH:** I will be more specific in describing them as asylum seekers. Have any of these asylum seekers—and we might include crew in this—received any financial payment on behalf of the Australian government or had access to telephone or internet facilities since their arrival in Australia? What other, if any, benefits have they received?

**Mr Allen:** They do have access to the landline telephones and to the internet. In terms of benefits received, as with other detainees they are entitled to accrue points.

**Senator CASH:** A points system?

**Mr Allen:** That is correct.

**Senator CASH:** If they are not going to be processed, how do they accrue points? Are they allowed to participate in the day-to-day activities that other detainees are participating in—for example, English lessons?

**Mr Allen:** There are activities and programs that have been organised for these people. This includes access to sporting equipment. There is an English language officer who has been working with these clients and they have also been encouraged amongst themselves, because some of the clients speak English, to instruct other clients.



**Senator CASH:** Will any of the asylum seekers who will have arrived after 7 May and before the agreement is completed with the Malaysian government be eligible to be sent to Malaysia under the proposed five-for-one swap? Are they earmarked for Malaysia?

**Mr Metcalfe:** The government has made it clear that these people will not have their claims processed in Australia and that they should pursue those claims in an overseas country.

**Senator CASH:** Is that overseas country Malaysia?

**Mr Metcalfe:** I have indicated that the minister has been quite careful in saying that it will be an overseas country where appropriate opportunities exist to raise any refugee claims.

**Senator CASH:** Would that include Malaysia or is Malaysia excluded from that?

**Mr Metcalfe:** That could include Malaysia.

**Senator CASH:** But these asylum seekers are not specifically earmarked for Malaysia?

**Mr Metcalfe:** We are awaiting the finalisation of any arrangements before we make detailed announcements about that.

**Senator CASH:** Where will these people be sent and when will they be sent there? More particularly, on what basis are they being detained?

**Mr Metcalfe:** They are being detained under section 189 of the Migration Act, which provides for all immigration detention—everyone detained under the act is detained under that section. The announcements as to when and where they will be sent will be made in due course.

**Senator CASH:** How long is it anticipated that they will be detained on Christmas Island?

**Mr Metcalfe:** For the shortest time possible, but that obviously depends on the finalisation of the arrangements we have been discussing.

**Senator CASH:** Basically, unfortunately, if Malaysia does not agree to a processing centre, we will have to look for another third country to take those people?

**Mr Metcalfe:** I do not get into hypotheticals. I refer you again to the joint prime ministerial statement.

**Senator CASH:** Let us refer to that and to the DIAC website, which 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 ...

How does that statement actually sit with the fact that these people are not necessarily earmarked for Malaysia? Are they part of that 800?

**Mr Metcalfe:** We will be repeating a great deal of evidence from yesterday, but essentially the material on the department's website reflects the government's announcements. It is there for public information and advice. The circumstances of the 100-plus people who have arrived since 7 May will be the subject of announcements, but the government has made it very clear and I have been formally directed, as I discussed last night, not to undertake any processing in Australia. However, contrary to some public statements that have been made

recently, they will be returned to a place of safety where they can pursue any claims in accordance with international procedures.

**Senator CASH:** Can I confirm that someone arriving before the Malaysian bilateral agreement is concluded will not be subject to the deal with Malaysia, the five-to-one swap?

**Mr Metcalfe:** I refer you to my evidence of yesterday.

**Senator CASH:** I would appreciate it if you would restate it because yesterday I was told that I could ask some questions and could not ask some questions. I would appreciate it if you could restate that evidence for the purposes of outcome 4 today as opposed to outcome 2.

**Mr Metcalfe:** I would prefer to check the *Hansard* because I know you will hold me to—

**Senator CASH:** No. It is quite simple. Can people who arrive before the agreement is concluded with Malaysia be sent to Malaysia?

**Mr Metcalfe:** No-one will be sent to Malaysia until the agreement is complete.

**Senator CASH:** Exactly. So what will happen to these 110?

**Mr Metcalfe:** They may be eligible for travel to Malaysia after the agreement is complete.

**Senator CASH:** So there appears to be potentially another 800 that we are talking about.

**Mr Metcalfe:** No, we are not. Which 800?

**Senator CASH:** If these ones are not necessarily going to Malaysia—

**Mr Metcalfe:** I think I have been quite clear. These people will not be processed in Australia. They will be transferred to a place overseas, as the minister has indicated. Whether they comprise some of the 800 for Malaysia or whether they go to another country will be the subject of announcements in due course. Of course, the number of 800 for Malaysia is a number that we can go up to, but it may well be that that number is not needed.

**Senator CASH:** I just want to confirm that anyone who arrived here before 7 May 2011 will not be subject to—

**Mr Metcalfe:** They have—

**Senator CASH:** They have raised a protection claim.

**Mr Metcalfe:** Invariably they have.

**Senator CASH:** Yes, they have.

**Mr Metcalfe:** They have been detained by the department and are subject to the refugee status assessment processes that have been in place for some time.

**Senator CASH:** So will the people who arrive between now and the date the agreement is completed able to be sent to Malaysia?

**Mr Metcalfe:** We will not send anyone to Malaysia until the agreement with Malaysia is complete.

**Senator CASH:** So you are saying that those people are currently not able to be sent to Malaysia but when the deal is completed they may form part of the 800 who are able to be sent to Malaysia.

**Mr Metcalfe:** The government has indicated that those people will be sent to a place overseas.

**Senator CASH:** To a place overseas?

**Mr Metcalfe:** Yes, this is what the minister has indicated and I have said dozens of times in the last 24 hours.

**Senator CASH:** But does the agreement with them—and I know it is only a one-page agreement—prevent those who arrive before the deal is concluded, so the 110 including the crew, being sent to Malaysia? Is that the Malaysian government's intention? Do they only want people who arrive after?

**Mr Metcalfe:** I have also said that I am not going to be drawn on the detail of the arrangement with Malaysia until it is complete.

**Senator CASH:** We seem to have some people, though, who are in limbo.

**Mr Metcalfe:** No, they are people who are detained in Australia and who will be removed from Australia as soon as practical in accordance with the Migration Act and where the Australian government would only send them to a place where they could pursue claims and where there is no risk of refoulement—and that exactly complies with international law, despite public comments made by other people.

**Senator CASH:** A number of these people have raised protection claims. Can I just confirm in relation to those people that the department's position is that Australia has no legal obligation to actually allow them to apply for refugee status?

**Mr Metcalfe:** I have been directed that they should not commence any refugee status processing. But our legal position is such that, as I discussed yesterday at length, at international law Australia would be in breach of the refugee's convention if it summarily returned those people to a place of persecution. The Australian government has no intention of doing that. The Australian government's intention is to send people to another country where any refugee claims could be pursued in accordance with international conventions. That is proper and lawful under international and Australian law. It is designed to stop people from risking their lives and the sorts of tragedies that we have seen, as with SIEV 221, where families were destroyed and where people smugglers simply profit from a disgraceful trade.

**Senator CASH:** Which is basically what coalition policy was for those exact reasons. One final question before lunch, Chair.

**CHAIR:** Yes, and then Senator Barnett has a question.

**Senator CASH:** You stated that those who have been detained, the 110 asylum seekers—

**Mr Metcalfe:** The crew will be dealt with separately.

**Senator CASH:** will be sent to another country. Can that country be Malaysia under the agreement, yes or no?

**Mr Metcalfe:** The people will be sent to another country.

**Senator CASH:** But can that country be Malaysia under the current agreement that we have?

**Mr Metcalfe:** The details of the agreement are being finalised, and I am sure the government will make further announcements at that stage.

**Senator CASH:** So there is no answer to that question at this present time? We have no agreement?

**Mr Metcalfe:** I have given you an answer, Senator.

**Senator CASH:** No, I just want to confirm that there is no answer to that question because there is no agreement at this present point in time?

**Mr Metcalfe:** I stand by my answer.

**Senator CASH:** One other question, very quickly: how did we arrive at the figure of 800? What was the public policy reason or the policy basis for 800?

**Mr Metcalfe:** The essential rationale was to derive a figure that was significantly large that there would be no incentive for people smugglers to seek to say to people, 'Well, let's send a few boats and you'll rapidly reach that number.' The whole intention here is to make it so obvious to people that, if they come to Australia, they will not be able to pursue refugee claims here and that they will be returned to Malaysia; it is to stop people from wanting to travel. It is about changing people's mind-set; it is about changing the psychology that is operating here, which is guarantees being given by people smugglers that people will get to Australia and get access to the Australian system and that they may well succeed or seek to be uncooperative in relation to their return. It is about stopping those risky voyages. It was a number big enough to make it clear that there is no point in believing what a people smuggler says.

**CHAIR:** Senator Barnett has one quick issue and then we will go to lunch.

**Senator BARNETT:** There are two points, Mr Metcalfe, just to follow-up on the Pontville detention centre. I just talked to Mayor Tony Foster from Brighton, who advises that last Tuesday he was contacted by the department to ask if he would be on a community consultative reference group, or words to that effect, and that he would be forwarded a copy of the terms of reference. He has not been sent that as yet. He is very unimpressed with the planning process. He is happy for me to say that on the record. I would ask you to provide a copy of the terms of reference as soon as possible on notice today. Secondly, and far more importantly, I have just talked to Mick Mansell from the Tasmanian Aboriginal Centre, who advises me that, according to his understanding, there are likely to be significant Aboriginal heritage issues on the site where your development is proposed. As you are aware, under the Aboriginal Relics Act, which is a Tasmanian legislation, a permit is required to be issued by the state government. He advises me that he has previously told the state government of the Aboriginal heritage issues on that site. As you are aware, he and his representatives will not be involved in any meaningful consultation regarding the issuing of an Aboriginal heritage permit, and that remains the case. Based on that advice, in my view there is clearly every likelihood that if consultation does take place between the Commonwealth and the Tasmanian Aboriginal Centre it will take many, many weeks to go through that process if it proceeds at all. I am just giving you a heads up.

**Mr Metcalfe:** Thanks very much, Senator.

**Senator BARNETT:** And that clearly, in my view, calls into question the validity of the development and the very clear question as to whether the development can proceed at all. I look forward to getting feedback from your department later today.

**Mr Metcalfe:** Thanks for your advice, Senator. We obviously are seeking to do this properly but quickly and to do so in a consultative way, and your advice has been helpful.

**Senator BARNETT:** The people from the Tasmanian Aboriginal Centre did confirm that they have not received any consultation or information as yet from departmental officers or others regarding this matter of the development at Pontville and regarding the Aboriginal heritage issue.

**CHAIR:** We are going to break for lunch.

**Proceedings suspended from 12:36 to 13:38**

**Mr Allen:** I want to correct a slight error in the statistics which I provided before lunchtime. The detailed statistics concerning the people intercepted since the announcement are correct, but I said in my summary that there were a total of six crew and 104 passengers. It is in fact four crew and 106 passengers. I apologise. I transposed the four and the six.

**Senator BARNETT:** Through you, Chair, has Mr Metcalfe or any of the officers got any answers to the questions put regarding the Pontville detention centre?

**Mr Metcalfe:** I do not have anything to update.

**Mr Moorhouse:** We are compiling the information, but I was incorrect. We are in the process of pulling together a community reference group. The membership has not been finalised yet. So I apologise for that. The people are being consulted about the community group, and we do have draft terms of reference which we can provide to you. So we will give you the details of the consultations and the draft terms of reference.

**Senator BARNETT:** Very good. Roughly when would we expect answers to the other questions that we put before lunch, Mr Moorhouse?

**Mr Moorhouse:** My colleague is trying to get the information for you now, so hopefully as early as possible.

**Senator BARNETT:** In the next hour or so? You are not sure?

**Mr Moorhouse:** As soon as we can, if that is okay.

**Senator BARNETT:** Thank you.

**Mr Moorhouse:** Is there a time frame that is important to you?

**Senator BARNETT:** No. Obviously the sooner the better. Thank you.

**Mr Metcalfe:** Senator, last night I think you asked us a question in relation to the article in the *Australian* yesterday about a decision by the Refugee Review Tribunal.

**Senator BARNETT:** Yes.

**Mr Metcalfe:** I think Dr Southern and Mr Fleming may be able to assist you on that matter.

**Dr Southern:** Senator, you referred to the newspaper article yesterday. I am not entirely sure of your specific question, if you would like to repeat it.

**Senator BARNETT:** You have obviously done some research, so tell me what you know about it and your response to the article. My question was: is it accurate?

**Dr Southern:** We understand that it is accurate, that the primary decision maker, in assessing the claims of this particular applicant against the refugees convention—one of the things that a primary decision maker considers is credibility of the applicant—reached a view

about the applicant's credibility in this case. The RRT reached a different view and remitted it back to the department.

**Senator BARNETT:** So the department accepts the tribunal's decision that this person was not overstating their persona with regard to their homosexual status?

**Dr Southern:** The department has accepted the decision of the RRT.

**Mr Metcalfe:** When the tribunal makes a decision it is incumbent for the matter to be treated as that.

**Senator BARNETT:** The question is whether it is systemic or not, because clearly I think there were three cases of this. Is that it? Are there just three cases in this regard or is this concern more systemic throughout the department?

**Dr Southern:** I am not aware of any other cases, but I would make the observation that every case is considered entirely on its merits by the primary decision makers.

**Senator BARNETT:** So there were just three cases with regard to that same issue. Is that is correct?

**Dr Southern:** That is my understanding, but only based on the newspaper reporting. We could take on notice whether there are others.

**Senator BARNETT:** If you could take it on notice and provide further and better particulars regarding each case. I would like to know the details and if there are any other cases of a similar nature. Could you take that on notice?

**Dr Southern:** Certainly, Senator.

**Senator CASH:** I would like to now turn to questions surrounding the Serco contract.

**Mr Moorhouse:** Ms Lynch-Magor just popped outside but she will be back in a moment. Would you like to ask the question?

**Senator CASH:** Absolutely, I am happy to. My first question is in relation to an article in the *Australian* on 12 May 2011 commenting on the five-year contract that Serco has with the department for managing the national immigration detention network. It claims that Serco's fees under the contract have been secretly doubled to \$712 million. Is this assertion correct?

**Ms Lynch-Magor:** The contract price of \$712 million is on Austender.

**Senator CASH:** And that is a correct figure?

**Ms Lynch-Magor:** It is a correct figure but it is not a secret figure, Senator.

**Senator CASH:** Basically what you are saying in relation to the media article is that claims that the government has secretly doubled the fee to pay the global prisons contract to Serco is not true; however, the figure of \$712 million is correct.

**Mr Metcalfe:** The figure of \$712 million has been openly advertised on the Austender website, so the suggestion that it is secret would appear to be a journalist exercising a bit of journalistic latitude.

**Senator CASH:** When was the contract placed or updated on Austender?

**Ms Lynch-Magor:** I do not have the date. I will get you the date that the variations to the contract which increased the amount went onto the Austender website.

**Senator CASH:** That would be greatly appreciated. Comments as reported in an article in the *Herald Sun* newspaper on 14 May 2011 by immigration industry experts say that this figure is likely to burst through the billion dollar barrier. Are they accurate?

**Ms Lynch-Magor:** The expansion of the detention network requires expansion of Serco's services and of course we have to pay for those services. All of the variations that we do under the contract are fully priced as value for money and are uploaded onto the AusTender website. As soon as those variations are done they will be uploaded.

**Senator CASH:** So there will be further variations. Is that what you are saying?

**Ms Lynch-Magor:** There are other facilities coming online, and those facilities will have to be priced and varied.

**Senator CASH:** Does the department estimate that this is likely to exceed \$1 billion?

**Ms Lynch-Magor:** The department spends a lot of time working out and ensuring that we are getting value for money for the services that we get from Serco. We are undergoing that process at the moment. I would not want to speculate at this point while I am establishing that what those fees might be.

**Senator CASH:** So what do you say in relation to the claims by the industry experts that this figure is now likely to burst through the billion dollar barrier?

**Ms Lynch-Magor:** I would say that I am establishing value for money under this contract for the government.

**Senator CASH:** What does the department anticipate the final cost of Serco five-year contract to be?

**Mr Metcalfe:** It is impossible to ascertain, Senator. As we have discussed before, it talks about future activity, essentially. Serco is paid for the work it does and that will depend very much upon the number of clients who are detained, and it takes us back to the issues we were discussing with Mr Sheehan before lunch.

**Senator CASH:** Are you able to advise how much Serco has been paid to date in the 2010-11 period?

**Ms Lynch-Magor:** The figures that are up on the AusTender website are the figures that are the value of the contract at this stage.

**Senator CASH:** What have they actually been paid though?

**Mr Metcalfe:** I think that the officers would need to check the invoices that have been received and the payments made to get a precise answer to that, so we will take that on notice.

**Senator CASH:** But in relation to the figures that are on the AusTender website, the value of the contract is now \$712 million. Is there any anticipation in relation to final costs for the 2010-11 period—so over the next five weeks?

**Ms Lynch-Magor:** Do we have in anticipation of final costs? I can take that on notice.

**Senator CASH:** How many variations were made to the Serco contracts during the 2010-11 financial year?

**Ms Lynch-Magor:** We have had two variations in the past year.

**Senator CASH:** What was the reason for each variation?

**Ms Lynch-Magor:** The variations included additional sites. We had the Adelaide Immigration Transit Accommodation that came online and that was included in a variation and the additional sites that were operational on Christmas Island.

**Senator CASH:** What were the costs in relation to each of those variations?

**Ms Lynch-Magor:** For the first two variations, the cost was approximately \$345 million.

**Senator CASH:** Is that for both of them?

**Ms Lynch-Magor:** Both of them.

**Senator CASH:** And in relation to the individual variations?

**Ms Lynch-Magor:** I do not have that information, but I can take that on notice.

**Senator CASH:** What are the insurance obligations of Serco in respect of damage to government property?

**Ms Lynch-Magor:** Under the contract, Serco assume a full licence for running the facilities and that includes full responsibility for the infrastructure and for the facilities. They are required to have adequate and appropriate insurance, which is sighted and overseen by the department, that covers the operation and any damage to those facilities.

**Senator CASH:** In terms of government property on the facilities, is that considered to be different from the government infrastructure that Serco has the licence over?

**Ms Lynch-Magor:** The department would have some small amounts of property on the facilities, for example, laptops and those sorts of things which DIAC case managers may use from time to time and, yes, that would be separate. But the majority of the loose assets and all of the infrastructure is all licensed to Serco for insurance purposes.

**Senator CASH:** So it is licensed to Serco for insurance purposes. In the article on 12 May 2011, it is also claimed that the government has granted Serco 'legal and financial indemnities'. Is that claim true?

**Ms Lynch-Magor:** I am not aware of that claim and I am not sure in relation to what it would be.

**Senator CASH:** Mr Metcalfe, are you aware of that claim?

**Mr Metcalfe:** I wonder whether you could read a bit more of the article, Senator, so that Ms Lynch-Magor can get the context. This is the article talked about the secret payments or to secrecy?

**Senator CASH:** It said:

This week's budget papers reveal that the Gillard government has also granted Serco legal and financial indemnities.

Serco is responsible for insuring the Immigration Department against loss and damage, or any personal liability claims arising from its management of detention centres, but the government has agreed that Serco will be liable to pay only \$75m, on top of any insurance payouts.

"What this means is that in the course of negotiating the contract, the commonwealth has agreed to meet any additional liability beyond \$75m in the event of certain circumstances," the department's spokesman said. "This is consistent with previous detention service provider contracts, and for Serco to achieve unlimited liability in all circumstances would result in additional contract costs.

"Such a decision was taken to ensure value for money and was subject to a full risk assessment."



The spokesman confirmed that the contract price had blown out to \$712m because Serco had been handed extra facilities to manage and needed to recruit more staff.

**Mr Metcalfe:** Thank you very much, Senator. Such a decision was taken to ensure value for money and was subject to a full risk assessment. A spokesperson confirmed that the contract price had blown out to \$712 million because Serco had been handed extra facilities to manage and needed to recruit more staff.

**Mr Metcalfe:** Thank you very much.

**Ms Lynch-Magor:** The issue is a standard inclusion in contracts where we require Serco to have full insurance coverage for all of the facilities that we licence to them? In addition we also ask them to have insurance which goes beyond the replacement of like for like. So their insurance policies would replace like for like, as opposed to a domestic insurance policy, for example, which would replace old for new. In that sense you need to ensure under your contract that you have provision to have liability in addition to that in the event that you needed to be able to purchase something where you could not purchase like and had to purchase something that was going to be more expensive. For that purpose—and it is a standard practice under the contract—you give a capped liability of \$75 million on top of full insurance.

**Senator CASH:** So the argument is actually misleading.

**Ms Lynch-Magor:** It is misleading. The additional \$75 million is that Serco has full insurance for all of our facilities and an additional capped liability of \$75 million, and that would allow them to approach an insurance market such that their insurance could be priced.

**Senator CASH:** When was the requirement for insurance by Serco regarding these facilities introduced into the contracts?

**Ms Lynch-Magor:** It was there from the get-go.

**Senator CASH:** So the nature of the legal and financial indemnity is over and above the full insurance?

**Ms Lynch-Magor:** Yes.

**Senator CASH:** And capped at \$75 million?

**Ms Lynch-Magor:** Yes, because unless you put a price on it the insurance market cannot actually respond.

**Senator CASH:** And what is the public policy reason behind granting Serco the legal and financial indemnity?

**Ms Lynch-Magor:** It allows Serco to approach the insurance market and to have an insurer prepared to insure them.

**Senator CASH:** So does Serco have any obligations in respect of the payment for damage caused by detainees or others within the nation's immigration detention network?

**Ms Lynch-Magor:** Yes.

**Senator CASH:** And what are those obligations?

**Ms Lynch-Magor:** They are required to make good all damage that is done in detention centres.

**Senator CASH:** Make good all damage done in detention centres?

**Ms Lynch-Magor:** Yes.

**Senator CASH:** What is the value of the damage caused to the immigration detention network during 2009-10 and 2010-11 to date? What was the amount claimed by the government for this damage? What was the amount paid to the government for this damage?

**Ms Lynch-Magor:** We have not had finalisation of costs for facilities for Christmas Island and for Villawood. We are working through the insurance claims. Serco will be making a claim with their insurer. We have made some early assessments of what we think those costs will be with our insurer to ensure that we have a concept of how much that is going to be, but Serco will be pursuing the insurance with their own insurer.

**Senator CASH:** What about the 2009-10 period?

**Ms Lynch-Magor:** I will have to take that on notice. I do not have that with me.

**Senator CASH:** What are the anticipated costs likely to be?

**Ms Lynch-Magor:** I think it will be in the order of around \$8.9 million.

**Senator CASH:** And that is for damage to the detention centre network for which period?

**Ms Lynch-Magor:** For this financial year.

**Senator CASH:** How does the government itself insure the immigration detention network—or is that Serco's responsibility?

**Ms Lynch-Magor:** Serco are fully responsible for insuring our facilities.

**Senator CASH:** Does the government have any responsibility in relation to any insurance in the nation's immigration detention network?

**Ms Lynch-Magor:** Yes. Naturally, as the Commonwealth's insurer Comcover have involvement in assessing claims and those sorts of things.

**Senator CASH:** I need to confirm that the government itself does not insure the immigration detention network. That is Serco's responsibility.

**Ms Lynch-Magor:** Facilities.

**Senator CASH:** Outside of the facilities, what else would need insurance?

**Mr Metcalfe:** The department pays premiums to Comcover, which would go to, for example, the wellbeing of our own staff. Clearly the department has obligations for appropriate care and compensation, and that is where Comcover comes in.

**Senator CASH:** When were the provisions for the contractor to insure the facilities actually introduced?

**Ms Lynch-Magor:** They were there from the beginning of the contract.

**Senator CASH:** What was the date?

**Ms Lynch-Magor:** the contract was signed in June 2009—that is, the contract for the immigration detention centres. Then the contract for the immigration residential housing and immigration transit accommodation was signed in January 2010.

**Senator CASH:** and that has the same insurance obligations of Serco?

**Ms Lynch-Magor:** Yes.

**Senator CASH:** Does the government maintain an insurance policy in relation to assess within the immigration detention network?

**Ms Lynch-Magor:** We license the assets to Serco.

**Senator CASH:** All assets to Serco?

**Ms Lynch-Magor:** All loose assets—every kettle.

**Senator CASH:** In terms of who is the department insured with, how much are the premiums, how long has the department had such insurance—those questions are not relevant because the assets are licensed to Serco.

**Ms Lynch-Magor:** As far as I am aware.

**Senator CASH:** In relation to insurance obligations on Serco that were included when those contracts were drafted in June 2009 and January 2010, work day in previous contracts?

**Ms Lynch-Magor:** Yes.

**Senator CASH:** From the beginning of those contracts?

**Ms Lynch-Magor:** I would have to take that on notice because I was not around then.

**Mr Metcalfe:** This function was, from memory, in 1997-98, and we would have to go back and check with that contract.

**Senator CASH:** Please take that on notice.

**Mr Metcalfe:** I suspect it has been a standard provision that has flowed through the various contracts that have occurred over the last 15 years.

**Senator CASH:** In relation to the insurance of the detention centre facilities, if a building is destroyed Serco's insurer will basically come in and fix the building at no cost to the government?

**Ms Lynch-Magor:** Insurance policies are designed and intended to work that way.

**Senator CASH:** Will there be a scissors where they may not work that way and there would be a cost to government and, ultimately, the taxpayer?

**Ms Lynch-Magor:** insurance is always one of those things Where insurance companies would certainly like to examine events and ensure that everything is the way that they would assume it would be. I would assume that all of those things would be examined by insurance companies.

**Senator CASH:** You said initially that Serco were required to have adequate and appropriate insurance and certainly, in being adequate and appropriate, one would assume that that includes that there would be no cost to the government in the event that the building is destroyed. What contingency measures are taken by the department to ensure that the insurance is adequate and appropriate?

**Ms Lynch-Magor:** we see full insurance policies and have them examined by people who have a great deal of expertise in that area to ensure that they are appropriate.

**Senator CASH:** Would use sign of a make contract if the department were not happy with an insurance provision within the contract?

**Ms Lynch-Magor:** I would not.

**Senator CASH:** Who are Serco's insurance?

**Ms Lynch-Magor:** I would have to take that on notice.

**Senator CASH:** What is the cost of premiums paid by Serco over their contracts? Is this reimbursed or covered in the contract payments to Serco?

**Ms Lynch-Magor:** I would have to take that on notice. Of course the insurance costs would be built into the contract fee. I am not aware of what those individual costs of premiums.

**Senator CASH:** Okay—you will take that on notice. You will find out for me what the premium is?

**Ms Lynch-Magor:** I will find out. I will do my best, senator.

**Senator CASH:** Who the insurer is and what their premiums are.

**Mr Moorhouse:** Could just add that the information in relation to liability limits is included in the budget papers—Budget Paper No. 1, 820.

**Senator CASH:** Thank you. Has Serco been sanctioned for any escapes or disturbances?

**Ms Lynch-Magor:** Yes.

**Senator CASH:** On what dates and for what specific reasons?

**Ms Lynch-Magor:** I would have to take that on notice.

**Senator CASH:** Are you aware of and how many occasions this is actually occurred—that they have been sanctioned?

**Ms Lynch-Magor:** the abatement regime has applied to Serco in relation to a range of matters. I can certainly provide—

**Senator CASH:** Sorry—the abatement regime?

**Ms Lynch-Magor:** Yes. Certainly escapes is a matter which is covered in abatement.

**Senator CASH:** So there is a contractual clause regarding abatement and the sanctioning of Serco in those circumstances?

**Ms Lynch-Magor:** And the application of the abatement.

**Senator CASH:** Are we able to have a copy of that clause?

**Ms Lynch-Magor:** That clause is not publicly available.

**Senator CASH:** But you will take it on notice and provide me with the information as to when Serco has been sanctioned for any escapes or disturbances and on what dates and for what specific reason?

**Ms Lynch-Magor:** Yes, Senator.

**Senator CASH:** In terms of Serco's contract or protocols with Serco on the department, what specific protocols are in place between the department and Serco in terms of Serco spokespersons or employees or contractors actually making media comment?

**Ms Lynch-Magor:** Under the contract Serco are required to ensure that their staff are not making comment to the media.

**Senator CASH:** How do they do that under the contract? What are Serco's obligations?

**Ms Lynch-Magor:** Their obligations are not to have their staff talking to the media or engaging in commentary.

**Senator CASH:** Are they allowed to have any authorised spokespersons under the contract?

**Ms Lynch-Magor:** Yes, of course they are. Under the contract they are able to have, and they do have, their own engagement with the media around the brand of Serco and the work that Serco does.

**Senator CASH:** Specifically in relation to the detention centre network or generally in relation to Serco's activities across Australia?

**Ms Lynch-Magor:** Serco is a very large, international company and they would naturally have a media profile like any other large company, and of course they are able to undertake that work.

**Senator CASH:** But they do have specific spokespersons to speak on the detention networks?

**Ms Lynch-Magor:** From time to time they provide clarification around issues to do with their company.

**Senator CASH:** In the event that a Serco staff member or Serco contractor does speak to the media, what sanctions are imposed on them?

**Ms Lynch-Magor:** It is a matter for Serco but, under the contract, Serco are required not to allow their staff to speak to the media. If staff do or if they make inappropriate comments, Serco need to take action against them—counsel them and deal with them—but that is a matter for Serco.

**Senator CASH:** So there are no specific sanctions under the contract that Serco has to apply to staff members?

**Ms Lynch-Magor:** Serco are required under the contract for their staff not to make public comment.

**Senator CASH:** What confidentiality requirements are Serco workers required to sign when they commence employment or a contract with Serco?

**Ms Lynch-Magor:** It is a matter for Serco, but Serco require their staff and their contractors to abide by the requirements of the contract, and the requirements of the contract are that those staff do not make public statements.

**Senator CASH:** Do they have to sign a confidentiality agreement, though? Is there a specific confidentiality agreement that the Serco staff or contractors have to sign?

**Ms Lynch-Magor:** I can check that with Serco, if you would like, but it is a matter for Serco.

**Senator CASH:** I have been informed that there are some staff members who say that they had to sign a confidentiality contract and that they were not allowed to then take a copy of that contract. On at least one occasion they actually state that the confidentiality contract was with the department rather than with Serco. Are there any circumstances in which the department would require Serco staff to sign a confidentiality agreement?

**Ms Lynch-Magor:** There are no circumstances that I am aware of.

**Senator CASH:** Could you take it on notice to see whether or not that has occurred.

**Ms Lynch-Magor:** I will take it on notice, but I am not aware that that has occurred.

**Senator CASH:** How many contractors does Serco engage across the detention centre network?

**Ms Lynch-Magor:** I do not have an exact figure but there are a number of contractors.

**Senator CASH:** Would you be able to take that on notice?

**Ms Lynch-Magor:** I can take it on notice, yes.

**Senator CASH:** And could you provide a breakdown of the various roles. Also, what is the cost of contractors engaged by Serco for the past three financial years?

**Ms Lynch-Magor:** I will take that on notice.

**Senator CASH:** Are you also able to provide that breakdown by sites in the detention centre network?

**Ms Lynch-Magor:** I think it would be very difficult because we have Serco staff who move around relatively frequently, but we will see what we can provide you.

**Senator CASH:** Is it the department's requirement that Serco ensure that their employees or contractors do not speak to the media? Would you sanction Serco if a staff member was to breach that?

**Ms Lynch-Magor:** Serco are required under the contract to ensure that their staff members and contractors do not breach confidentiality under the contract, and we require that of them.

**Senator CASH:** I am now going to move onto incidents of abuse against staff. Can I confirm, in relation to the confidentiality, basically the gag is coming from the department's perspective and not from Serco's perspective?

**Ms Lynch-Magor:** It is not a gag; it is a requirement under the contract.

**Senator CASH:** But if the department did not require Serco to include that provision Serco would not have that provision in. The department is requiring Serco—

**Ms Lynch-Magor:** I suggest that a contract is an agreement between two parties and Serco may well have required that in the contract themselves. It is an agreement between two parties that have come together mutually to agree on that.

**Senator CASH:** So you are saying that Serco may well have asked for the confidentiality provisions?

**Ms Lynch-Magor:** I am saying that it is a contract between two parties.

**Senator CASH:** Are you able to advise whether it is a requirement of the department that a confidentiality clause be included in the contract?

**Ms Lynch-Magor:** It is a provision in the contract jointly agreed to by Serco and by the department.

**Senator CASH:** But the department has required it. Would you have signed a contract if Serco did not agree for there to be a confidentiality clause?

**Ms Lynch-Magor:** I cannot speculate about that.

**Senator CASH:** Who is responsible for the contracts?

**Mr Moorhouse:** I think we can say that if we are engaging a contractor to work with us we would expect them to have a number of obligations, including protecting the privacy of

our clients in detention. So I think it is fair to say that we would require of Serco that there be a confidentiality agreement.

**Senator CASH:** I am now going to turn to incidents in the detention network. Could the department provide an updated list of incident types and levels used for the immigration detention network as they have applied for the past two years, and note where there have been any changes to the levels applied in each incident type? My understanding is that on 12 February 2011 there were changes to incident types and levels and it was implemented on that date.

**Mr Moorhouse:** I think this is in reference to the Serco risk ratings where we require notification of certain types of incidents. There was a media report—

**Senator CASH:** Correct. For example, there might be a minor incident that may have changed to a major incident following any changes to the Serco risk document.

**Mr Moorhouse:** We were aware of the media article, but we are not aware that that was a result of a departmental action. So it may have been something that Serco initiated.

**Senator CASH:** So is the department aware of incident types and levels within the detention centres—whether something is classified as a minor incident, a major incident or a critical incident?

**Ms Lynch-Magor:** That is defined in the contract.

**Senator CASH:** If this was to change would the department be notified?

**Ms Lynch-Magor:** Yes, because a contract is between two parties and we would have to be part of that. So it has not been changed under the contract.

**Senator CASH:** So what were the changes to incident types and levels implemented on 12 February 2011?

**Mr Moorhouse:** The incident notification has a number of different levels and those levels influence the notification of the department in relation to those incidents. So there are some incidents that have to be notified virtually straightaway.

**Senator CASH:** A bomb threat.

**Mr Moorhouse:** I would expect so. That would be one of the critical incidents we would expect to be notified about immediately. I think what we are referring to is the newspaper article that some of the things that are grouped within the three particular ratings have changed.

**Senator CASH:** I am not referring to a newspaper article; I am referring to a specific incident list. Can you provide the list of incident types and levels that Serco report to you on? Are you able to do that under the contract?

**Ms Lynch-Magor:** Yes, we can.

**Senator CASH:** And can you provide the list as it has been for the last two years, so incorporate any changes that have occurred?

**Ms Lynch-Magor:** Yes, we can.

**Senator CASH:** Thank you. 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 person in each of the last four years?

**Ms Lynch-Magor:** Yes, we certainly are aware. Four years would not cover the life of this contractor, so are you asking to go back to the previous contractor?

**Senator CASH:** When was the previous—

**Ms Lynch-Magor:** Serco signed the contract for the immigration detention centres in June 2009. So if you wanted to go back four years, we would have to go back to the previous contractor, G4S.

**Senator CASH:** It would be appreciated if you were able to do that. Could you also please provide on what date the department was made aware of the incidents, in which centres these incidents occurred and whether any charges have been laid in respect of these incidents and, if so, what is the current status of the charges?

**Ms Lynch-Magor:** I just want to be clear so that we give you the right information. That would only apply to incidents rather than threats of incidents?

**Senator CASH:** No, incidents of physical abuse and/or threats made against Serco staff. Basically what I am looking for is the number of incidents in the detention network by location, broken down by incident level and incident type. I am happy to have it for 2009-10 and 2010-11 to date, so just this contract. Does that make it slightly easier for you?

**Ms Lynch-Magor:** Yes, that makes it much easier.

**Senator CASH:** Mr Metcalfe, in relation to incidents that occur, what is the protocol in elevating it to your level and advising you?

**Mr Metcalfe:** Senator, there are a series of reports. Ms Lynch-Magor and Mr Moorhouse have been talking about the requirement for the department to be notified. When particular issues are notified to the department there is a system within Mr Moorhouse's group of preparing a situation report, which is circulated to a number of senior officers in the department and to the minister's office.

**Senator CASH:** So when does it actually get to you?

**Mr Metcalfe:** It gets to me when it is sent to me. It is sent by email—so as soon as it is sent to me. Internet providing, it arrives.

**Senator CASH:** Have you not received notification of something? Is that what you mean?

**Mr Metcalfe:** No, I am just saying that it is instantaneous. As soon as the report is sent by the duty officer, it is sent to a number of people and I receive it, and that can be at any hour of the night or day.

**Senator CASH:** But in terms of the actual incidents themselves, how soon after the incidents? Is there a protocol in terms of—

**Mr Metcalfe:** That takes us back to the questions you were asking previously about the requirements under the contract for Serco to notify the department of issues, and Ms Lynch-Magor can go over that again if necessary. But we have a system—

**Senator CASH:** In relation to you?

**Mr Metcalfe:** Serco have obligations to report things to us and then we have a protocol within the organisation of matters being reported to the managers and other people responsible, and I am included on that circulation list.



**Senator CASH:** So Serco do not report directly to you; they report to people within the department?

**Mr Metcalfe:** No, to the department. We have a duty officer arrangement within the department that is the focal point for the first reports coming in and is then responsible for preparing a situation report and distributing that by email.

**Senator CASH:** As the secretary of the department, are you notified of all critical incidents?

**Mr Metcalfe:** I would expect to be.

**Senator CASH:** You would expect to be.

**Mr Metcalfe:** Yes.

**Senator CASH:** Have you been notified of all critical incidents?

**Mr Metcalfe:** There was one occasion where I was not advised of an incident that I would have expected to be advised about.

**Senator CASH:** What was that occasion?

**Mr Metcalfe:** That was in relation to a matter recently following a fire in a room at Villawood which was reported to the department and the subject of a situation report which I received. Subsequently it was discovered that a can of flyspray together with a baby oil bottle containing a substance had been located. That was notified to the department's duty officer, but the duty officer failed to report that to senior managers or the minister's office. However, the matter had been appropriately reported to the department and appropriate action had been taken at the centre, including calling the police, so there was a proper, swift operational response. Certainly the concern raised by the proximity of the can of flyspray and the baby oil bottle was recognised as an incident, an operational response occurred and it happened properly. The failure in this case was the failure to notify me, senior officers and the minister's office.

**Senator CASH:** In relation to the device that you refer to, is that known as an improvised explosive device? Is it known as a bomb?

**Mr Metcalfe:** Various people have described it as various things in the media.

**Senator CASH:** What does the department describe it as?

**Mr Metcalfe:** I describe it as a can of flyspray and a bottle of baby oil.

**Senator CASH:** Really? That is interesting. I am glad no-one was hurt, Mr Metcalfe; that is all I can say. The next time that occurs and someone is hurt, we will go through this evidence again.

**Mr Metcalfe:** No-one was hurt.

**Senator CASH:** Was that defined as a critical incident?

**Mr Metcalfe:** What I am saying is that—

**Senator CASH:** Is it defined as a critical incident?

**Mr Metcalfe:** I am still trying to answer the previous question.

**Senator CASH:** Is it a bomb or an explosive device?

**Mr Metcalfe:** That is a matter for the police to advise us upon.

**Senator CASH:** But the department's position is it is a can of flyspray and some baby oil—that is it?

**Mr Metcalfe:** In proximity to each other. Whether it was capable of exploding and whether it would therefore be classified as an improvised explosive device or a bomb is a matter that I do not feel qualified to talk about. I am trying to be precise in my answer. There has been a lot of loose language used by a lot of people around various issues, and I am trying to be precise and cautious in my language. That is not denying that it was a serious issue and that there was a proper operational response. The failure on this occasion was the notification of that particular circumstance coming on top of the fire that had occurred in a room, which had been the subject of proper notification.

**Senator CASH:** Was the incident that we are referring to listed as a critical incident?

**Mr Moorhouse:** It would have been considered as a critical incident by Serco and was reported appropriately to the department.

**Senator CASH:** So, even though the department said it was merely a can of fly spray and a bottle of baby oil left next to each other, Serco deemed it a critical incident.

**Mr Moorhouse:** Serco reported it in line with the reporting requirements.

**Senator CASH:** Did they deem it a critical incident?

**Mr Moorhouse:** It was described as what it was.

**Senator CASH:** Did they deem it a critical incident?

**Mr Metcalfe:** Mr Moorhouse has answered the question.

**Senator CASH:** Did they deem it a critical incident?

**Mr Metcalfe:** Mr Moorhouse has answered the question.

**Senator CASH:** How has he answered the question? Did they deem it a critical incident?

**Mr Metcalfe:** He said that they notified the department of it as a critical incident.

**Senator CASH:** Thank you very much.

**Mr Metcalfe:** We said that about five minutes ago. Chair, I really do not know what more we can do to assist the committee.

**Senator CASH:** Given that the baby oil and a can of flyspray, to quote the department's view of what this actually was, were found several days after the Christmas Island riot and, four weeks later, after Villawood burnt down, why weren't you informed?

**Mr Metcalfe:** I am concerned that I was not informed as were other senior managers, but I am more concerned that the department was notified and that appropriate action was taken. The key issue here is not a failure to recognise a potential issue or to act upon it, clear that happened in a very timely manner. The safety of staff and detainees was uppermost in the mind of the persons identifying the proximity of the two substances and devices and the reporting of that to appropriate response authorities.

**Senator CASH:** My question was: why were you not informed? Has the department undertaken an investigation into what was the breakdown in relation to the duty officer?

**Mr Metcalfe:** Yes, we have. Essentially, it was a failure by a middle-ranking officer in the early hours of the morning to send a further notification because he had already sent a

notification of a fire and did not believe that further advice was necessary. That was the wrong call, and that officer is aware that we have very clear expectations of reporting of these sorts of issues.

**Senator CASH:** Was the officer disciplined?

**Mr Metcalfe:** We are considering whether any action under the Public Service Act would be appropriate.

**Senator CASH:** How long does that consideration take?

**Mr Metcalfe:** That is a matter that is dealt with by the values and conduct section of the department, and it is an issue that will take as long as it needs to take in order to ensure it is done fairly and properly.

**Senator CASH:** Is the minister advised of all critical incidents?

**Mr Metcalfe:** The minister's office receives the situation reports that I have described, which would include any critical incident.

**Senator CASH:** Was the minister advised in relation to this critical incident?

**Mr Metcalfe:** No, he was not, Senator.

**Senator CASH:** That was part of the breakdown of the communication.

**Mr Metcalfe:** That is right. Essentially, the email that would have normally gone—and we receive emails from time to time on issues—did not go; therefore, senior managers in the department in Canberra were unaware, but certainly staff in Villawood were aware, and the minister's office was not advised. I have formally apologised to the minister because I believe that the department let him down. His expectation is of being advised of these issues—to paraphrase a term 'of no surprises'—and of ensuring that he is kept well briefed of issues. The department, I believe, overwhelmingly does a good job in relation to that. On this incident we let him down, and I have formally apologised to him.

**Senator CASH:** Are you aware of any other critical incidents that you have not received notification of, or the minister has not received notification of, or is this the sole breach or breakdown in communication?

**Mr Moorhouse:** The answer to that, Senator, is no. I am not aware of any other incidents.

**Senator CASH:** Mr Metcalfe, are you aware of any other incidents where you have not been informed?

**Mr Metcalfe:** I am not aware of any other incidents, but I have asked Mr Moorhouse and, indeed, all of my senior staff to regularly remind their officers of the need to ensure that critical incidents, either within the detention network or more broadly in relation to operational matters are appropriately escalated and, where necessary, that the minister's clear expectations of the department are fulfilled.

**Senator CASH:** Has a review been undertaken in relation to the breakdown of the communication with the duty officer?

**Mr Metcalfe:** On this particular matter, we were quickly able to establish what occurred. The question that you asked, which is does that warrant sanction under the act, is an issue that is being dealt with properly and it is not proper for me to pre-empt any matter. I may be involved in some way in making decisions on that issue in due course. The aspect of ensuring

that senior managers, the minister and I are notified swiftly of any major issues is something that we regularly remind people about and about the expectations, and by any measure it does occur. We are advised of all sorts of things in what is a big, busy network, and that is my expectation and that is the minister's expectation.

**Senator CASH:** Have you undertaken a review of all other incidents to see whether or not they have been properly reported as a result of this breakdown?

**Mr Moorhouse:** We receive situation reports regularly. There has been no need for us to review those other incidents. I do not understand—

**Senator CASH:** How would you know if there has not been a minor incident or a major incident, unless you have undertaken a review of the whole process?

**Mr Metcalfe:** I think what is more important is a very clear expectation conveyed by the minister directly to me and to senior managers and reiterated, of course, after this particular issue, and so that is a very clear expectation and an understanding of how we do business. It is my expectation that every senior manager in the department is reiterating that. We have no information to suggest that there has been a similar communication breakdown elsewhere. I am satisfied that we receive regular reports of issues that do require escalation or notification. This is an important area. The location of two items which could be highly flammable or possibly explosive, as we have been discussing, clearly was an issue that was acted upon operationally. The department was properly notified, but it was then not the subject of a further notification up the line. For that, as I have said, I have expressed my apologies to the minister.

**Senator CASH:** Where did the detainees get the accelerants from?

**Mr Moorhouse:** Senator, they were things that were available within the detention facility. Since that incident, aerosol products have been removed from within the detention facility.

**Senator CASH:** Within the entire detention network or just within that particular facility?

**Mr Moorhouse:** I believe it is the entire network, but I will just confirm that. Yes, that is correct.

**Senator CASH:** So there was a review undertaken and that was the result—you removed aerosols?

**Mr Moorhouse:** When we identified that aerosol cans could be used in this particular way, they were removed from detention centres.

**Senator CASH:** Is that all types of aerosol cans?

**Mr Moorhouse:** As far as I am aware.

**Senator CASH:** So, if someone wanted deodorant, they would not be able to use an aerosol deodorant?

**Mr Moorhouse:** That is correct.

**Senator CASH:** Is there a code of conduct within the centres that detainees are supposed to abide by?

**Mr Moorhouse:** There is.

**Senator CASH:** Are we able to get a copy of that code?

**Mr Moorhouse:** Yes.

**Senator CASH:** Okay. Is that code enforceable?

**Ms Lynch-Magor:** It is a behaviour management code, and enforceability is an interesting concept, I guess, in—

**Senator CASH:** Well, it is, because why have a code if it is not enforceable?

**Ms Lynch-Magor:** That is right, but it is about what sanctions you can apply. The code of conduct does work to encourage good behaviour, and it has certainly been relatively successful in engaging clients in a compliant way. But, from time to time, clients seek to behave in a way that is against the behaviour agreement.

**Mr Metcalfe:** I think I described it yesterday as contumacious behaviour, Senator—wilfully disobedient, not obeying the lawful authority. It has of course been the subject of recent announcements and, indeed, legislation introduced into the parliament so that there are consequences for such unlawful behaviour.

**Senator CASH:** But is the code itself enforceable?

**Mr Metcalfe:** The behaviour guidelines are enforceable. But I do think it is important to seek to balance comments here. The reaction by some people to someone who does not behave appropriately, that they should have facilities withdrawn from them—for example, use of the internet or recreation facilities—could of course exacerbate bad behaviour because the person becomes bored or angry. So how to manage people's behaviour is a constant consideration.

I think we talked at some length yesterday about the fact that we are not dealing with a homogeneous group of people; we have different people in different facilities in different circumstances, with hopes and aspirations of living in our country. It is certainly our expectation that they will adhere to proper standards and that they understand that there are consequences if they do not adhere to those standards.

**Senator CASH:** Can you enforce the code of conduct, though?

**Mr Moorhouse:** There are a number of ways in which we can do that. As my colleague was saying earlier, the behavioural agreement is largely focused on trying to encourage positive behaviour, and the reason for that is that the vast majority of people who are held in immigration detention facilities are compliant and well behaved. We have seen, as you are well aware, a number of examples where people have not been well behaved. There are a number of options available to us. One is the appropriate place of detention. If a person is demonstrating that they are of a higher level of risk, we would place them in different types of detention facilities. We have facilities in Villawood and Maribyrnong that are designed to be higher-security facilities and, as you are probably aware, we also used Silverwater prison for a short period of time. So it is open to us to respond to examples of seriously non-compliant behaviour by moving people into detention facilities that are more suited to their behaviour. But, for the vast majority of people in detention, we try to manage their behaviour in more positive ways.

**Senator CASH:** So the code is basically a carrot and not a stick: it encourages good behaviour but does not really apply sanctions to bad behaviour.

**Mr Metcalfe:** No, I think Mr Moorhouse said that there are sanctions for bad behaviour.

**Senator CASH:** But are you sanctioned in relation to breaking the code?

**Mr Metcalfe:** I think what Mr Moorhouse has clearly said is that we have tried to encourage people in a positive way, your carrot, but if they—

**Senator CASH:** Where is the stick? I want to know where the stick is.

**Mr Metcalfe:** Silverwater jail is a fairly serious—

**Senator CASH:** And is that for breaching the code, is it?

**Mr Metcalfe:** No. It is part of an overall behaviour management framework which is available to us which, as Mr Moorhouse has explained, goes to where a person is held, the circumstances of their detention, access to facilities and that sort of thing.

**Senator CASH:** Is it against the code to get on the roof? Or would that not be in the code?

**Mr Moorhouse:** We would regard that as being seriously noncompliant behaviour, yes.

**Senator CASH:** So it is against the code to get on the roof?

**Ms Lynch-Magor:** Yes, of course it is against the code.

**Senator CASH:** What happens then when someone gets down from the roof and they have breached the code? How do you enforce the code?

**Ms Lynch-Magor:** I think then a range of options would be looked at. That would include where that client is placed. I think that is one of the consequences that comes out of breaching the code of conduct and breaching requests by the service provider to behave compliantly. In addition to that, access to things which are important to all of us and to clients in particular—excursions, privileges and all of those things—are not available to that client.

**Mr Moorhouse:** I think it is also important to mention that if a person is involved in breaking the law then they are subject to referral to the police and being dealt with in an appropriate manner for criminal behaviour. You talk about being on the roof but, as we saw from recent examples, there was a different choice of behaviour. They are dealt with in accordance with the law. We have behavioural options relating to how people are treated within the facility, but there are a range of other consequences for, let us call it, bad behaviour.

**Senator CASH:** How many asylum seekers have been sent to Silverwater other than those for the recent riots?

**Mr Metcalfe:** It has been some years since someone was sent to Silverwater jail. We could check on that, but it has not occurred until recently for quite a long period of time.

**Senator CASH:** How many people have been denied privileges for getting on the roof? Has anyone been denied privileges for getting on the roof?

**Ms Lynch-Magor:** We could take that on notice.

**Mr Moorhouse:** The people who came off the roof in Villawood who were not referred to Silverwater jail were located in the more secure facility in Villawood.

**Senator CASH:** Were they denied privileges? Did they still have access to the internet, the telephone—

**Ms Lynch-Magor:** I suspect they have not been on an excursion.

**Senator CASH:** But did they get access to a telephone and the internet?

**Mr Moorhouse:** We can check on that for you.

**Senator CASH:** Thank you. Are Serco able to enforce the code or is that just something that the department does?

**Ms Lynch-Magor:** Serco are able to enforce the code.

**Senator CASH:** Can the department confirm whether there is a set of procedures or a memorandum that sets out the procedures for the department and/or Serco for dealing with a rooftop protest or similar incident at the Villawood detention centre, seeing as we are now talking about it?

**Ms Lynch-Magor:** Serco has management plans at all of the centres to manage incidents and that would include that sort of incident.

**Senator CASH:** So there is one, is there?

**Ms Lynch-Magor:** Yes.

**Senator CASH:** Are you able to provide the Senate with a copy of that memorandum that sets out the procedure?

**Ms Lynch-Magor:** The Serco management plan?

**Senator CASH:** Yes, but in relation specifically to dealing with a rooftop protest.

**Ms Lynch-Magor:** It would deal with management of incidents at the Villawood Immigration Detention Facility.

**Senator CASH:** So not specifically with a rooftop protest as such?

**Ms Lynch-Magor:** It would deal with a range of incidents.

**Senator CASH:** Is a rooftop protest one of them?

**Ms Lynch-Magor:** I cannot tell you off the top of my head.

**Senator CASH:** Are you able to provide us with a copy of the management plan?

**Ms Lynch-Magor:** I can take that on notice. I am not sure whether—

**Mr Metcalfe:** I would want to check that it was not going to advertise security arrangements. There is no point advertising—

**Senator CASH:** No. In relation to the rooftop protests, is the incident at Villawood the only time that a detainee or detainees have climbed onto a roof?

**Mr Moorhouse:** No.

**Senator CASH:** What other times were there?

**Mr Moorhouse:** That also happened at North West Point and Christmas Island.

**Mr Metcalfe:** It also happened on previous occasions at Villawood.

**Senator CASH:** What actually happened to those people? Did they have their privileges removed? Were they not allowed to go on excursions?

**Mr Metcalfe:** I think we have already taken that on notice.

**Senator CASH:** Good. I just wanted to make sure that it is not just in relation to Villawood.

**Mr Metcalfe:** You carry all centres. I recall back in about 2007 we had a number on the roof of stage 1 of Villawood. That was a difficult management issue that the then minister, Minister Andrews, was responsible for.

**Senator CASH:** You have said that Serco are able to enforce the code of conduct. What authority is required for use of force by a Serco officer in the event that force is necessary?

**Ms Lynch-Magor:** Serco have the ability to use reasonable force under the contract.

**Senator CASH:** What is defined as 'reasonable force'?

**Mr Metcalfe:** It is as provided in the Migration Act.

**Senator CASH:** What is that definition?

**Mr Metcalfe:** It is the common law definition: reasonable and proportionate to the circumstances. That is the whole concept of reasonableness.

**Senator CASH:** Are you able to outline what the procedures are in relation to dealing with the rooftop incident? What is your expectation as the department? What would actually be done?

**Mr Moorhouse:** Are you asking for expectation or—

**Senator CASH:** What is the expectation of what Serco would do by way of the procedure?

**Mr Moorhouse:** We would expect that Serco would engage immediately with the person in that situation—

**Senator CASH:** Or persons.

**Mr Moorhouse:** person or persons, identify why they are doing what they are doing and negotiate with them to come off the roof, which is essentially a dangerous situation to the persons' own circumstances. So we would expect them to negotiate in the first instance and as quickly as possible try to encourage the person to come down, and that is generally what happens.

**Senator CASH:** Can you advise whether these procedures were complied with in the recent rooftop protest at Villawood where detainees were on the roof for 11 days?

**Mr Moorhouse:** Yes, that is exactly what happened.

**Senator CASH:** They were got down as quickly as possible.

**Mr Moorhouse:** They were negotiated with by negotiators from the AFP initially and then by Serco. It took some time to get them down. There was contemplation of using reasonable force to get them down.

**Senator CASH:** There was contemplation.

**Mr Moorhouse:** There was consideration of doing that.

**Senator CASH:** And what was the reasonable force that was contemplated?

**Mr Moorhouse:** There was contemplation of removing them from the roof. The advice that we received from the AFP was that that would be dangerous to both the detainees and to the officers who would be involved. From recollection, the roof was nine metres from the ground, so there were serious risks of injury for anyone who fell off the roof. Certainly the three or four people who remained on the roof who remained on the roof for the longer period



were also threatening self-harm. So the advice from the AFP was that there was too great a risk to the individuals themselves and to the AFP officers to try to remove them by force.

**Senator CASH:** Can you confirm the minister's advice to the House of Representatives that detainees regularly returned to the roof cavity through the protest and were not prevented from returning to the roof by DIAC, Serco, the AFP or anyone else?

**Mr Moorhouse:** That is correct.

**Senator CASH:** On how many occasions and how many detainees undertook this behaviour?

**Mr Moorhouse:** The detainees moved between the roof and the roof cavity regularly during this period when they were on the roof. Access to the roof cavity was restricted because the manhole to the roof cavity had been wired closed, so the people on the roof were able to move into the roof cavity. There was consideration of trying to get onto the roof while the people were in the roof cavity, holding them in the roof cavity and then bringing them down.

**Senator CASH:** So the AFP advice did extend to safety within the roof cavity.

**Mr Moorhouse:** The AFP advice did take into account the context of the situation.

**Senator CASH:** In the roof cavity specifically or just on the roof?

**Mr Moorhouse:** I am not sure I understand this question precisely.

**Senator CASH:** When you said the AFP said that there would be a danger in removing these people from the roof, were the AFP also referring to the roof cavity?

**CHAIR:** Senator Cash, I might remind you about the use of words in your questioning. I am not going to direct you how to put your questions but maybe just ask you to think about the words that you use.

**Senator BARNETT:** Chair, on a point of order: I would ask you to likewise counsel the minister in his language and the use of it in reference to senators at the table asking legitimate questions.

**CHAIR:** I have no intention of counselling the minister at all. He is a minister of the Crown and he is entitled to have his own view about the questions that are being put. The word 'plead' does have some connotations to it. I understand, perhaps, where you might be heading to, Senator Cash, so let us just move on with the questions that you have to ask.

**Senator CASH:** Mr Moorhouse, you stated that it was not regular practice for senior officials from the department to negotiate directly with detainees. However, on this occasion, as you stated, you did negotiate directly with the detainees. Would the involvement therefore of yourself be considered special?

**Mr Moorhouse:** It would be considered unusual.

**Senator CASH:** It would be considered unusual.

**Mr Metcalfe:** But it was an unusual situation, wasn't it? We had two young men on a roof for 11 days, we had advice from the police that it would be unsafe to use force and we were obviously concerned about the police as well as the young men. Mr Moorhouse was able to advise the protestors of the consequences of their actions and they decided to come down—and I think that is a very good thing.

**Senator CASH:** Mr Moorhouse, you stated that you were basically in the last stages of having to resort to force. What type of force was actually anticipated?

**Mr Metcalfe:** That is really a matter for the police, I think, to answer.

**Senator CASH:** So we would direct those questions to the AFP.

**Mr Metcalfe:** Yes. As you know, the department has no capability in relation to the exercise of force in these circumstances and we rely upon Serco and the Federal Police for that advice. I think it is best to direct to them that question as to how force might have been used. But, as Mr Moorhouse indicated, it was in a precarious place of nine metres up. If someone had fallen, there could have been terrible consequences. All of those factors would have entered into the minds of the police. Mr Moorhouse was able to take the unusual step of directly engaging with the two people, letting them know that their actions were way past anything that was reasonable, and they realised that the time was up.

**Senator CASH:** Was the roof cavity dialogue that you had with the detainees, Mr Moorhouse, before or after protestors were found on Minister Bowen's electorate office roof?

**Mr Moorhouse:** After.

**Senator CASH:** How long after?

**Mr Moorhouse:** I am sorry, I do not recall. It was on the Saturday—

**Senator CASH:** But it was certainly after this occurred.

**Mr Moorhouse:** It was on the Saturday; it was after.

**Senator CASH:** Will it now be standard practice that a deputy secretary will go in and negotiate directly with detainees?

**Mr Metcalfe:** No, Senator.

**Mr Moorhouse:** But it is standard practice that we use all possible means to try to avoid the use of force. Force is seen as something that we use as a last resort. It is not possible for us to do this in every situation.

**Senator CASH:** Were the detainees who were protesting told at any time that when their protest finished they would not be transferred to Silverwater prison?

**Mr Moorhouse:** There were a number of negotiations that took place during that week.

**Mr Metcalfe:** Discussions.

**Mr Moorhouse:** A number of discussions that took place—

**Senator CASH:** What was that, Mr Metcalfe? Discussions. We are not allowed to call them negotiations, Mr Metcalfe—is that the direction you just gave to Mr Moorhouse?

**Senator Carr:** Can you let the officer finish the answer.

**Mr Metcalfe:** I was suggesting that the correct characterisation of what was occurring was a discussion, not a negotiation. A negotiation implies that things are being taken and given. What was occurring was a discussion to advise the people of the consequences of their actions.

**Mr Moorhouse:** Could I be clear—the secretary is quite correct. The discussions I was referring to were discussions with legal representatives and community representatives in relation to the people on the roof. Questions were asked during the negotiations with legal

representatives: what the circumstances were in relation to the individuals and whether they would be transported to Silverwater.

**Senator CASH:** And what was the response?

**Mr Moorhouse:** We gave no undertaking in relation to that. I and the other staff who were involved indicated that the situation, as we understood it at that particular time, was that the AFP were not seeking their transfer to Silverwater, but should issues arise at a subsequent point and should the AFP lay charges against them then that situation could arise. So we were quite precise about the circumstances.

**Senator CASH:** I need to be very clear here. At any time during these discussions were the detainees told they would not be going to Silverwater?

**Mr Moorhouse:** In outlining the circumstances we did indicate to them that, the way things stood at that time, we were not seeking their transfer to Silverwater. It was not an offer, it was not a negotiation, it was a description of a fact.

**Senator CASH:** But they were told by you?

**Mr Moorhouse:** The discussions I was talking about were with the legal representatives of the third person, the person who came down the day before the final two. In those discussions we discussed what the situation was in relation to his client and whether or not the client would be transferred to Silverwater when the client came down.

**Senator CASH:** What was the substance of those negotiations, what was the legal adviser advised?

**Mr Moorhouse:** The legal adviser was told what the facts were of the situation and that there was no expressed interest by the AFP in their client at that time but we could not rule out that occurring in the future. In that situation we would not be transferring them immediately to Villawood. It was not a negotiation, it was a description of the factual situation.

**Senator CASH:** Did the legal adviser then go and inform his client of that discussion?

**Mr Moorhouse:** As far as I am aware they were in contact, yes.

**Senator CASH:** So it would be fair to say that some of the detainees protesting were actually told during those negotiations that they would not be going to Silverwater.

**Mr Moorhouse:** They were told what the factual situation was.

**Senator CASH:** And that included that at that particular point they would not be going to Silverwater.

**Mr Moorhouse:** It is important to be precise because I believe that one of them was subsequently transferred to Silverwater.

**Senator CASH:** That is correct.

**Mr Moorhouse:** We were quite precise in what we told them and that was: at that specific time the AFP had not sought their transfer to Silverwater but, if at some point later charges were laid against them, then they could be transferred to Silverwater, so we were quite precise.

**Senator CASH:** Which is basically what happened.

**Mr Moorhouse:** Which is what happened in the case of one of them.

**Senator CASH:** Are you sure that the message was clearly conveyed to them that it was only at a given point in time that the AFP had determined that they would not be going to Silverwater but as they came down the AFP decided that they would be going to Silverwater?

**Mr Moorhouse:** I am sure that the message that was conveyed was correct because it was conveyed by a colleague in my presence and I listened—

**Senator CASH:** In what language?

**Mr Moorhouse:** This is to their legal adviser in English.

**Senator CASH:** So you heard what was conveyed?

**Mr Moorhouse:** I heard exactly what was conveyed.

**Senator CASH:** Did you then hear what was conveyed to the protesters?

**Mr Moorhouse:** That is a matter between the legal adviser and the protester.

**Senator CASH:** So you did not hear what was conveyed?

**Mr Moorhouse:** Not to him, no.

**Senator CASH:** Twenty-two others were sent to Silverwater without charges. Why was this so different then in relation to the remaining two protesters? Mr Metcalfe did you have something to say?

**Mr Metcalfe:** You have conflated the 22 persons with the fact that we have been talking about the roof. I was just saying to myself that of course we did not have those 22 people on the roof. There had been a major riot, a major destruction of property, and the assessment from the police was that the appropriate place to manage the outrageous behaviour of those people was through confinement in a correctional facility where much closer attention to their behaviour could be paid than is available in the immigration detention network. I wanted to make it clear that there were not 22 people on the roof who were sent off to Silverwater, it is part of a related series of issues that were occurring at that time.

**Senator CASH:** You mentioned damage to the detention centre network. This is a slightly different question but you have triggered it in my mind. I want confirm that I have asked you to take notice what the total damage bill is for the destruction to detention centres now across Australia.

**Mr Metcalfe:** Yes.

**Senator CASH:** Do you believe that the last who protested were offered some form of inducement or special deal to end their protest by being told that they would potentially not be going to Silverwater?

**Mr Moorhouse:** I am absolutely sure that they were not, because I would not do that.

**Senator CASH:** Okay.

**Mr Moorhouse:** Can I just add that they were both young men who were in a highly stressed situation and it was not necessary to offer them inducements. It was a simple discussion offering options to them and they decided to come down.

**Senator CASH:** The other 22, though, that we have been referring to were sent to Silverwater without charge. Wouldn't it be fair to say that those on the roof would have thought the same was going to happen to them, particularly in light of what was conveyed to

them in relation to the AFP situation? Would there have been the belief that they would not be going to Silverwater?

**Mr Metcalfe:** That was a matter where we were receiving advice from the AFP as to the appropriate management of people in the immigration detention network. The advice from the AFP was that those persons transferred to Silverwater had been behaving in such a noncompliant manner that even placing them in the most secure part of Villawood Detention Centre would not necessarily have been appropriate at that particular point in time. That security classification in terms of their behaviour was being informed by the views of the Federal Police.

**Senator CASH:** So these protestors were different from the 22 who went to Silverwater without charge?

**Mr Metcalfe:** By definition the 22 persons transferred to Silverwater to ensure their behaviour could be managed were different to the two persons who were not sent to Silverwater. That was based upon the views of the police as to the ability to manage their behaviour.

**Mr Moorhouse:** Could I add that the people who were transferred to Silverwater had been identified as persons of interest that the AFP wished to interview in relation to the violence and damage.

**Senator CASH:** Which two?

**Mr Moorhouse:** The people who were transferred to Silverwater—the earlier group—

**Senator CASH:** Yes.

**Mr Moorhouse:** had been identified by the AFP as persons of interest that they wished to interview in relation to the violence and damage. The other two people we are talking about had not been identified as persons of interest involved in the damage.

**Senator CASH:** Where are they now?

**Mr Moorhouse:** As far as I am aware they are still in Villawood. They were transferred to the Blaxland compound, which is a more high security party of that compound. Whether they are still there or not I am not sure.

**Senator CASH:** And where are the 22 detainees who were transferred to Silverwater and questioned by the police over the riot?

**Mr Moorhouse:** Some are still in custody—the ones who have had charges laid against them—

**Senator CASH:** And how many was that?

**Mr Moorhouse:** Six of the 22.

**Senator CASH:** Six of the 22 have had charges?

**Mr Moorhouse:** Yes. One remained in Villawood and the remainder—the other 14—have been transferred to Maribyrnong, which is the other facility where we have a high level of security.

**Senator CASH:** Why were they transferred to Maribyrnong? Was there a concern for their safety, for the safety of people in that community, for Serco officers?

**Mr Moorhouse:** For appropriate detention. One of the things that we try to do in terms of placement of detainees is to ensure that we are placing people according to their individual risk and the overall risk of the facility. We thought that it was appropriate to locate them in Maribyrnong for capacity reasons and for appropriate placement reasons.

**Senator CASH:** In relation to the roof protestors that you had the roof cavity dialogue with, it appears to be clear that if they came down they would not be immediately transferred to Silverwater as others had been. They had a unique audience—in fact, it was a one-off audience—with the Deputy Secretary in a roof cavity, and you still say that this is not a special arrangement.

**Mr Metcalfe:** I think Mr Moorhouse has said that it is an unusual arrangement.

**Senator CASH:** So you would agree that it is an unusual arrangement.

**Mr Metcalfe:** It is quite unusual for two young men to be on the roof of a detention centre for 11 days. Clearly, we were concerned for their welfare and state of mind. We were clearly concerned about the good order and functioning of the facility. I recall it was a Sunday morning. I was interstate and Mr Moorhouse told me that he decided to go to Villawood because he was looking for a way to finalise what was an ongoing issue in the network. I believe it was an act of singular exemplary public service that this was able to be resolved in a peaceful manner and that order was able to be restored without the need for force to be used, which may have had very dramatic consequences.

**Senator CASH:** And all of this just happened to happen on the day that the minister had protestors on his own roof?

**Mr Metcalfe:** It is a totally unrelated issue. I cannot comment on the minister's electorate office or the actions of the New South Wales Police; what we can comment on is the issue within our detention centre, and I believe that Mr Moorhouse's actions deserve great commendation.

**Senator CASH:** In the October 2010 estimates I asked in question on notice No. 273:

What plans are there to ensure that the Villawood facility is secure and that these incidents will not happen again?

That was in relation to escapes from the Villawood Immigration Detention Centre. I particularly asked:

Has the roof area been secured?

The answer given by the department was that action had been taken that would prevent detainees climbing on the roof. Was the committee misled in relation to the answer or was the action taken simply inadequate?

**Mr Metcalfe:** Do you have the number of that question?

**Senator CASH:** It was No. 273.

**Mr Metcalfe:** Was that from the last estimates?

**Senator CASH:** No, the October estimates.

**Mr Metcalfe:** I am not sure we have that with us.

**Senator CASH:** I am happy to provide you with a copy.

**Mr Metcalfe:** The department would never seek to mislead the committee.

**Senator CASH:** So was the action taken inadequate then?

**Mr Metcalfe:** I am not sure. Have you visited the centre?

**Senator CASH:** Not at this stage, no.

**Mr Metcalfe:** Essentially we are talking about old migrant flats that were constructed 30 or 40 years ago, which have been adapted to provide a secure facility in terms of perimeter fencing. Clearly, these are not purpose-built buildings. The sooner we can have a new facility, which provides appropriate standards of care and security, the happier I will be.

**Senator CASH:** I would like to read out the answer to the question because I do not think that that actually explains what has happened. It states:

In regard to securing the roof areas, the department has begun a works program to restrict access to the roof areas. These works include:

- replacing ceiling access covers with steel structures;
- placing restrictors on window openings, and
- applying anti-climb treatment to potential access points on the exterior of the buildings, such as downpipes.

So that was actually departmental work that was undertaken. Were the works undertaken inadequate?

**Mr Moorhouse:** From what I can see, the work was undertaken to restrict access to the roof. As the secretary was explaining, the detention facilities that we have available in Villawood are not all of a high-security nature. At various times in the past we have employed additional security measures, such as razor wire, to stop people from engaging in noncompliant behaviour. Some years ago a decision was taken to remove the razor wire. As a consequence of that, the capacity to restrict people's behaviour is to some extent limited. Those measures were undertaken in order to restrict people from gaining access to the roof but, as I guess we have seen, it is not able to totally prevent that from occurring.

**Senator CASH:** My question actually was: has the roof area been secured? The answer clearly was no.

**Mr Metcalfe:** Or not sufficiently well.

**Senator CASH:** Can you please update answer No. 273 from the October 2010 estimates by providing the committee with information regarding the exact nature of the work that was undertaken and the cost of that work?

**Mr Moorhouse:** Yes.

**Senator CASH:** Is it true that three of the detainees who remained on the roof for 11 days were allowed to enter the roof cavity to eat and in addition recharge their phones?

**Mr Moorhouse:** No, that is not correct. It is correct that they were able to enter the roof cavity. It is not correct that they were able to recharge their phones, because there was no electricity to the roof cavity available. What appears to have happened is that food and spare batteries had been taken into the roof cavity.

**Senator CASH:** By the detainees?

**Mr Moorhouse:** Whether it is by those detainees or some of the others who were on the roof at a particular point in time, I am not sure. There certainly was food and the people were

able to use their mobile phones some 11 days after the incident had started, so there were clearly mobile phone batteries—

**Senator CASH:** This is a claim that the minister made in the House of Representatives, so can we be very clear here. Is it true that the three detainees who remained on the roof for 11 days were allowed to enter the roof cavity? Can you answer that question?

**Mr Moorhouse:** They were able to enter the roof cavity. 'Allowed' is a different word.

**Senator CASH:** Okay. Were they able to enter the roof cavity to eat?

**Mr Moorhouse:** From what I understand, they were able to eat in the roof cavity.

**Senator CASH:** Who provided them with the food?

**Mr Moorhouse:** I am not entirely clear about that. I have been informed that the AFP negotiators provided food during the negotiations as part of that negotiation strategy.

**Senator CASH:** Was that three meals a day?

**Mr Moorhouse:** I do not know.

**Senator CASH:** Could you find out what the provision of food was? In relation to their phones, did the detainees have phones whilst they were on the roof?

**Mr Moorhouse:** That is correct.

**Senator CASH:** How did they recharge those phones?

**Mr Moorhouse:** The observation I would make is that they must have had other batteries inside the roof and they were able to go inside and replace the batteries while inside the roof.

**Mr Metcalfe:** Mr Moorhouse has just advised that there was no power in the building, so it was not as if they had a charger to recharge their batteries. It sounds like batteries had been prepositioned in the roof cavity and that they simply used those spare batteries to maintain their mobile phone.

**Senator CASH:** So the prepositioning of something in the roof cavity was deliberately done?

**Mr Moorhouse:** I think it is important to note that there were a number of people involved in the rooftop protests. The last two who came down were two young men who I would describe as being somewhat confused by their circumstances and not thinking all that clearly in the latter stages. Whether or not they had taken those sorts of measures or whether others who had been involved at other points of the protest had undertaken them, I do not know.

**Senator CASH:** I need to be very specific here. The minister stated that the three detainees who remained on the roof for 11 days were allowed to enter the roof cavity and recharge their phones.

**Mr Metcalfe:** They must have been able to replace their phone batteries with charged batteries.

**Senator CASH:** Were they able to recharge their phones? Was the minister misinformed? Does the minister know what he was talking about? Had he been given the correct information?

**Mr Moorhouse:** The minister knows exactly what he was talking about.



**Mr Metcalfe:** Senator, again you are trying to twist words. We have indicated that they were able to recharge their phones by we think inserting new batteries that had been positioned there. To me that is a form of recharging your phone. The minister has been absolutely correct and was correctly informed.

**Senator CASH:** Who is actually paying for the mobile phones that they were recharging? Is that something that the Australian taxpayer pays for?

**Mr Moorhouse:** No. Irregular maritime arrivals are not meant to have access to telephones. We presume that they were provided by non-IMA detainees who probably were able to communicate with the IMAs after some of the fencing was damaged.

**Senator CASH:** Has an investigation been undertaken into how they were able to get access to mobile phones?

**Mr Metcalfe:** Dr Hawke and Ms Williams are undertaking, as part of their inquiries, a review of the circumstances and the occurrences not only on Christmas Island but also at Villawood. That is a matter that they will be addressing.

**Senator CASH:** Were the mobile phones confiscated the minute the protesters came down from the roof?

**Mr Moorhouse:** They were.

**Senator CASH:** And did you have a look in them to see that they actually had batteries in them?

**Mr Moorhouse:** I did not take the phones off them.

**Senator CASH:** Will any of the protesters be subject to the character test?

**Mr Moorhouse:** They are all subject to the character test. The question is whether there are any criminal charges against them.

**Mr Metcalfe:** As we have indicated on several occasions, because either I or my officers may be involved in decision making or provision of advice, we are very anxious to ensure that any decisions that are made are legally proper so that justice can appropriately flow—whether that is in relation to any criminal charges that may be laid or in the application of the character test—so we will not speculate. But I do note the comment the minister made that he is determined that the grievous examples of noncompliance will have major consequences for people.

**Senator CASH:** Where did the protesters that were on the roof for 11 days carry out their ablutions? What provisions were made for them?

**Mr Moorhouse:** There were no provisions made for them.

**Senator CASH:** So where did they go to the toilet?

**Mr Metcalfe:** They had access to the roof and the roof cavity.

**Senator CASH:** Who had to clean that up afterwards?

**Mr Metcalfe:** Serco would be responsible for the restoration of that facility.

**Senator CASH:** Has any advice been given to the minister or requested by the minister regarding general conduct for action under the character test and action under section 501 by the minister?

**Mr Metcalfe:** We had a long discussion about that this morning.

**Senator CASH:** In relation to these particular individuals?

**Mr Metcalfe:** The minister has indicated, and I think I have stated very clearly, a general intention as to how provisions should apply. The issue of when those matters might be placed before a delegate or the minister is yet to occur. That is also relevant to whether the persons have been found to be refugees and are therefore subject to consideration of a visa or whether they are in fact awaiting removal from Australia.

**Senator CASH:** Has it yet occurred in these cases?

**Mr Metcalfe:** I will check on these particular cases, but my expectation is probably not because it is reasonably recent. Without being drawn into the particular individuals' circumstances, I make the observation that the character issue, the section 501 issue, is relevant for a person who may be under consideration for a visa in Australia. There is no visa to cancel or refuse if a person has been refused refugee status and is awaiting removal from Australia. The issue of whether or not prosecution should occur is a related issue to that.

**Senator CASH:** Has any advice been sought about the 22 who were transferred to Silverwater but not charged?

**Mr Metcalfe:** I think some have been charged.

**Senator CASH:** Has any advice been sought in relation to these people or submissions provided to the minister?

**Mr Metcalfe:** Again, the advice will be provided to the minister in the proper way should any of those persons be on a possible visa pathway. As to the application of either the current law or the future law, that very clearly will happen at the appropriate time. If the persons are not on a visa consideration pathway but are awaiting removal, then they will be dealt with under Australian law.

**Senator CASH:** Has any information been provided to date to the minister in relation to those 22 people?

**Mr Metcalfe:** I will check as to whether any of those particular individual cases have yet come before the minister.

**Senator PRATT:** I have some brief questions about Villawood and then I will ask about children in detention. How long ago was the Villawood detention centre built?

**Mr Metcalfe:** The Villawood detention centre largely consists of two major parts separated by a few hundred metres. The purpose-built detention facility was built in 1965 and provides higher-security accommodation. It has been added to and strengthened over the years, including in recent years. The other part of the centre, where this particular disturbance and rooftop protest occurred, became operational in 1976. It largely comprises buildings constructed in the early sixties and early seventies for the short-term accommodation of migrants to Australia—it was an old migrant hostel—and it was adapted in 1976 to become a detention facility. Essentially, we are talking about buildings that are very old.

**Senator PRATT:** They were certainly not purpose-built.

**Mr Metcalfe:** They certainly were not purpose-built, and the part that was purpose-built was built when I was five years old—and I am no spring chicken.

**Senator PRATT:** I am sure that was not very long ago. How would you characterise it in terms of suitability, safety and security now?

**Mr Metcalfe:** We have to use what we have. Over the years, various improvements have been made to the facilities such as more secure fencing, although Mr Moorhouse did refer to the changes to some of the fencing and the removal of razor wire by a decision of the government in 2005. However, it is very clear—and it has been clear for many years—that a new, purpose built detention centre is required that is fit for purpose and would be both more efficient and more secure to operate and would probably provide better amenity to staff as well as detainees.

**Senator PRATT:** So the alternative facility has been sought. Is there progress on approval for that?

**Mr Metcalfe:** Yes, there is. I recall requests first being made by the department about this as far back as 1997. It was in the 2008-09 budget that the extensive refurbishment and redevelopment of Villawood was announced, and work is now underway in relation to that. We expect it will still be a couple of years, though, before those are completely redeveloped and much more purpose built facilities become available to us.

**Senator PRATT:** I think you have taken on notice a question about the repair bill for damage to detention centres, but I am interested in knowing what the bill would have been. I recall a number of riots under the previous government—as in before 2007. I would like to know what that damage bill is and how it might compare.

**Mr Metcalfe:** I think we have taken on notice to Senator Cash the cost of the recent disturbances on Christmas Island and Villawood. Is there a time frame that you are looking for? Obviously, going back to the early sixties would be difficult for us, but if there is a time frame then certainly there were some major fires and destruction of property on Christmas Island, at Woomera, at Port Augusta and so forth.

**Senator PRATT:** That is the kind of time period I am thinking of. In the current context there is a compare and contrast of detention policies of this government and the previous government.

**Mr Metcalfe:** It is an issue that we can certainly take on notice, and I suspect there have been questions asked of the department in the past about the cost of those particular incidents. Essentially, we largely are required to operate in a network that is not built for the particular purpose. It is largely converted buildings, with the major exception of the North West Point facility on Christmas Island, which was constructed in recent years and handed over to the department a couple of years ago.

**Senator PRATT:** I have some questions about the government policy to remove children from detention and into community facilities. We had some discussion of that this morning in relation to the numbers of families and children, but I would like to know a little bit more detail about the kinds of facilities and access to services that families are now able to access in terms of school, mainstream health care, mainstream family and children's services et cetera.

**Mr Metcalfe:** Ms Pope can answer that question. This initiative builds on arrangements introduced in 2005 by the former government to, essentially, seek to detain as many people in the community as possible under so-called residence determination arrangements. The

department was quite successfully able to trial the means of ensuring compliance and availability for immigration purposes without detention in a facility actually occurring. It is using that background and experience that has been gained over the last few years, applying it together with, as I said this morning, assistance and the good offices of a number of not-for-profit welfare and religious groups and the Australian Red Cross. But Ms Pope can provide you with more detail.

**Ms Pope:** The Red Cross, as Mr Metcalfe has just said, is the lead agency for the provision of services to clients who are placed in the community, but they are subcontracting with a range of other organisations that have a range of expertise in, for example, out-of-home care for unaccompanied minors and other experience which is very useful for delivering services for this client group.

You asked a question about the sorts of services that people have access to in the community. If we take the example of a family, they live in a house in the community like anybody else. There are a couple of restrictions on their activities. They are not allowed to work and they do not have access to formal study but their children attend school as normal. The adults can clearly be involved in the activities of their children in school. We are steadily increasing the range of activities available to clients, including, for example, recreation activities, sporting opportunities and opportunities to learn English in various community based programs. Clients can acquire new skills. While they cannot earn a formal qualification they can certainly participate in a range of opportunities to build their skills. Whether they are granted a visa or need to contemplate returning home, those skills are very useful to them.

So in terms of settlement, the fact that they have been living in the community means that they have direct and relevant experience of what it is like to live in the Australian community—they have learnt how to use the transport system, how to access medical help, how to go to a doctor—and they are relearning some of the life skills that have usually degenerated a bit since the time of their flight from whichever country they have come from and during the time spent in other countries overseas and then in detention centres in Australia. So they are regaining the ability to manage a household, to budget money, to help kids with their homework.

All of those sorts of activities are very useful if they are granted a visa because they settle with a lot of the groundwork done. And it is not that easy to settle in a new country. If we compare them with people who are resettled directly from offshore or directly from centres we expect them to be a little ahead in terms of what they have managed to achieve in the community. If they are going to go home then it certainly helps with the opportunities that might await them in their home countries, particularly around the acquisition of the English language and any other skills they may have been able to acquire.

**Senator PRATT:** What is the process for determining whether, for example, a family with children is going to be suitable or comfortable enough in the community setting?

**Ms Pope:** When we first started working on this we were very focused on vulnerability and who we needed to move out first. That sort of criteria related, for example, to families with very small children, the young youngest unaccompanied minors, those who had been in detention the longest and pregnant women. It was the sort of pretty obvious vulnerability criteria. We are now moving through the caseload as quickly as we can and going on to other

families with older children, the older unaccompanied minors and so on. That is the way we are approaching it.

**Senator PRATT:** Can I ask about the framework for care for unaccompanied minors?

**Ms Pope:** Yes, unaccompanied minors are accommodated in the community, with a full-time carer provided by agencies other than the Red Cross. Their expertise is not in out-of-home care so they have contracted with other organisations to provide that. Those carers live in with groups of unaccompanied minors. The ratios are determined by state arrangements and by any issues that we think might need a higher ratio of carers—arrangements where we might have a particular vulnerability we need to cover. For the most part they live as a household unit, in effect, and work together to run their households. We like the kids to be involved in managing that household, doing chores, cooking dinner, shopping and doing those sorts of things as well as the recreational activities I was talking about before.

**Senator PRATT:** Can I ask about the services available to those children if it has been identified that they have experienced some kind of trauma, which I imagine would not be uncommon for many of them.

**Ms Pope:** Many of them were already accessing mental health services in centres and where they transfer in the same state—for example if they were getting help in the MITA in Melbourne and they move into the Melbourne community—they remain with the same service provider who would have been assisting with torture trauma counselling or whatever was in place. If they move from one state to another in order to move into community detention they are linked up, again, with the providers that are appropriate to that area. That applies to medical services or physical requirements as well.

And where we think there are particular issues we make sure we place children and/or families in a location where those services are readily available. For example, we would not place people in a regional area if the services were not available.

**Senator PRATT:** So, while there is clearly a priority in getting children out of detention, you cannot move them out without making sure all those things are in place.

**Ms Pope:** That is right. I guess it has been a constant balancing act between moving people out as quickly as we could while making sure they had access to appropriate services and that their welfare was taken care of. And that continues to be the way we are approaching it.

**Senator PRATT:** Thank you, Ms Pope.

**Senator CASH:** Going back to Serco, I wrote down, 'What is the value of damage caused to the immigration network during 2009-10 and what was the amount claimed by the government for this damage?' I understand it was \$8.9 million for 2010-11. I just want to make sure that the figure I wrote down is correct.

**Mr Moorhouse:** No, the figure of \$8.9 million related to this financial year.

**Senator CASH:** Sorry, that was this financial year?

**Mr Moorhouse:** And we indicated we would take the previous financial year on notice.

**Senator CASH:** So, for 2010-11, it is \$8.9 million to date.

**Mr Moorhouse:** That is a very rough estimate. That is the estimate we have, but I have to indicate that it is very rough at this stage.

**Senator CASH:** That is your expectation for this financial year.

**Mr Moorhouse:** That is our best estimate at this stage.

**Mr Metcalfe:** It is a good indication of the order of magnitude, I think, but we will obviously wait for the precise figure.

**Senator CASH:** Were you going to give me the exact figure to date? Is that something you had taken on notice?

**Mr Moorhouse:** No. What we took on notice was the figure for 2009-10.

**Senator CASH:** Okay. So I can work with \$8.9 million as what the department anticipates will be the final figure.

**Mr Metcalfe:** I think a good way to describe it would be around \$9 million.

**Senator CASH:** Around \$9 million, okay.

**Mr Metcalfe:** But clearly that is based on initial estimates and we are waiting for more detailed advice.

**Senator CASH:** Thank you very much.

**CHAIR:** I have a question in relation to medical staff, particularly nurses. At the detention centres in Darwin and on Christmas Island, are the health and medical staff employed directly by Serco or is it via a subcontracted company?

**Mr Metcalfe:** No, it is a separate contract with IHMS. IHMS is the service provider in relation to health services.

**CHAIR:** With Serco?

**Mr Metcalfe:** No, it is a direct contract with the department. Essentially, Serco is responsible for facilities, guarding and provision of services—food and those services.

**CHAIR:** What does IHMS stand for?

**Mr Metcalfe:** International Health and Medical Services is the company that is contracted to provide health services to the department in the detention centres.

**CHAIR:** That would be for medical staff on Christmas Island as well as in the centres in Darwin?

**Mr Metcalfe:** That is correct, as well as in Darwin and elsewhere.

**CHAIR:** Is there anything in their contract about conditions of employment?

**Mr Metcalfe:** There would be an expectation about appropriate industrial standards, but we would have to check precisely what there might be in the contract. Essentially, contracts will require adherence to applicable instruments and standards.

**CHAIR:** Okay.

**Mr Metcalfe:** Senator, I do not wish to curtail the ability of senators to move around within outcome 4, as we agreed, but there is a regular, high-level meeting today that my department normally attend and I was wondering if it was possible for me to have some indication of the likely areas we will cover. That will allow me to identify which of my deputies or division heads might be able to attend that meeting at the Prime Minister's department. It is something that happens regularly.

**CHAIR:** What time is that meeting?

**Mr Metcalfe:** Four o'clock. Otherwise I will have to hold people here.

**CHAIR:** I think we are going to continue working through 4.2 and 4.3, aren't we?

**Senator CASH:** All over.

**CHAIR:** When you say 'all over', do you mean questions about different centres?

**Senator CASH:** Correct.

**Mr Metcalfe:** For example, Senator, Mr Allen is one officer who might attend this meeting on our behalf. He has answers to questions in relation to the 106 persons on Christmas Island. If Senator Cash or Senator Barnett or others were going to go back there—

**Senator CASH:** In terms of the Malaysian issue that we were talking about.

**Mr Metcalfe:** That is right. If we are talking precisely about those people, then I need him here; if we are not, I could probably let him go and attend to other business. But we are of course at the disposal of the committee and if there is a doubt then I will hold the officer here.

**Senator BARNETT:** We could do that now.

**Senator CASH:** We can do it now and then that person can go.

**CHAIR:** All right. We will do that. Does that assist you?

**Mr Metcalfe:** If there are questions there.

**Senator BARNETT:** I have only got a few. I will do that now if you like.

**Mr Metcalfe:** Thank you very much. That is much appreciated.

**Senator BARNETT:** Regarding Malaysia, are you aware that the United Nations High Commissioner for Human Rights is in Australia and apparently meeting with the Prime Minister today?

**Mr Metcalfe:** Yes, I was aware of that.

**Senator BARNETT:** Are you aware of the views of the high commissioner with respect to your plan for Malaysia and the fact that it violates international law?

**Mr Metcalfe:** I heard a report on *AM* this morning, driving to Parliament House, which provided a short extract of her speech. I have not seen a transcript of the entire speech, but I understand the gist of what she seemed to be saying.

**Senator BARNETT:** I have a quote here from an ABC report of the comments by the high commissioner, Navi Pillay. She said:

They cannot send individuals to a country that has not ratified the torture convention, the convention on refugees.

Have you received advice on that fact and do you have legal advice to the contrary?

**Mr Metcalfe:** Senator, I indicated yesterday that we are confident in the legal position that we have. I have noted the commissioner's comments and, with respect, I would disagree with some of the comments she has made.

**Senator BARNETT:** Do you have any advice with which you can provide the committee to back up your view that your disagreement is sound and her views as the UN High Commissioner for Human Rights is wrong?

**Mr Metcalfe:** I think we are quite clear, on the basis of the advice that we discussed yesterday, advice we received from the highest legal officials in Australia, that our primary

international law requirement is non-refoulement under the convention. There is nothing that prevents a person from being deported or moved to another country; however, we would be in breach of international law if they were refouled. We are very clear about that.

I am not aware of the basis for the high commissioner's comments. I understand that she had not been well briefed in relation to Australia's plans. I do not have any understanding of whether or not she had, for example, discussed her proposed comments with the United Nations High Commissioner for Refugees.

**Senator BARNETT:** Have you briefed the Prime Minister on this?

**Mr Metcalfe:** I have not, but I have—

**Senator BARNETT:** Has someone from your department briefed the Prime Minister in advance of the meeting today with the high commissioner?

**Mr Metcalfe:** Not that I am aware of. My expectation is that the Prime Minister will be briefed by her department or by my minister, and I know that Mr Bowen also met with the high commissioner this morning as well.

**Senator BARNETT:** But you do accept that Malaysia has not ratified the convention against torture?

**Mr Metcalfe:** That is a statement of fact, Senator.

**Senator BARNETT:** Indeed.

**Mr Metcalfe:** And, as I have said, nothing has been said in the last 24 hours that changes our view about the appropriateness and lawfulness of our actions.

**Senator BARNETT:** Are you aware of the view of Human Rights Law Centre Executive Director Phil Lynch, that the government should abandon the deal with Malaysia?

**Mr Metcalfe:** I have not seen that specific comment.

**Senator BARNETT:** But that wouldn't surprise you?

**Mr Metcalfe:** I have not seen that comment, Senator. As Mr Bowen made clear, he expects there to be opposition to this particular plan, he expects people will have issues with it. That is entirely accepted. In a civil society, of course we expect that. The government's position is quite clear and unambiguous—and I note the positive comments made by the relevant international body, the Office of the United Nations High Commissioner for Refugees.

**Senator BARNETT:** You cannot say that the UN High Commissioner for Human Rights is not a relevant person.

**Mr Metcalfe:** The core mandate in relation to the international protection of refugees is with the UNHCR, not the UNHCHR.

**Senator BARNETT:** Are you saying she is irrelevant?

**Mr Metcalfe:** I am saying that I note her comments, but I also note the comments made by the UNHCR and the comments and advice provided to the Australian government in pursuing this action.

**Senator BARNETT:** All right. So, just to confirm on the record what you said yesterday, you are willing to—



**Mr Metcalfe:** I stand by my comments—

**Senator BARNETT:** No, sorry; I had not finished.

**Mr Metcalfe:** Sorry, Senator.

**Senator BARNETT:** I am just asking if you could confirm on the record what you said yesterday and are saying again today, that you are willing to—I will not say 'suffer'—be involved in comprehensive litigation regarding the Malaysia deal.

**Mr Metcalfe:** As we have seen elsewhere where Australia has undertaken this type of activity, we are confident in our legal position in both domestic and international law. That is not to say some people will not criticise it; I believe, though, that it is easy for some people to focus on the few people who access the services of people-smugglers and risk their lives coming to Australia. I have to deal with the consequences of the deaths of people on the high sea. I am also mindful of the thousands of people that Australia brings to the country as refugees. I do not know, because we were not involved in any briefing of the human rights commissioner, as to whether she had that context when she made her remarks.

**Senator BARNETT:** So you have not sought to brief her?

**Mr Metcalfe:** The minister met with her this morning. I am sure he had a good discussion with her.

**Senator BARNETT:** So your minister did meet with the UN High Commissioner for Human Rights this morning.

**Mr Metcalfe:** Yes, and I think there is some media reporting about that already.

**Senator BARNETT:** Thank you.

**Proceedings suspended from 15:35 to 15:55**

**Senator FURNER:** I return to the line of questioning prior to the break regarding Villawood, Mr Metcalfe. Would it be a reasonable enough observation that the redevelopment that is being worked on at Villawood would assist the department in managing client behaviour, in particular rooftop protests?

**Mr Metcalfe:** Yes.

**Senator FURNER:** It would?

**Mr Metcalfe:** Yes, it would.

**Senator FURNER:** In what way?

**Mr Metcalfe:** The plans and specifications for the new facility—both the new secure facility and the refurbishment, the major redevelopment of the centre—will have security as a very clear consideration. That is security in all aspects, whether it is the potential for escape or the potential for protest action, including the sort of action we have seen recently where people have climbed on to roofs. It is possible to apply some measures to prevent people from climbing on to roofs: anticlimb measures, for example. If you ever have the opportunity to visit the Maribyrnong detention centre you will see that there are physical barriers that can be constructed to prevent people from climbing from an outside wall on to a roof. The issue we have had at Villawood, of course, has been the ability to get into the roof cavity and then through that on to the roof itself. The redevelopment will obviously take those sorts of issues

into account. That will allow us to manage the facilities in a much more orderly way than we have been able to in the past.

**Senator FURNER:** How long have these plans for the redevelopment been considered?

**Mr Metcalfe:** The most recent plans were the subject of a decision by government in the 2008-09 budget process. But as I indicated to Senator Pratt, the department has been indicating for many years that we believed that we needed new detention facilities in the greater Sydney area. There have been various discussions and considerations underway for many years. It was a decision about two years ago that has now given us confidence to move forward with this major development process.

**Senator FURNER:** So you are indicating that a couple of years ago that decision was made.

**Mr Metcalfe:** Yes. I personally have been involved on this issue, I regret to say, since 1997 when I was the division head responsible for border control and compliance matters within the department and immigration detention issues. That was a time when the service provision was privatised and I came to the job just as that was being implemented. Part of that was a clear desire by the department to obtain more modern, purpose-built facilities. It was clear that there was always going to be a role in any system for some form of immigration detention for some, albeit a small number or proportion of, clients of the department. Clearly Sydney, as our largest metropolitan area, is always going to have a case load of people awaiting deportation or who simply do not comply with other arrangements. The department has been convinced of the need for this for many years and has been developing proposals. But it was a decision two years ago that has led to funding being provided.

**Senator FURNER:** That begs the question: if this plan was considered in 1997, why wasn't something done prior to this?

**Mr Metcalfe:** That is a matter for the government of the time. It is not up to me to comment about that. It is clearly an issue that is quite old now. If we had modern, purpose-built facilities then it would be easier for our service provider to provide a secure and safe arrangement for both staff and clients.

**Senator FURNER:** You indicated that the facility was built when you were six years old. Is that correct?

**Mr Metcalfe:** Stage one, or the so-called Blaxland complex, was, I understand, commissioned in 1965. So I am giving away my age. Other parts of the facility, particularly the ones that were the subject of the recent rooftop protests were migrant flats. Villawood was, of course, a migrant centre. Many thousands of migrants who came to Australia actually lived in the migrant flats at Villawood. They were built in the 1960s and 1970s and then converted and used in more recent times. But they were clearly not designed from a security perspective. In their original specifications they were designed as flats. Here is a point of trivia, which I am sure the chair will allow me to include: in fact the Easy Beats met at Villawood. So whenever you hear the song 'Friday on my mind', it will remind you of Villawood. Quite seriously, many thousands of migrants came through those flats and those were people who were, obviously, happy to be in Australia. It was not a security issue. It was the conversion of the facility following that that has meant it is being used for a purpose that it was not built for. That is the case with quite a few of the places we are required to use. The

only major purpose-built centre in recent times is the \$400 million facility at North West Point on Christmas Island, which is a very important facility. The immigration detention centre at Maribyrnong is also quite old but it has been significantly upgraded and provides a relatively secure environment. It always was a detention centre, unlike parts of Villawood, which were flats.

**Senator FURNER:** Would it be reasonable to suggest that had Villawood been redeveloped as far back as 1990 we would not have been in the situation we were looking at in April this year with the rooftop protests?

**Mr Metcalfe:** Certainly, it would be my expectation that any modern purpose-built facility would not allow people to have access into the roof cavities or onto roofs. Senator Cash has asked questions and we have undertaken to provide more information about the remediation that has occurred to prevent people climbing out of windows and onto the roofs. Short of putting steel plating across the ceiling, it would be difficult to actually secure the ceiling from people smashing their way into it and then smashing their way through the roofing area. As Mr Moorhouse has said, that then places the department and its service provider in a situation of having to make continual assessments about the behaviour of individuals. Where we have some individuals who are hell-bent on a major noncompliant course of action, there are not large numbers of facilities that can actually manage those people. Even our most secure facility in Sydney, Blaxland, was not seen as sufficiently secure for the persons who had been involved in the riots and arson. Hence the view of the police that they should be held for a period of time at Silverwater correctional facility.

**Senator FURNER:** I do have another couple of questions on complementary protection legislation. Is it true that applicants would be eligible for protection under this legislation at first instance? Currently they have to go through the process of applying for a protection visa, being rejected by the decision maker, seeking review of the tribunal, being rejected again, and then having to rely on the minister to intervene.

**Dr Southern:** That is correct, Senator. The legislation will provide that all of the matters under the other international treaties can be considered at the primary decision stage and review decision stages so an applicant would not have to go through a process knowing that they would be unsuccessful to reach the point at which they could seek ministerial intervention.

**Senator FURNER:** How long would that process take—are we looking at months or years?

**Dr Southern:** We gave some average times earlier today. I think, for primary decision stage, it is between two and four months, and it is a similar period for the review stage. So we are looking at a period of months.

**Mr Fleming:** And possibly longer.

**Dr Southern:** And possibly longer.

**Senator FURNER:** If it was longer, what sort of time would that be, beyond the two to four months?

**Dr Southern:** It can vary depending on the complexity of the case and the case load.

**Senator FURNER:** What are the safeguards that currently exist in the process if the minister refuses to intervene in a worthy case?

**Mr Fleming:** Because it relies on the minister's personal, non-delegable public interest powers, there is no mechanism for review; there is no requirement to give reasons to not intervene in a case. Essentially, there is no further right of review.

**Senator FURNER:** What are the real benefits of the legislation? Could you give me a summary of what outcomes it will deliver?

**Mr Fleming:** Firstly, if protection under a non-refoulement obligation other than in the refugees convention is owed, that can now be acted upon as soon as that is known. It can be actively sought and pursued both by decision makers and applicants from the beginning of the process; they do not need to wait for 10- or 12-plus months before accessing intervention. Secondly, it then becomes transparent and subject to merits review consideration by the independent Refugee Review Tribunal.

**Senator FURNER:** Thanks for that.

**Senator CASH:** I will turn to the issue of tobacco products available to detainees in detention centres. Can a witness please confirm that tobacco products are made available to detainees in detention centres?

**Mr Moorhouse:** Tobacco products are available to purchase within detention centres. Detainees can use the points that they are able to earn to purchase tobacco, amongst other items such as phone cards and soft drinks.

**Senator CASH:** I understand, and I have a series of questions surrounding that, but certainly in all of the detention centres, both onshore and offshore, tobacco products are available to detainees. What type of tobacco products are available—is it just cigarettes or is it roll-your-own cigarettes, cigars et cetera? What are the actual tobacco products available?

**Mr Moorhouse:** I cannot answer that question, but I will see whether someone else can.

**Senator CASH:** But certainly cigarettes are available.

**Mr Moorhouse:** Cigarettes are definitely available.

**Senator CASH:** What are the supply and distribution arrangements for tobacco products?

**Mr Moorhouse:** I am not sure I understand the question. They are not available to children. They are able to be purchased with the points that detainees can acquire from participating in activities and so on.

**Senator CASH:** Is it the department or is it Serco that sources them?

**Mr Moorhouse:** Serco sources them.

**Senator CASH:** How is Serco able to provide to detainees tobacco products? Is it under their contract that they are able to provide tobacco products to detainees?

**Mr Moorhouse:** They are one of the items that is made available to detainees to purchase within the detention facility. The points that detainees are able to not accumulate but acquire—because they do not accumulate—allow them to basically buy a few personal thing like soft drinks, snack foods and cigarettes.

**Senator CASH:** Does the department sanction the provision by Serco of tobacco products to detainees?

**Mr Moorhouse:** I do not think it would be fair to say we sanction it; we have active anti-smoking campaigns within the facilities, but smoking is a fact of life, it is not unlawful and, as you know, many people are addicted. Therefore, it is available to people to purchase, as it would be outside of a facility.

**Senator CASH:** Are tobacco products purchased and distributed by DIAC and any DIAC staff members at the detention centres?

**Mr Moorhouse:** No.

**Senator CASH:** It is only by Serco.

**Mr Moorhouse:** It is through Serco.

**Senator CASH:** In relation to the list of personal items that you referred to that detainees are able to purchase, are you able to provide me with a list of those?

**Mr Moorhouse:** I am not now, but I can take it on notice.

**Senator CASH:** Yes, if you could take it on notice. So Serco are the ones who actually source the tobacco products under their contract?

**Mr Moorhouse:** Yes.

**Senator CASH:** Who puts in place the anti-smoking campaign at the detention centres?

**Mr Moorhouse:** The health provider, IHMS, puts that in place.

**Senator CASH:** Is that a requirement of the health provider that they undertake an anti-smoking campaign by the department?

**Ms Lynch-Magor:** IHMS, as our health provider, undertake appropriate public health messaging and support for the clients we have. Smoking rates in Australia are very low. You would be aware that a number of clients are coming from areas where smoking rates are very high and cigarettes are very cheap. IHMS provide a lot of public health messaging and support to our clients. Smoking prevention or how to give up smoking and how to quit smoking are ways that IHMS engage with their clients.

**Senator CASH:** What is the range of tobacco products or cigarettes that are available? What brands are available?

**Ms Lynch-Magor:** I am not sure about the brands. We can take that on notice. I do know that from time to time brands of tobacco are particularly an issue for Indonesian crew, who want to smoke particular brands of Indonesian cigarettes. I am aware that the brands that are available in the detention centres are brands that are available in Australia. For example, Serco is not importing cigarettes for people.

**Senator CASH:** If the Indonesian crew like to smoke a particular type of Indonesian tobacco that was available in Australia, could they put forward that request?

**Ms Lynch-Magor:** They could put that request forward. We have asked Serco to standardise—

**Senator CASH:** Is this the crew?

**Ms Lynch-Magor:** Yes. Crew are detained just like anybody else. Crew generally have very high levels of smoking. We asked Serco to standardise a 'basket'—to use the term—of items that were available so that we would have a limited number of things which would be available. That would include discretionary items. All items for personal hygiene, deodorant,

shampoo and sanitary items are provided and should be provided by Serco. It is additional things that you might want from time to time and cigarettes are included in those.

**Senator CASH:** Are there smoking and non-smoking detention centres?

**Ms Lynch-Magor:** No there are not.

**Senator CASH:** Are there smoking and non-smoking rooms in the detention centres?

**Ms Lynch-Magor:** Australian detention centres are run in a way that is consistent with public health messaging. There is no smoking in public places; there is no smoking in eating areas. There are designated external areas for people to smoke and to smoke safely.

**Senator CASH:** Can they smoke in their dongas?

**Ms Lynch-Magor:** No they cannot.

**Senator CASH:** Is there a limit on the number of cigarettes a person can purchase per week by way of a health requirement?

**Ms Lynch-Magor:** It is not health requirement but it is naturally limited by the number of points that a client can get. They can only exchange those points for a certain number of cigarettes. Once they have smoked them they are gone.

**Senator CASH:** Is there a limit on the number of packets of cigarettes? If I attended lots of English lessons every day—

**Ms Lynch-Magor:** The number of points is capped. It does not matter how many lessons you attend after that; you can only accumulate 50 points.

**Senator CASH:** What is the cap on the points?

**Ms Lynch-Magor:** It is 50 points.

**Senator CASH:** Is that for a week?

**Ms Lynch-Magor:** That is for a week. Those points are reset each week.

**Senator CASH:** If I do not expend my points, I cannot accumulate them and suddenly have 200 points?

**Ms Lynch-Magor:** You cannot accumulate them.

**Senator CASH:** What does a credit equal? Does it equal one dollar?

**Ms Lynch-Magor:** It is equivalent to one dollar.

**Senator CASH:** How do the detainees acquire the points? Is there a certain list of things that they have to do?

**Ms Lynch-Magor:** There are some points that they get just for being in the centre. In addition to that participation in programs and activities will give them additional points up until the cap.

**Senator CASH:** Are the circumstances in which Serco staff would have given additional cigarettes to detainees in the event that a detainee is misbehaving and is demanding cigarettes but does not have the points? Have you been made aware of that?

**Ms Lynch-Magor:** I am not aware of that.

**Senator CASH:** Are you able to take on notice whether or not there have been circumstances where detainees have demanded cigarettes and they do not have the points to acquire them and the cigarettes have been provided to them by Serco staff?

**Ms Lynch-Magor:** I will definitely take that on notice.

**Senator CASH:** Thank you very much. What is the dollar value of a packet of cigarettes? How much does Serco charge for the cigarettes?

**Ms Lynch-Magor:** The point value is equivalent to the dollar value of a packet of cigarettes. I am afraid I am not sure what that is.

**Senator CASH:** That is fine. For example, if I were to purchase a packet of cigarettes—I also do not smoke—and it was \$25 at my local service station, I would expect to pay 25 points. So you are not subsidising the cigarettes in any way?

**Ms Lynch-Magor:** No, Senator.

**CHAIR:** How long has that system been in place?

**Ms Lynch-Magor:** The points system in exchange for the provision of cigarettes has been in place for many years at detention centres.

**CHAIR:** How many years—two years or 10 years?

**Ms Lynch-Magor:** Certainly as long as I have been involved.

**Mr Metcalfe:** It would go back quite a lot of years. It is consistent with the administrative basis of what is happening here, which is that immigration detention is not punitive or correctional; it is to ensure a person's availability for process. Within reason, the department and the service providers seek to provide a reasonable circumstance for people. Sadly, some people do like smoking and, indeed, I am advised it helps keep some people calm and relaxed or whatever. My dad was a smoker. I will not talk about it, but it is a terrible habit.

**CHAIR:** I was just trying to get a feel for the fact that the points system is not something new; it has actually been in for quite a number of years.

**Ms Lynch-Magor:** More than 10 years, we are advised.

**Senator CASH:** How much are detainees paying in equivalent credits for cigarettes? Does that figure include a retail GST component as opposed to a lower GST component, based on bulk purchasing arrangements, and excise duty? Are you able to advise on that?

**Ms Lynch-Magor:** I will take that on notice. I should point out that it is within the normal Australian standard. They are not being provided cigarettes which are separated from excise or any of those things. It is exactly the same as you or I going to the shop and buying a packet of cigarettes. All the excises and government duties are reflected in the points that are charged for those cigarettes.

**Senator CASH:** Are you able to provide an estimated cost in terms of the dollar value spent and the amount of product purchased for tobacco products by Serco for the financial years 2009-10 and to date?

**Ms Lynch-Magor:** I will take that on notice.

**Senator CASH:** Thank you very much. In terms of where Serco actually sources their products, do you know where they source their cigarettes from?

**Ms Lynch-Magor:** I do not know.

**Senator CASH:** Are you able to find out?

**Ms Lynch-Magor:** I can ask the question.

**Senator CASH:** Would there be a panel of providers?

**Ms Lynch-Magor:** As I said, I do not know. I have never asked the question.

**Senator CASH:** In terms of the government's plain packaging campaign, currently how are the cigarettes provided to the detainees?

**Ms Lynch-Magor:** As far as I am aware, the canteens that we operate at detention centres are not traditionally like a shop. The items are not displayed and certainly advertising is not part of what we do. It is a small and finite list of things. Clients know exactly what they want, they ask for it and, I gather, Serco staff go away and bring it to them, a bit like old-style shopping. Certainly we can give you some advice. They are not displayed, to my knowledge, so they would not invoke—

**Senator CASH:** Are they in plain packaging?

**Ms Lynch-Magor:** Of course. They are Australian standard cigarettes—the same that we would buy at the shop. The ones that we would have to buy have the pictures on them that are required by the Australian government and so are the ones that are provided by Serco.

**Senator CASH:** I have finished with that subject. It just want to go back and clarify something, though, in relation to the insurance obligations and the \$8.9 million that we were referring to earlier for the 2010-11 period as the value of damage caused to the immigration detention network during that period. One of the questions that I had asked was in relation to Serco's legal obligations and their insurance and whether or not there would ever be a circumstance in which the government, ultimately the taxpayer, would become liable to pay any of the insurance. I understand it would be in very limited circumstances—that Serco had the insurance and they had to pay for what happened. Is there any clause in the contract that would void Serco's insurance—for example, if Serco were not managing a detention centre properly?

**Ms Lynch-Magor:** I will answer that in one moment. Can I just clarify this: in relation to the \$8.9 million figure referred to, when I answered the question the first time I think I rightly said that that was an estimation—

**Senator CASH:** Which?

**Ms Lynch-Magor:** of the damage that was done at Villawood and Christmas Island.

**Senator CASH:** It was Villawood and Christmas Island.

**Ms Lynch-Magor:** It is not the full amount. That would be for the past financial year, so that number will be different when we provide it to you on notice. I just wanted to make that clear because I was not sure whether that had come across clearly.

**Senator CASH:** I appreciate that. Thank you.

**Ms Lynch-Magor:** To answer the other part of the question, of course we all know, with insurance, that there are insurance policies. Insurance policies, of course, cover a gamut of things—a wide range of things—and in the event that there was a breach to the insurance policy then that would be an area where Serco's insurer would have a case with Serco around what they would and would not pay, in the same way that anybody's insurance would work in that space.

**Senator CASH:** Under the contract, would failure to properly manage the detention centre be an event that may trigger the insurance company saying, 'We are not going to pay'?



**Ms Lynch-Magor:** I would have to check the detail of the insurance policy.

**Senator CASH:** Would you be able to do that?

**Ms Lynch-Magor:** I will do that.

**Senator CASH:** Thank you very much. I will now turn to questions in relation to Christmas Island. When was the department first aware of trouble in the centre prior to the walk-out on 12 March 2011?

**Mr Metcalfe:** Just so that you are aware how we are proposing to answer in this area, Ms Wilson, who is now the deputy secretary responsible for the business services group was the deputy secretary responsible for immigration detention services at the time of the Christmas Island incidents so we thought it might be easiest if she was to assist in answering in this area because she may well have some first-hand knowledge of particular issues. So the answers might come from Mr Moorhouse, Ms Lynch-Major or Ms Wilson, depending on the question that you ask.

**Senator CASH:** I will repeat the question. When was the department first aware of trouble in the centre prior to the walk out on 12 March 2011?

**Ms Wilson:** There was some reporting on the night of 11 March that Serco had received some reports, through clients reporting to staff in the centre, that there was potentially something that was being discussed among clients. But that was a very limited report.

**Senator CASH:** So Serco actually notified the department or the duty officer?

**Ms Wilson:** It was during business hours—

**Senator CASH:** During business hours they advised the department—

**Ms Wilson:** That is right.

**Senator CASH:** that they had noticed discussions amongst—

**Ms Wilson:** They have a few clients who talk to them about issues that might be going on in the centre. They informed that there were some discussions happening. There was a hook-up between Christmas Island and Canberra.

**Senator CASH:** When you say there was a hook-up—

**Ms Wilson:** There was a telephone hook-up.

**Senator CASH:** Who was on the telephone on Christmas Island?

**Ms Wilson:** Ms Lynch-Major might be able to help me but I understand it was the leader on Christmas Island. I was not involved in that phone hook-up.

**Ms Lynch-Magor:** Yes, it was the Serco lead on Christmas Island. It was DIAC-led on Christmas Island.

**Senator CASH:** It was DIAC?

**Ms Lynch-Magor:** It was DIAC on Christmas Island.

**Senator CASH:** DIAC on Christmas Island.

**Ms Lynch-Magor:** Serco on Christmas Island.

**Senator CASH:** So DIAC on Christmas Island and Serco on Christmas Island.

**Ms Lynch-Magor:** That is right.

**Senator CASH:** And who in Canberra?

**Ms Lynch-Magor:** Acting First Assistant Secretary in Canberra, myself—

**Senator CASH:** And the Acting First Assistant Secretary was?

**Ms Lynch-Magor:** Our colleague Deb Jacka at that time, and there were some of our DIAC colleagues and Serco here in Canberra.

**Senator CASH:** What were the department here in Canberra made aware of?

**Ms Lynch-Magor:** Basically that there were some signs that there might have been some discussions about a protest building. It was limited. As I said, it was limited source reporting that was brought to our attention. The teleconference took place, and following the teleconference a range of activities were agreed in terms of following through, but there was also an agreement that it warranted a significant presence of staff from both DIAC and Serco in the compounds, a lot of engagement with clients, talking to clients about the movements we had planned to the mainland and the status of their cases, and engaging clients with meaningful activity; those were the strategies that were required to manage the level of client discussion that had taken place so far, I guess.

**Senator CASH:** Were the discussions elaborated on in any way in the report back to Canberra, other than, 'We've had some discussions with some detainees and there may or may not be a protest'?

**Ms Wilson:** No. I guess it is fair to say that my team reported to me that, by the end of the teleconference, Serco had dismissed the threat as a plausible threat that was going to escalate going forward.

**Senator CASH:** They had dismissed the threat?

**Ms Wilson:** Yes. We normally raise these things and work through from a whole bunch of perspectives what the risks and threats are and whether the intelligence is actually confirmed from a range of sources. In this particular incident, we went through the normal process that we do, and it was agreed that it should not be maintained as a real risk on our alert system but we would all, basically, be duly diligent and put in place the activities I mentioned previously.

**Senator CASH:** By way of background, are you able to provide a breakdown of critical incidents by month in the six months leading up to the riots at Christmas Island?

**Ms Wilson:** I am sure we can do that for you on notice.

**Senator CASH:** Thank you. Could you also note whether or not there was any escalation in incidents over this time when you are actually looking at the information.

**Ms Wilson:** There had been nothing in particular in North West Point. There had been a range of altercations between some unaccompanied minors and families at Construction Camp the previous month, but nothing in North West Point particularly.

**Senator CASH:** But you will provide us with that information?

**Ms Wilson:** On notice, yes.

**Senator CASH:** Thank you. After Serco had dismissed the threat of a protest after the telephone discussion, what then happened?

**Ms Wilson:** As I said, we agreed to a range of strategies to mitigate risk, including ongoing invisible staff engagement in compounds to engage with clients but also to remind

them what was acceptable behaviour and what was not. There are meaningful activities. People sometimes participate in these events when they get bored. We wanted to make sure there were soccer games, gym classes and English language classes being run, and we use activities as a way to keep people busy in a meaningful way. We also talked to them about the fact that there was an independent merits review team coming to Christmas Island shortly and that these were things to look forward to. We talked to them about our ongoing desire to transfer clients off Christmas Island into other places on the mainland as they became available. So these four elements are key strategies. We try regularly to reassure clients about their case being progressed and their needs being met.

**Senator CASH:** In relation to the escalation of incidents over the previous six months, had the department observed any increase in the escalation of incidents? Had the department made a note of that?

**Ms Wilson:** I would have to look at the data, but I think there was a general sense that more little things were becoming big things, if that is a fair thing to say.

**Senator CASH:** So the department had noticed an increase—an escalation.

**Ms Wilson:** Yes. Lining up to get a meal might have resulted in a push and a shove where before it would not have turned into anything like that. It is probably fair to say we had noticed those simple things were becoming more complex

**Senator CASH:** What then happened in terms of the walkout?

**Ms Wilson:** I have a bit of a chronology, so I will just talk you through some steps.

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

**Ms Wilson:** You can tell me how much or little you want to know. In the early hours of 12 March, a group of 50 clients breached the perimeter fence of North West Point, down near the Aqua-Lilac end of the facility. This rose to about 100 clients. The bulk of the group walked down to the airport, where they sat in an area adjacent to the airport. That group stayed there for quite a while, and over the course of the day some of the clients started moving away from the airport to other places on the island, including the beach or into different places, and they broke up into smaller groups and dispersed. Over the course of the day we certainly worked with the local police, Serco and DIAC. We were very keen to ensure the safety of the airport and the safety of planes landing and departing.

**Senator CASH:** Was there any threat at any stage to planes or to the safety of people at the airport?

**Ms Wilson:** No. The local police talked to the clients who were seated around the airport and adjacent to the airport. It was a key aim of ours to make sure there was no disruption to air travel. I guess it would be fair to say that most of the local police were engaged in that activity. Over the course of that day, which was a Saturday from memory, Serco ran regular buses around the island picking up clients who had had enough and were ready to get on to the bus and come back to the centre. That happened through the rest of the day and over the rest of the weekend.

**Senator CASH:** In relation to the escalation of events over the previous six months, did the department raise any concerns with the AFP that the sworn officers with public order

management training withdrawn the previous November should actually be returned to Christmas Island?

**Ms Wilson:** At the time of that withdrawal I was actually on Christmas Island. They were several discussions about the state of the facility in order to manage that withdrawal. There was a risk assessment done. You would need to talk to the AFP about the mechanism in which that took place. A decision was made, based on the risk and the levels present on the island, about the scale of the force that was required to be left behind.

**Senator CASH:** Had the department, in noticing over the previous six months that there had been escalation in terms of the detainees' behaviour, raised with the AFP that these officers should be returned to Christmas Island?

**Ms Wilson:** There is a weekly meeting of Commonwealth officers on island, including the AFP. Those discussions take place constantly about the incidents in the centres, the level of support required, the numbers on the island and the numbers in different facilities. Those conversations are ongoing locally with the AFP.

**Senator CASH:** In January, February or even early March did the department revisit whether the officers should be returned to the island? Was there any discussion surrounding that?

**Ms Wilson:** There was not a specific discussion about mobilisation of a bigger AFP team to go onto the island.

**Senator CASH:** But what about those ones who had actually been removed?

**Ms Wilson:** There were conversations around the number that should be a regular presence on the island.

**Senator CASH:** But were there discussions surrounding whether the sworn officers with public order management training who had been withdrawn the previous November should be returned to the island?

**Ms Wilson:** Not in any specific degree of detail.

**Senator CASH:** What about a general degree of detail?

**Ms Wilson:** There were general conversations about the number of incidents increasing and about the numbers of clients on Christmas Island increasing. Those discussions took place with AFP on the island.

**Senator CASH:** My understanding is that there were no AFP team members with those skills that could be deployed when the riots started, is that correct, because they had been removed the previous November?

**Ms Wilson:** I understand that part of the force that remained had some public order training, but you would have to check with the AFP about that. In terms of the normal contingent remaining on Christmas Island, I cannot specifically tell you how many would have public order skills per se.

**Senator CASH:** I want to go back to the conversations. You say conversations occur on a very regular basis and you say there was no specific conversation in relation to those officers returning. What were the general conversations about? Were concerns raised by the department that these officers needed to come back to Christmas Island because the department was seeing an escalation in the behaviours occurring at the detention centres?

**Ms Wilson:** I think I have probably said all I can on that matter.

**Senator CASH:** There was a media report at the time that departmental officers were following a group of the detainees around, offering them food and a ride back to the centre. Is that true?

**Ms Wilson:** I would need to confirm whether it was departmental officers. But, as I mentioned, there was a Serco bus. Staff were going around. It was a hot day and people were hungry and thirsty. They were being offered a ride back to the detention centre. They had walked a long way. I am sure there was water and food provided on that bus going back to the centre.

**Senator CASH:** Why weren't those people arrested and taken back to the centre, by force if necessary?

**Ms Wilson:** The numbers of police on the island and the need to secure the airport as a priority did not enable us to have sufficient AFP on the island to actually do that. We were trying to do it in a peaceful way which required working with the clients rather than using AFP, which were being used for another purpose at the time.

**Senator CASH:** What you are saying is the number of AFP on the island at the time was deficient.

**Ms Wilson:** To assist in securing the airport, providing some community support when this was going on and also helping to relocate 100 people, probably that was the case.

**Senator CASH:** That there was a deficient number of AFP. There has to have been a deficient number of AFP because you were deploying them elsewhere.

**Ms Wilson:** I reaffirm my comment that I think the priority was securing the airport and providing support to the community which did not allow for sufficient AFP to be available to pick up 100 people.

**Senator CASH:** Because there were not the AFP available.

**Ms Wilson:** You would again have to check that with AFP.

**Senator CASH:** Basically no-one was there, so the department were exposed after they had removed the police in November. Isn't that the case?

**Ms Wilson:** As I said, we did not anticipate an event of this scale.

**Senator CASH:** But you certainly anticipated an event, because your evidence is the department, over the previous six months, had noticed an escalation in that type of behaviour and yet it was in November that the decision was made to remove those officers. You also said conversations occurred on a very regular basis. You had all of January, all of February and part of March. You could have been prepared if you had chosen to be.

**Ms Wilson:** I have nothing further to add to what I have said already.

**Senator CASH:** If those AFP officers had been returned to Christmas Island, you potentially would have had the resources to go and arrest the people. Isn't that true?

**Ms Wilson:** I guess the AFP would have had to have formed a view about whether they would want to arrest those 100 people. Some people would have broken down the fence; other people would have walked out through a hole in the fence. They would have had to have

formed a judgment about who needed to be arrested. I am not in a position to provide advice on that.

**Senator CASH:** What powers do Serco or departmental officers have to ensure detainees do not behave inappropriately or badly? Can they put troublemakers in isolation? Can they refuse privileges? Are they allowed to physically restrain them?

**Ms Wilson:** I think you covered much of this earlier today. Serco are allowed to use reasonable force. The secretary explained to you what reasonable force was under the Migration Act and things that a normal person would consider to be reasonable in a given circumstance. In this instance, there were many more people going through the hole in the fence than the Serco guards could manage at that point. They were asking people to stay in the centre. They were asking people to come away from the fence. They were doing the things they were able to do given the circumstances.

**Senator CASH:** Are they allowed to physically restrain detainees? Is physical restraint considered to be appropriate reasonable force?

**Ms Wilson:** They would have to get approval for that and it would depend on the circumstance as to whether it was reasonable. There was no threat to life. Apart from the hole in the fence, there was no threat to persons.

**Senator CASH:** But they do require authority from DIAC if they are going to use force?

**Ms Wilson:** Certainly, in terms of operations we tend to give approval if we think situations are going to get to the point where they might have to use—are you talking about things like flexicuffs or something like that?

**Senator CASH:** Anything like that, absolutely. Do they also need approval for that?

**Ms Wilson:** Yes. If a situation presents itself where they do not have a choice—

**Senator CASH:** How do they seek that approval? Is it through a departmental officer on Christmas Island?

**Ms Wilson:** Yes, through the regional manager on Christmas Island.

**Senator CASH:** How do they get access to that person?

**Ms Wilson:** That person was at the scene for the duration of the incident or there was a person acting in her capacity for the whole time of the incident.

**Senator CASH:** To confirm, force can only be used if the department approves it?

**Ms Wilson:** Apart from asking people to get off a fence or—

**Senator CASH:** That is not force. What about the suspension of privileges? Do Serco need to get departmental approval if they are going to suspend someone's privileges?

**Ms Wilson:** Ms Lynch-Magor has already discussed this with you. It is part of a behavioural management plan. They have authority to do all that by themselves. They re-risk assess a client, and depending on the risk assessment they can stop excursions, participation in activities, et cetera. That is part of the ongoing good order of the centre.

**Senator CASH:** They do not need to speak with the regional manager to withdraw someone's privilege?

**Ms Wilson:** No.

**Senator CASH:** They need to notify you, obviously, because that would be an incident.

**Ms Wilson:** There are daily meetings on Christmas Island across all agencies and they would notify of that. They might say they had tried to talk to me but I was still not responding and that they were planning to put in a behavioural management plan which would cover these things. Certainly, all agencies would be aware of it.

**Senator CASH:** In terms of the use of physical force, when Serco has spoken to the regional manager to seek approval to use physical force, does the regional manager then have a line of command. Do they need to seek authority from Canberra? Or is the regional manager able to authorise the use of force?

**Ms Wilson:** The regional manager is able to authorise the use of force but they would certainly notify it back to Canberra as part of that consideration.

**Senator CASH:** Hold on. They can authorise the use of force without speaking with Canberra?

**Ms Wilson:** This was part of an incident which was being managed. We had set up a command centre in Canberra so everything to do with the incident there was regularly reported back to Canberra. In an isolated sense, yes, they can authorise the use of force. But as part of this they were actually regularly reporting back to Canberra anyway.

**Senator CASH:** But generally, if a Serco officer needs to use force, the regional manager can authorise that.

**Ms Wilson:** Yes, they can.

**Senator CASH:** What about transferring them to another part of the facility. Does Serco need to seek the authorisation from the regional officer or is Serco able to do that?

**Ms Wilson:** Again you are asking me two questions; I am not sure what you are asking me. In general, they can place clients where they should be best placed according to their risk assessment. They will just do that. In the middle of this situation they had a command centre on Christmas Island and we had a command centre in Canberra. Clearly, if they were moving people for a particular reason, the conversations would have happened both in command centre on Christmas island and in Canberra.

**Senator CASH:** And in the normal course of events? Just generally? Does Serco need to seek the regional officer's authorisation to transfer someone from one part of the centre to another, or can Serco just do that under the contract?

**Ms Wilson:** Serco would do that based on the risk assessment.

**Senator CASH:** Do they then need to notify DIAC that they have done that?

**Ms Wilson:** In general, no.

**Senator CASH:** So they can basically move people around the centre depending on risk assessment?

**Ms Wilson:** It is about the best placement of clients based on risk. The only exception to that would be the use of red compound.

**Senator CASH:** That was my next question. What about the high security section? Do they need authorisation from the regional manager before they transfer someone into the high security section, or is that something they are also able to do on their own judgment?

**Ms Wilson:** Are you referring to the red compound?

**Senator CASH:** Yes – the high security section.

**Ms Wilson:** They would need approval from my position in Canberra to use the red compound.

**Senator CASH:** Would they call you directly or would they go through the regional manager, who would then approach you?

**Ms Wilson:** They would go through the regional managers because she would have to satisfy herself that there was a case to use the red compound. I am not on the ground; she is.

**Senator CASH:** During the incident on 12 March, when did it become clear that neither the department nor Serco were in control of the detention centre?

**Ms Wilson:** Did you say 12 March?

**Senator CASH:** When the walkout was. I will put it in context: when was the decision made to actually hand over control of the centre to the AFP?

**Ms Wilson:** On 18 March the AFP was formally hand responsibility from DIAC and Serco. There is a formal process for handover and handback and there are certain conditions that have to be met in order to do that. When the centre was handed over to AFP all of our staff reported through that AFP process so there was only one lead in relation to the centre. That is so only one agency had responsibility for securing and managing the centre.

**Senator CASH:** What was the process that was undertaken before the decision was made to hand over control to the AFP?

**Ms Wilson:** Over a couple of days there were multiple efforts made to secure the compound, to fix the holes in the fence. This was a thing that happened regularly. Every time Serco fixed the holes and DIAC tried to talk with staff, the holes would reappear again the next night. In the meantime in Canberra we had talked with AFP and a range of other agencies, AFP had deployed a significant number of AFP officers to Christmas Island—

**Senator CASH:** In terms of the deployment of the AFP officers, how many days transpired from the walkouts to the arrivals of the extra AFP?

**Ms Wilson:** I do not have the specific—

**Senator CASH:** Was it 24 hours? Was it 72 hours?

**Ms Wilson:** The day they walked out was the morning of the 12th. I understand we had the first movement of the AFP onto the island that Sunday, the next day, but it was not until a couple of days later, around the 16th; that—sorry, there was a sequential movement of AFP from the 13th onwards. I am just not sure of the exact numbers every day.

**Senator CASH:** How many in total arrived at the island?

**Ms Wilson:** I do not have the numbers by days. We can get that for you on notice.

**Mr Metcalfe:** You will be seeing the AFP in the next—

**Ms Wilson:** We will be.

**Senator CASH:** That is fine. I will follow that up with the AFP. Has the minister used any of his powers, including in the past and present general conduct provisions—as he promised, after—to refuse or cancel anyone's visa?



**Ms Wilson:** The disturbance is still the subject of police investigations.

**Senator CASH:** The answer to that is obviously 'no' at this point in time.

**Mr Metcalfe:** The minister has made his position quite clear on that.

**Senator CASH:** Could you read into the *Hansard* what the minister's position is?

**Mr Metcalfe:** The minister is quite clear that this type of behaviour is completely unacceptable and that it will have consequences, in terms of consideration, if a person is found to be a refugee and is therefore subject to consideration as to whether they should have a visa. This sort of behaviour would be the subject of consideration and, of course, there is legislation before the parliament that would be applicable. The question of whether any of those particular cases have reached that particular stage is an issue, but the minister has made his general position quite clear.

**Senator CASH:** Where are those cases at?

**Mr Metcalfe:** It would be lots of different individuals, and so across all of those persons there would be a different stage, possibly. Some would be people who may well be found to be refugees or may not have been found to be refugees but are seeking review. So many cases would be at different stages, I would suspect.

**CHAIR:** I think Senator Furner wants to ask something that is sort of related.

**Senator FURNER:** It is in the line of questioning on these types of incidents. I am trying to remember an incident dating back to 2000, I think, under the Howard government; there was a break-out of Woomera. Is that correct?

**Mr Metcalfe:** Yes. My recollection is that there was a major walkout of people from the then Woomera detention centre. I think it was probably in 2000; I will correct that if I am wrong.

**Senator FURNER:** I understand it is around 2000.

**CHAIR:** I think it was exactly the date the Olympic torch landed at Uluru. In fact, I think it might have been 9 June.

**Mr Metcalfe:** We will check it. We will hold you to that, Senator. We will go looking on that date.

**CHAIR:** If that is right, I want some payment for it! I think it is around then—9 June or July. June, I think it was. I clearly have vivid memories of that day.

**Mr Metcalfe:** We will see if the two issues coincided.

**Senator FURNER:** I understand there were arrests resulting from that particular issue.

**Mr Metcalfe:** Certainly, I am happy to think back, and I am sure that previous members of this committee would have asked lots of questions about that particular incident at the time. I was deputy secretary of the department then and I have a recollection, but it is 11 years ago now. My recollection is that dozens if not hundreds of people exited the detention centre at Woomera, which was a couple of miles outside the township of Woomera. They moved into the township and occupied a large section of the town and severely disrupted activity in what would have been a proper—but I suppose some people would characterise it as unusual. The then departmental secretary, Mr Bill Farmer, was dispatched to discuss the situation with the people concerned and he engaged in discussions with the group. Ultimately there was

acceptance by the group that they should return to the centre, and they walked back or were transported back. Beyond that, my memory is not clear but I am sure I could refer you on notice to evidence that would have been provided to this committee 10 or 11 years ago about that matter. From memory, it was a very major issue at the time, and the Department of Defence as the principal administrators of the Woomera Prohibited Area, the Woomera township; and the Australian Federal Police and the South Australian police would all have been involved in the matter.

**Senator FURNER:** So it is not a new phenomena that that is happening. This type of event has been happening for over a decade.

**Mr Metcalfe:** It takes us back to facilities that have had to be prepared, quite often fairly quickly, to deal with surges of arrivals of people coming. It is not something the department is happy about or that its service providers are happy about, but we have seen this sort of thing before and on that occasion it was not a deputy secretary who was ultimately involved in resolving the matter; it was the secretary of the department.

**Senator FURNER:** Interesting.

**CHAIR:** For the Hansard, I want to quote from a newspaper article from 13 June:

The arrival of the Olympic torch at Uluru in Central Australia last week gave the mass media an occasion for a carefully stage-managed spectacle: the Governor-General handing the torch to the area's Aboriginal inhabitants ...

Yet just 1,000 kilometres away across the desert in Woomera, events were unfolding that revealed an entirely different state of affairs. About 500 asylum-seekers broke out of the over-crowded Woomera Detention Centre ...

**Mr Metcalfe:** You have an extremely good—

**CHAIR:** I think you owe me, Mr Metcalfe.

**Mr Metcalfe:** We will work out what I owe you later, Senator. An early mark may be what I owe you.

**CHAIR:** We will see what I can do.

**Mr Metcalfe:** My understanding is that that then sparked further incidents elsewhere in the detention network—

**CHAIR:** You are right. At Curtin and at Port Hedland.

**Mr Metcalfe:** That is correct.

**Senator CASH:** Certainly, one might say that that is what happens when you get lots of people in detention centres; however, I would also say that we have now doubled the amount of detention that we had back then. Mr Metcalfe, can the department confirm the peak detention capacity of the detention network under the Howard government, compared to the peak detention today?

**Mr Metcalfe:** I would have to take that on notice. Certainly Woomera was a large facility. Baxter was a large facility. Port Hedland—

**Senator CASH:** But compared to today? Is there anyone here who can answer that question?

**Mr Metcalfe:** I am probably the best placed to answer, and I would not want to be drawn. But certainly there were a number of centres operating: Curtin, Port Hedland, Baxter,

Woomera, Villawood, Christmas Island and other centres as well. So we have seen large numbers of people—

**Senator CASH:** But not as large as we have seen today?

**Mr Metcalfe:** I would need to check on that.

**Senator CASH:** You are the department secretary, Mr Metcalfe.

**Mr Metcalfe:** And even my memory does not give me the precise statistic of 11 years ago. But I will happily take that on notice.

**Senator CASH:** Did our detention capacity under the Howard government ever exceed 4,000?

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

**Senator CASH:** You actually do not know? As the department head, you do not know whether under the Howard government—

**Mr Metcalfe:** I was not department head at the time.

**Senator CASH:** No. However.

**Mr Metcalfe:** I have been the department head since 2005. I was deputy secretary at the time and I think you will forgive my lack of precise recall as to the situation 11 years ago.

**Senator CASH:** I think we all know that it never eclipsed 4,000.

**Mr Metcalfe:** You have made that comment, and I will confirm whether you are correct.

**Senator CASH:** Why don't you get one of these people here to go to the department website? Because you can access the information on the department's website.

**Mr Metcalfe:** Well perhaps you can tell us the answer.

**Senator CASH:** Under the Howard government, it did not. How many departmental staff, contract staff and clients are on Christmas Island as at the current date?

**Mr Metcalfe:** It will probably be as of a few days ago. That would be when our statistics are valid to.

**Ms Wilson:** I do not think we have the exact date but we probably have around the 16th of May. We will keep looking it for it.

**Senator CASH:** Departmental staff, contract staff and clients on Christmas Island as at the current date. How many AFP officers are there? What is the usual contingent of AFP officers on the island? While we are waiting for that information, for the benefit of Hansard, under the Howard government, peak detention capacity was approximately 3,750 and today, lo and behold, it is just under 6,800.

**Ms Wilson:** As at 16 May, there were 99 DIAC staff on Christmas Island.

**Senator CASH:** Contract staff? So that was direct employees of DIAC.

**Ms Wilson:** Serco staff, 254; IHMS—International Health and Medical Service—63; interpreters, 61; Resolve, which is our facilities maintenance and cleaning people, 70; Life Without Barriers, which provides independent support for unaccompanied minors, three—

**Senator CASH:** Does that also include contractors or are you only talking about direct employees?

**Ms Wilson:** Some of these are contractors to Serco.

**Senator CASH:** So that is included within the figure you have given me?

**Ms Wilson:** Yes, that is right.

**Senator CASH:** What is the total number?

**Ms Wilson:** The total across the board is about 600, and 149 of those are locally engaged.

**Senator CASH:** How many AFP officers are currently on Christmas Island?

**Ms Wilson:** Sorry, I do not have that number. I would have to take that on notice.

**Senator CASH:** The department does not know how many AFP officers are Christmas Island?

**Ms Wilson:** Or you could ask the AFP.

**Mr Metcalfe:** It is up to the AFP to advise on how many officers they have there.

**Senator CASH:** Mr Metcalfe, given the events of this year on Christmas Island, are you honestly telling this committee that you do not know how many AFP officers are currently stationed on Christmas Island?

**Mr Metcalfe:** I am saying that the AFP is the responsible agency in terms of the deployment of their stuff on Christmas Island and you could refer questions to them, Senator.

**Senator CASH:** I accept that I could ask them the question, but are you actually saying that the department does not know how many AFP officers are currently on Christmas Island?

**Mr Metcalfe:** No, I am saying that, to get the correct up-to-date information, you should ask the agency responsible.

**Senator CASH:** How many does the department believe there are on Christmas Island?

**Mr Metcalfe:** I would prefer not to go into things I believe or do not believe. I would prefer to deal with the facts.

**CHAIR:** The AFP will be here on Thursday.

**Senator CASH:** I cannot believe that your evidence to this committee is that you actually do not know the number of AFP officers, given what—

**CHAIR:** Senator Cash—

**Mr Metcalfe:** You were verballing me, Senator. I did not say that. I said you should ask the AFP.

**CHAIR:** Senator Cash and Mr Metcalfe, let me make this really clear. As Mr Metcalfe has said, if you want the exact number of officers in the AFP who are currently stationed on Christmas Island or at any time in the past, the best people to ask is the AFP, who will be here on Thursday. Similarly, if you asked them, I assume they would not know how many DIAC staff are on Christmas Island.

**Mr Metcalfe:** I do not have someone at—

**CHAIR:** That is the right agency at the right time.

**Senator CASH:** I would have thought it is a slightly different consideration, considering the AFP are there to enforce law and order.

**CHAIR:** Could I just stop you there. As a senator representing people on Christmas Island, it is not just in relation to this but in relation to all of the law and order on Christmas Island. They are the police officers for speeding, drink driving, waterways, fishing, break and

enter—anything and everything on Christmas Island. The AFP would be the right agency to ask that question on Thursday.

**Senator CASH:** Thank you, Madam Chair. Has the department received any advice that there may be more incidents in the future on Christmas Island in relation to these conversations that are constantly occurring between the officers?

**Ms Wilson:** Soon after the March incident or more recently?

**Senator CASH:** Continuing.

**Ms Wilson:** We continue to get advice from different clients.

**Senator CASH:** Have you received any advice that there may be more trouble in the future on Christmas Island in the detention centre?

**Ms Wilson:** I think I need to ask Mr Moorhouse for that because I have been out of a job for the last four weeks.

**Senator CASH:** Mr Moorhouse, has the department received any advice that there may be more trouble in the future on Christmas Island?

**Mr Moorhouse:** We get daily reports from the Christmas Island manager and the DIAC manager on Christmas Island. Those daily reports go to the issue of tensions on the island. Some context that I would provide in terms of people in detention at the present time is that the attention population a dynamic thing—it changes over time. As Mr Metcalfe has emphasised earlier in the hearing, IMAs as a group are not homogenous; they are extremely different, coming from very, very different backgrounds. The composition of the IMA flow, if I can call it that, has changed over time.

**Senator CASH:** Is what you are telling me a justification for what will ultimately be, yes, the department has received advice that there may be more trouble in the future.

**Mr Moorhouse:** Okay, I beg your pardon. What I am trying to do is to say that we monitor the level of tension and concern within this and other centres and we have a number of strategies for managing that. What I was trying to do was to give you context. The short answer is, we receive reports and intelligence in relation to the atmosphere within detention centres all the time. That is part of our core business.

**Senator CASH:** Yes.

**Mr Moorhouse:** We try to respond to that in a number of ways, which I am happy to outline, if you would like me to.

**Senator CASH:** No, no, because that is not my question. What I want to know is: has the department received any advice that there may be trouble in the future on Christmas Island?

**Mr Moorhouse:** The answer to that is that we continue to monitor the tone in all of our detention centres—

**Senator CASH:** Let us talk about Christmas Island.

**Mr Moorhouse:** Okay, talking about Christmas Island, we have an increasing number of people on what we refer to as negative pathways: people whose refugee claims have been refused. The short answer is yes, but I wanted to give you context.

**Senator CASH:** Thank you. That is all I needed to know. Mr Metcalfe, are you happy with the current AFP deployment on Christmas Island?

**Mr Metcalfe:** It is not really a question of me being 'happy'—

**Senator CASH:** Are you satisfied with the current AFP deployment on Christmas Island?

**Mr Metcalfe:** I am satisfied with the arrangements which Ms Wilson has outlined about the very regular conversations and monitoring and interdepartmental processes involving AFP and Serco in relation to the potential for further problems to exist. It is a matter for AFP as to the operational deployment, and I am sure you will pursue that with AFP.

**Senator CASH:** What is the alert level at CI?

**Mr Metcalfe:** I do not think we—

**Senator CASH:** You do not have an alert level in terms of escalation of tensions?

**Mr Metcalfe:** We do not have a sort of green, amber, red type situation.

**Senator CASH:** So there is no grading system in terms of rating the actual tension in a particular detention centre across the detention network—that one is worse than the other?

**Mr Moorhouse:** No, there is no ranking system as such.

**Senator CASH:** So how would you compare, say, Curtin in Derby to Christmas Island in terms of tension?

**Mr Moorhouse:** We receive regular narrative reports from our managers who describe the situation within the centre rather than using some sort of arbitrary numerical or other coding system.

**Senator CASH:** So, for example, in relation to incidents you have minor incidents, major incidents and critical incidents?

**Mr Moorhouse:** Yes.

**Senator CASH:** In relation to the potential escalation of behaviour on detention centres, there is no grading system to say, 'We are now at code red stage. We actually need to deploy more Federal Police.'?

**Mr Metcalfe:** No. It is a narrative. It is basically an extremely regular review of the mood of the centre and the circumstances that are occurring and it is in a narrative form. Clearly, if our senior officers in the centres believe that more needs to be done, then it is escalated and elevated in that particular way. But we have not sought to reduce that to a sort of numerical, colour-coded—

**Senator CASH:** A code.

**Mr Metcalfe:** or whatever form. It is more nuanced and more active and that. Such a system may work in some areas. I can imagine in terms of extremely large networks where that needs to be described in that way, but this is the subject of very close daily management by Mr Moorhouse and his people.

**Mr Moorhouse:** Can I just add to that. The sorts of tensions that we see are actually quite different. That is what I was trying to explain before. So, for example, we will have some people who are on positive pathways who are frustrated or disappointed—

**Senator CASH:** That they are not being moved.

**Mr Moorhouse:** And so what we try to do, as part of managing that degree of concern, is to keep people more informed, to advise them and of course to try and speed up the

processing as much as possible. There are other centres where there are more people on negative pathways and the sorts of tensions are more difficult, and so we manage the tensions in different ways.

**Senator CASH:** In circumstances of heightened tension and violence at the centres, does the department, any other government agency or Serco monitor communications at the centres, including phone and internet?

**Mr Moorhouse:** We do not monitor people's personal communications, but we do have intelligence officers who keep track of the mood and receive reports from people and engage in conversations with people in the detention facilities.

**Senator CASH:** So, despite the fact that you have had riots in detention centres, the government still has not made the decision to actually monitor telephone calls or internet usage?

**Mr Metcalfe:** This department has no authority to place telephone taps, if that is what you are asking, Senator. You would have to ask other agencies whether they have undertaken such activity.

**Senator CASH:** What about monitoring the internet?

**Mr Metcalfe:** The department has guidelines in place in relation to internet access, and I think we have talked before about how Serco are required to administer that. But we have no powers to intercept telephone calls.

**Senator CASH:** How do you make a decision about how such issues are managed where an event escalates? Do the recent occurrences at the detention centres suggest that should be revised? Has it been revised in any way?

**Mr Metcalfe:** There are probably two answers to that. Mr Moorhouse can respond on the dynamic management that is occurring, and of course the government has appointed two former departmental secretaries to conduct a thorough review of both the Villawood and Christmas Island incidents. No doubt, they will make recommendations in relation to these issues, but we are not waiting for them to report. We are obviously very mindful of what has occurred, the types of tensions that have arisen and how they are manifesting themselves. As Mr Moorhouse said, that is a daily part of his activities and those of other senior officers in Canberra as well as in the network.

**Mr Moorhouse:** In terms of how we respond, Senator, as I mentioned, the large majority of people in detention are very compliant and are actually quite grateful for the care and support provided by the Australian government; but even those people can be frustrated by long delays. So we try to ensure that we are engaging with people to reduce their levels of frustration or concern and keep them informed. We have had regular support and guidance from CISSR, the agency we mentioned before, who have been very engaged with us. They have suggested ways in which we can better engage with clients and keep them informed, and even use community leaders to help convey some of the messages that we want to convey to clients. So that is one of the techniques that we are using.

Another technique is to move people around more. One of the key issues in terms of managing tensions is placing people according to risk, so that we are actively using placement—

**Senator CASH:** I thought that was Serco's responsibility—that they moved people according to risk.

**Mr Moorhouse:** They can move people within the facilities, but we can move people between facilities.

**Senator CASH:** Do you mean between centres?

**Mr Moorhouse:** Between centres, yes. We can actively move people between the centres. Of course, a key strategy is to make sure people are moving through the centres. Those people who are assessed as refugees are able to be processed quickly, enabling us to reduce the tensions that come from a higher population.

**Senator CASH:** How much damage was done to the infrastructure at the centre as a result of the incident on 12 March? How much property was destroyed, including televisions, fencing et cetera?

**Ms Wilson:** I have an indicative cost of the damage, Senator. As Mr Moorhouse and Ms Lynch-Magor said earlier, we are still trying to get a final quantification—

**Senator CASH:** What is the indicative cost?

**Ms Wilson:** Approximately \$2½ million, based on replacement costs. The fire destroyed some unused buildings in Aqua and Lilac, and damaged fences and administrative buildings as well as some tents.

**Senator CASH:** What about other damage—to televisions, computers?

**Ms Wilson:** There was damage to gates as part of the fences, roller doors and CCTV, and there was a lower level of damage to other parts of the complex.

**Senator CASH:** Would you be able to provide to us a list of the damage that was done to the detention centre?

**Ms Wilson:** As in just what I read out?

**Senator CASH:** Yes.

**Ms Wilson:** I am sure we can provide that on notice.

**Senator CASH:** What is the estimated cost of actually repairing the damage to the centre and where do we find those costs in the budget?

**Ms Wilson:** As I said, the process of quantifying the costs is still taking place.

**Senator CASH:** So it is not in the budget?

**Ms Wilson:** The estimate is \$2.5 million. I think you had a previous conversation in which Ms Lynch-Magor talked about the insurance for Serco. Serco will make all those—

**Senator CASH:** You are saying that Serco is going to be responsible.

**Ms Wilson:** Serco will make good for things that are covered.

**Senator CASH:** Unless the clause kicks in that they have not managed the detention centre properly. And that is actually a cause of the riots commencing.

**Mr Metcalfe:** We spent quite a long time earlier indicating that this is an issue to be covered by Serco's insurance arrangements. It is clearly well within the limits provided. There is nothing in the budget because it is a matter for Serco's insurance.



**Senator CASH:** Can you confirm reports in the *Australian* on 23 May 2011 which state that a guard was hospitalised:

with serious burns to his arm and torso after a ... detainee allegedly threw a kettle full of boiling water on him as he attempted to break up a brawl.

**Ms Wilson:** Is this in relation to the March incident or another incident?

**Senator CASH:** This is in relation to an article in the *Australian* newspaper dated 23 May, which states:

TWO asylum-seekers are facing charges over separate attacks on guards at Christmas Island's main detention centre amid claims unrest at the facility has worsened in the wake of the violent March riots.

**Mr Moorhouse:** We can confirm that. You use the word 'kettle'. I am not aware of what the vessel was in which the boiling water was contained. But the rest of the article I can confirm.

**Senator CASH:** So, a guard has been hospitalised with serious burns.

**Mr Moorhouse:** Was hospitalised. He went to the hospital but he has—

**Senator CASH:** With burns?

**Mr Moorhouse:** Yes.

**Senator CASH:** To his arms and torso after a detainee threw a vessel containing boiling water on him as he attempted to break up a brawl?

**Mr Moorhouse:** As I understand it there was a scuffle and this occurred during that scuffle.

**Senator CASH:** It was 1 am Friday last. That is a few days ago. The department has been notified of this incident.

**Mr Moorhouse:** That is correct.

**Senator CASH:** Can you also then confirm reports in the same article that a second guard was left with cuts and bruises after he was allegedly kicked and punched by a detainee for denying him access to restricted belongings that had been locked in the centre's property section.

**Mr Moorhouse:** There were a couple of other incidents around the same time. That may have related to one of them, yes.

**Senator CASH:** What other incidents were there around the same time?

**Mr Moorhouse:** I was aware of one incident where a Serco officer was accompanying a detainee who was to be advised that a family member had died. He became very emotional and assaulted the Serco officer when he was advised that a member of his family had died.

**Senator CASH:** How did he assault the officer?

**Mr Moorhouse:** I do not have the specific details in relation to that.

**Senator CASH:** Was the officer hospitalised?

**Mr Moorhouse:** I am not sure whether this is the same incident. That is what I am saying.

**Senator CASH:** So there were reports in the same article that a second guard was left with cuts and bruises after he was allegedly kicked and punched by a detainee for denying him

access to restricted belongings. You are saying there may also be another incident where a detainee assaulted a guard after he had been told that a family member passed away.

**Mr Moorhouse:** It has been clarified for me that that was not the incident. That was a relatively minor incident. The one that you mention has been confirmed to me.

**Senator CASH:** So, the boiling water has been confirmed; the kicking and punching by a detainee of a guard for denying them access to belongings has been confirmed. You have also raised another incident where another guard was assaulted. Were there any other incidents?

**Mr Moorhouse:** Yesterday you asked for numbers of assaults and we gave you the number of alleged assaults of detainees in relation to Serco staff.

**Senator CASH:** What were the restricted belongings? Did Serco notify you what restricted belongings the detainee was looking for?

**Mr Moorhouse:** I do not have that information in front of me; we can find out for you or I can take it on notice.

**Senator CASH:** Could you find out for me if there is a person in the room who is able to advise us. Is it also true that there was a third altercation, involving 40 people, at the Christmas Island detention centre on Friday, 20 May, and that there have been altercations of some sort for almost every night in recent months?

**Mr Moorhouse:** There have been a number of incidents. The altercation that you mentioned, I am aware of.

**Senator CASH:** The one involving 40 people at the Christmas Island facility on Friday, 20 May?

**Mr Moorhouse:** Yes.

**Senator CASH:** What actually occurred during that altercation?

**Mr Moorhouse:** I would need to check my notes in order to be able to give you the information in relation to that. But my understanding was that it was a dispute between two ethnic groups over who would occupy a room that had been vacated by someone who had moved off the island. So there was a dispute in terms of who wanted to move into that room, and it escalated into a sort of a brawl, or however you would describe it, between the two ethnic groups involved.

**Senator CASH:** Is it also a fact that there have been altercations of some sort for every night in recent months?

**Mr Moorhouse:** That is a very difficult question to answer, because—

**Senator CASH:** Have you been notified by Serco?

**Mr Moorhouse:** I think I can say: no, that is not correct. It is overstating the level of incidents of concern.

**Senator CASH:** What is the level of incidents then?

**Mr Moorhouse:** We would need to take that on notice. We could let you know the number of incidence over the last month. Have any charges been laid in relation to any of these incidents?

**Mr Moorhouse:** The police have been involved in a number of the incidents, particularly the two that you mentioned. The police were called in relation to those incidents.

**Senator CASH:** My understanding is that, in relation to the restricted belongings, it was pornography. Are you able to confirm that for me?

**Mr Metcalfe:** I will confirm what it was when I am advised—as soon as we can get that information.

**Senator CASH:** Thank you very much. It does lead to another question. If detainees are found to be in possession of pornography when they come to the centre, I would hope that it does not become a restricted belonging; I would hope that this is something that is taken by the department and destroyed. What is the department or Serco's policy in relation to pornography?

**Mr Moorhouse:** Detainees are not allowed to have access to pornography. I have just been advised in relation to the matter you mentioned before: apparently the goods that the detainee was seeking access to was a DVD player that had been—

**Senator CASH:** So, not a pornographic video, but a DVD player?

**Mr Moorhouse:** A DVD player is what was reported to us.

**Senator CASH:** Do you know if it was to actually watch pornography?

**Mr Moorhouse:** The detainees are not allowed access to pornography.

**Senator CASH:** They are not allowed access to pornography. However, I will be going through a series of questions later where we have allegations of detainees accessing pornography. Do you know if it was to watch pornographic material?

**Mr Moorhouse:** People in detention are in administrative detention. The things they have access to are restricted, but it is not a prison.

**Senator CASH:** No, I know that. They manage to get mobile phones in.

**Mr Moorhouse:** So, for example, in terms of things that are allowed to be brought into a detention centre, there is a list of things that are either prohibited or controlled.

**Senator CASH:** Mobile phones are prohibited.

**Senator CASH:** Mobile phones are prohibited and—

**Senator CASH:** However, the detainees on the rooftop were able to access mobile phones.

**Mr Moorhouse:** And that is part of the challenge of managing facilities that are not purposely designed, where we have mixtures of people who are non-IMAs and people who are IMAs; where we have visitors and we have fences that are not solid brick walls that no-one can get through.

**Senator CASH:** I accept all of that. Do you know whether or not the particular detainee was seeking his DVD player to watch pornographic material? Do you have that knowledge?

**Mr Moorhouse:** The report I have is that he was seeking access to his DVD player.

**Senator CASH:** Not to watch pornography?

**Mr Moorhouse:** If we were aware that it was to watch pornography, then we would expect that Serco would remove the pornography from the centre.

**Senator CASH:** Is it also true that the immigration department described Friday's incident where the guard was burnt as 'minor', as reported in the *Australian* article?

**Mr Moorhouse:** Not as far as I am aware.

**Senator CASH:** So what did they actually describe it as, if it was not 'minor'?

**Mr Moorhouse:** We would regard it as a serious incident.

**Senator CASH:** No, I did not ask what you would regard it as. I want to know what Serco notified you of.

**Mr Moorhouse:** Regarding the Serco notification, we get a situation report. This is where there is a difference with the requirement to report. The Serco ratings of 'critical', 'major' and 'minor' relate to the requirement to report to us. When there is a report, it is not reported as being with a particular label; it is reported in terms of what the incident is. An incident such as this is an extremely serious one. It is an assault.

**Senator CASH:** Yes.

**Mr Moorhouse:** There is no way that our staff or our contracted staff should have to put up with that sort of behaviour. We treat it extremely seriously. We called the police in order to investigate it, or Serco would call the police in order to investigate it. I do not want to give any sense that there is any tolerance or condoning of this sort of behaviour at all. It is a very serious matter.

**Senator CASH:** Are you able to provide a breakdown of all incidents over the past 12 months and indicate how they have been categorised and what response was made by the department?

**Mr Moorhouse:** We have some of that, in terms of the types of incidents and the categories. I do not have the detail of response to all of them, but I can give you some of that, if you like.

**Senator CASH:** If you could, thank you. In terms of this incident, in relation to where the guard was burnt, is it reported to you as 'critical', 'major' or 'minor'?

**Mr Moorhouse:** As I was trying to explain, those gradings relate to when an issue needs to be reported to us. The situation reports that we receive are not graded in that way; they are descriptive.

**Senator CASH:** So, basically, Serco has its own categorisation of incidents. For example: accident to staff, minor; accident to staff, serious, and that is a critical level; accident to staff, minor, and that is a minor level. Are you saying that they do not then translate that into what they report to the department?

**Mr Moorhouse:** Perhaps I can get some assistance in terms of describing this more precisely, but that relates to the notification requirements—basically how quickly that should be brought to the attention of DIAC.

**Senator CASH:** So, in relation to the incident itself, that is not the category that Serco are actually placing on it? What are you then told? When the report comes through to you that a guard has had hot water thrown on him and he has been burnt and is in hospital, are Serco obliged to say to you, 'We think it's a minor incident' or 'We think it's a major incident' or 'We think it's a critical incident'?

**Mr Moorhouse:** No, they would be expected to report that to us and they would tell us what happened. The problem with categorisation is that we get involved with this sort of

labelling. There are different perceptions in terms of the character of the label. The situation reports that we use are not labelled in that way; they are descriptive.

**Senator CASH:** The immigration department described Friday's incident as 'minor'. The article said:

"Police have been notified and the centre is currently calm," a spokesman said.

Who was that spokesman?

**Mr Metcalfe:** I would have to check. We have a number of spokespersons. We have a duty roster. I am not quite sure which incident you are talking about. Is it the burning of the officer or the altercation that occurred?

**Senator CASH:** I would like to know in relation to both of them.

**Mr Metcalfe:** Okay. We will check as to what the departmental spokesman said in relation to—

**Senator CASH:** Was Mr Logan the department's spokesperson?

**Mr Metcalfe:** He is the head of the National Communications Branch. We have a number of public affairs officers who could have been the spokesperson at the time.

**Senator CASH:** How fast was the burning incident brought to the department's attention?

**Mr Moorhouse:** I would need to check that. I would need to take that on notice in order to check the timing. If you would like us to advise on a precise time, we could do that on notice.

**Senator CASH:** Was it within hours; was it within days?

**Mr Moorhouse:** Within hours.

**Senator CASH:** The incident occurred on Friday at 1 am, so when would you expect the department to be notified? What is the turnaround procedure?

**Mr Moorhouse:** Basically, there is the notification requirement of notifying DIAC, the DIAC duty officer—we have a 24-hour duty officer. The DIAC duty officer will put it into a situation report and that will then be sent to officers to monitor those sorts of reports. The secretary, I and other senior officers receive those reports 24 hours a day. The first thing I do in the morning when I get up is to have a look through the situation reports. If I get up in the middle of the night for any reason, which I do occasionally, I monitor the situation reports.

**Mr Metcalfe:** It happens when you are our age, John.

**Senator CASH:** Going back to the Christmas Island and Villawood incidents, have there been any formal debriefs of all parties involved in the rights of those at Christmas Island and Villawood and of the agencies involved: Serco, DIAC and the AFP?

**Mr Moorhouse:** Yes.

**Senator CASH:** Has this resulted in any requirements for change?

**Mr Moorhouse:** I would need to take on notice the specific responses that we have made to the two incidents. But I think the short answer is yes.

**Senator CASH:** Did you know what the responses or the changes would be?

**Mr Moorhouse:** There is a whole series of issues that we are working through, including how we respond, how we engage with other agencies, how we manage the sorts of tensions that have led to these situations, and so on. Yes, we are responding in a number of ways.

**Mr Metcalfe:** As I said before, this is within the terms of reference of the Hawke-Williams review. As I also made clear, we are not waiting for that. There have been a whole range of things done, including the placement of particular individuals in different places.

**Senator CASH:** Can you also confirm in relation to the article in the *Australian* on 23 May that last month three young detainees were charged with attempting to gang rape a fellow asylum seeker and were locked in the compound reserved for the most troublesome and disruptive among the 1,000 men at the centre?

**Mr Moorhouse:** I can confirm that that incident occurred, yes.

**Mr Metcalfe:** That alleged incident occurred.

**Mr Moorhouse:** I beg your pardon.

**Mr Metcalfe:** People are facing charges.

**Senator CASH:** They are facing charges.

**Mr Metcalfe:** We have to be very careful. That is a matter for the courts to now determine. There is an allegation, the police have decided to prosecute and we will see what happens.

**Senator CASH:** In relation to the incident at 1 am on Friday night where the officer had hot water thrown on him, would you agree that this is a critical incident and not a minor incident as was allegedly reported?

**Mr Moorhouse:** Whatever label we want to put on it, it is an extremely serious and disturbing incident. Without wanting in any way to play down an incident of that nature, when we are responsible for the number of people that we are currently responsible for, there is inevitably going to be a large number of incidents that occur. If you had a suburb of 6,000 people in Australia, you would have a large number of incidents occurring all the time. We do monitor them. We monitor them closely and we make sure we are responding to the more serious of those incidents appropriately. It is a complex situation we are facing at the present time. As I mentioned before, we have a larger and increasing number of people who are on negative pathways and who have less incentive to be compliant. That is posing a challenge for us and we are seeking to use the infrastructure that is available to us as constructively as possible in order to manage that challenge.

**Senator CASH:** When there is an incident at a detention centre, Serco officials are required to file a report?

**Mr Moorhouse:** Yes.

**Senator CASH:** Regardless of the level of the incident?

**Mr Moorhouse:** I cannot say that because it depends on what is categorised as an incident. The incidents that fall within a certain definition are required to be categorised. I do not mean to be in any way playing this down, but if people are pushing for a place in the food queue or insulting each other because of different backgrounds, we may not report those sorts of things and they may not be considered an incident. But if something is sufficiently serious then it is reported.

**Senator CASH:** In the article in the *Australian* the immigration department described Friday's incidents as minor:

"Police have been notified and the centre is currently calm," a spokesman said.

Has someone tried to play this down in the media, given that you acknowledge that this is a very serious incident? Why would a spokesperson come out and describe Friday's incidents as minor when a guard ended up in hospital with burns?

**Mr Metcalfe:** We have said we would look into the comments that were made by the departmental spokesperson. It would depend on the questions they were asked and we can check what response they provided.

**Senator CASH:** Will the department be reissuing a statement to ensure that the public are properly informed that you do not believe—

**Mr Metcalfe:** Mr Moorhouse, on evidence before this committee, has indicated that we regard that incident, as I said, as a very serious matter.

**Senator CASH:** So basically the immigration department spokesperson who described this incident as minor was wrong?

**Mr Metcalfe:** I have learned enough about the media to want to check what was asked and what was answered. I think we have established that in one other article you referred to there were at least two factual mistakes. It may well be that that was how it was described and, if that was how it was described, it was inappropriately described.

**Senator CASH:** So it was inappropriately described.

**Mr Metcalfe:** Senator, you are verballing me again. I did not say it was inappropriately described. I said that if it was described in that way by the officer, the media spokesperson, then it was inappropriately described. But I have not agreed that that is what the person said. We will check on that

**Senator CASH:** Would you, please, and would you be able to provide that on notice—unless you can get that information tonight?

**Mr Metcalfe:** We will check and we will give you advice tonight or on notice as to the question asked and the response given, but Mr Moorhouse has been quite clear that anything of the nature of an assault of that particular type resulting in serious injury, burns to a person and charges being laid is clearly a serious matter. There is no doubt about that.

**Senator CASH:** I now just refer to the answer to question on notice 315 from the February estimates hearing:

Are the Tamils who were refused security clearance by ASIO still on Christmas Island?

The answer was:

As at 21 February 2011, three adult Tamils who received adverse security assessments were being accommodated on Christmas Island.

**Mr Metcalfe:** We will have to check that point.

**Senator CASH:** Is there someone here who can do that?

**Mr Metcalfe:** We will check and see if we can provide an answer this evening.

**Senator CASH:** Thank you. Has the department found a third country to accept some or all of them and what steps is the department taking to seek a third country for resettlements?

**Mr Metcalfe:** As far as I know no third country has been found and the department continues to work with international partners in relation to possible placement and resettlement options. These are ongoing diplomatic initiatives in that respect. If I can add to

that, particularly in relation to their placement at the moment, I will do so this evening or tomorrow.

**Senator CASH:** One would assume they are still in Australia.

**Mr Metcalfe:** That is my assumption.

**Senator CASH:** If you can find out where they are being held, just to update that question—

**Mr Metcalfe:** For sure. We are happy to update that and we will do so this evening if we can.

**Senator CASH:** But certainly no third country has been found yet.

**Mr Metcalfe:** Not to my knowledge.

**Senator CASH:** I now refer to the answer to question on notice 316 from the February estimates in relation to the family who were transferred to Sydney. Are there still security concerns about the family?

**Mr Metcalfe:** The answer is that they are the subject of adverse security assessment.

**Senator CASH:** They are the subject of adverse security assessment?

**Mr Metcalfe:** Yes.

**Senator CASH:** Why has no action been taken to return them to Christmas Island?

**Mr Metcalfe:** I will need to check on the current circumstances of that case.

**Senator CASH:** Are you able to get that information for us tonight? Is there someone here?

**Mr Metcalfe:** I will seek to do so, but I would also seek to provide any advice in accordance with a general consideration as to the privacy of the individuals.

**Senator CASH:** What have been the costs from February 2011 to date of the static guards at the family's accommodation?

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

**Senator CASH:** I will just confirm that, for the three months from November 2010 till February 2011, the cost of the static guards at the family's accommodation was \$428,861.

**Mr Metcalfe:** That is what the answer says.

**Senator CASH:** What does that consist of? What is the Australian taxpayer getting for half a million dollars by way of static guards? What do you actually get? The department, I am assuming, does know what we are paying half a million dollars for.

**Mr Metcalfe:** Of course.

**Senator CASH:** So please tell us.

**Mr Metcalfe:** That is personnel to provide a physical presence to ensure that these persons, who have been found by ASIO to be not able to be granted a security clearance, are kept appropriately secure.

**Senator CASH:** That was from November for approximately three months. How many static guards are there outside?

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



**Senator CASH:** I am hoping there are lots for half a million dollars. Would it be 24-hour—

**Mr Metcalfe:** It would be 24-hour. That would be a fair part of the cost I imagine—the fact that that would involve shifts of several people.

**Senator CASH:** How many people are they guarding?

**Mr Metcalfe:** It is the family. I would have to check.

**Senator CASH:** Is it a big family?

**Mr Metcalfe:** Five persons.

**Senator CASH:** So half a million dollars is the cost for static guards at the family's accommodation for three months. We can probably expect another half a million dollars for the Australian taxpayer.

**Mr Metcalfe:** No-one is denying that this is a very expensive business.

**Senator CASH:** It is an exceptionally expensive business. Half a million dollars for three months to guard five people—

**Mr Metcalfe:** My recollection is that the reason the family were transferred from Christmas Island was because the lady in question had to give birth. The question of the appropriateness of their circumstances and their ability to travel relates to health issues associated with that. I readily agree that this is a very expensive business and that is why the government is determined to take firm measures in relation to breaking the people-smuggling business model.

**Senator CASH:** In terms of the half a million dollars—it is \$428,861, but I will call it half a million dollars—for the cost of static guards at the family's accommodation for three months, if nothing is changed I think it would be a fair assumption that the department will be seeing a similar deal for the next three-month period. Would those costs be greater or smaller for guards if the family were on Christmas Island? What is the cost of security like that on Christmas Island?

**Mr Metcalfe:** We would have to check and provide proper and considered advice in relation to that. It would depend on what facilities were available for the family on Christmas Island. Of course, there is a significant premium in the provision of any personnel on Christmas Island because of its distance from mainland Australia.

**Senator CASH:** So it could be in excess of half a million dollars but then it could be less than half a million dollars. You will provide that exact comparison for me.

**Mr Metcalfe:** I think it would probably be best if we update your question.

**Senator CASH:** Yes, if you could update the question and also provide the comparison.

**Mr Metcalfe:** We will provide an update for question No. 316.

**Senator CASH:** I also asked what the cost was of providing escorts to the school for the child. The answer I was given was:

The costs associated with providing escorts for this child are equivalent to the other children.

What are the costs then of actually providing escorts to the school for all of the children escorted?

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

**Senator CASH:** What are the arrangements in terms of escorting children to school? Does someone pick them up, do they walk to school, do they ride their bikes, do they—

**Ms Lynch-Magor:** All of the school-age children in the detention network attend school. Serco will drive a minibus and take the children to school. Often their parents will accompany them, like normal parents do, and get them settled at the gate.

**Senator CASH:** Are those parents allowed to accompany this child, seeing they have been given an adverse security clearance?

**Ms Lynch-Magor:** I do not think so, no.

**Senator CASH:** Could you confirm that?

**Ms Lynch-Magor:** I would have to take that on notice. But usually the bus will go to the school in the morning and go home in the afternoon.

**Senator CASH:** In relation to the costs associated with providing escorts for this particular child, can you provide me with the costs associated with the other children while this child goes to school?

Mr Metcalfe, you said that this family were now the subject of an adverse security assessment; does that include the child?

**Mr Metcalfe:** I think we said earlier that children are not the subject the assessment.

**Senator CASH:** So the child is still able to go to school even though the parents are subject to an adverse security assessment?

**Mr Metcalfe:** That is quite clear.

**Senator CASH:** My understanding is that the family we are referring to were actually on Christmas Island previously, and were transferred to Sydney. Were there guards guarding them whilst they were on Christmas Island?

**Mr Metcalfe:** They would have been in a secure environment on Christmas Island.

**Senator CASH:** What does that secure environment entail?

**Mr Metcalfe:** I would need to go back and check as to what it was, but certainly because they were the subject of adverse security assessments they were provided with an appropriate level of security.

**Senator CASH:** Is that within a detention centre?

**Mr Metcalfe:** We do not detain children in detention centres, so they would have been held in another place of detention.

**Senator CASH:** In the current financial year, how many charter flights were procured by the department to support the processing of illegal maritime arrivals on Christmas Island?

**Mr Moorhouse:** One of my colleagues is just getting that information for you. Can I come back to you with the answer to one of your earlier questions? You asked me about question on notice 315, where the three adult Tamils were located—

**Senator CASH:** The three adult Tamils?

**Mr Moorhouse:** They are now located within the Maribyrnong Immigration Detention Centre.

**Senator CASH:** When were they actually moved there?

**Mr Moorhouse:** You have got me! I am sorry, I will check again.

**Senator CASH:** Thank you very much.

**Mr Metcalfe:** Every answer we give, we get another question.

**Mr Moorhouse:** I also have the answers to Senator Barnett's questions about Pontville. Would you prefer that I wait until he returns?

**Senator CASH:** I would because I know he is very keen to hear them himself. I do appreciate you getting back with the information, and I am sure if he listening in he will be making his way to the Main Committee room as quickly as possible.

In relation to my question on the charter flights: in the current financial year how many charter flights were incurred by department to support the processing of illegal maritime arrivals? So, one on Christmas Island and then separately across the whole detention network?

**Mr Moorhouse:** The number of charters in relation to IMAs was 113.

**Senator CASH:** It was 113?

**Mr Moorhouse:** I need to give you a date, of course. Until 29 April it was 113 charters to support the processing of IMAs, at a total—

**Senator CASH:** To Christmas Island, or across the network?

**Mr Moorhouse:** That is across the network. This is specifically relating to IMAs, and it is at a cost of \$14.261 million.

**Senator CASH:** A cost of \$14.261 million—but that was only in relation to IMAs?

**Mr Moorhouse:** That is correct.

**Senator CASH:** How many were there and what was the cost of charter flights to carry departmental staff to and from Christmas Island and across the network? Can you disaggregate those costs?

**Mr Moorhouse:** There were only two charters that I am aware of that were not for IMAs. So the answer is two.

**Senator CASH:** So how else would departmental staff go? Would they book commercial aircraft?

**Mr Moorhouse:** That is correct.

**Senator CASH:** So there were two charter flights for departmental staff. What was the cost of them?

**Mr Moorhouse:** No, not for departmental staff—one was for a delegation of staff from the Detention Health Advisory Group to inspect Leonora and the other was for a delegation of officers to inspect the RAAF base at Scherger prior to its commissioning. So they were both to remote locations and both for significant groups of people. The costs were \$12,320 for the flight to Leonora and the cost was \$38,387 for the charter to Scherger. But I emphasise they were for groups of people.

**Senator CASH:** Are there costs of charter flights to carry departmental staff?

**Mr Moorhouse:** They are the only two that I have got here that I have a record of.

**Senator CASH:** Are you able to find out whether or not there were any charters in relation to departmental staff?

**Mr Moorhouse:** No. This is the extent of what I have got.

**Senator CASH:** This is the official record?

**Mr Moorhouse:** Yes. So departmental staff travel on commercial flights.

**Senator CASH:** And what about provisions to and from Christmas Island and provisions in relation to the detention network? Are charter flights ever used to carry provisions?

**Mr Moorhouse:** If we have a charter flight that is travelling to Christmas Island and there is spare capacity on it, at times that can be used to carry provisions with the spare capacity on a flight that is booked for another purpose, but generally goods to and from Christmas Island go as airfreight.

**Senator CASH:** What is the cost of transporting asylum seekers between the island and the mainland and back again for the financial period to date?

**Mr Moorhouse:** Including domestic flights?

**Senator CASH:** Well, can we do it by charter and by domestic?

**Mr Moorhouse:** The number I gave you for—

**Senator CASH:** The 113?

**Mr Moorhouse:** That number, 113, is the only detail I have in relation to IMAs, but that would include charters to other locations. We do not use that very often. So that would be almost exclusively—

**Senator CASH:** Almost solely to Christmas Island?

**Mr Moorhouse:** That would almost be solely to Christmas Island.

**Senator CASH:** Do you have the fares by way of domestic fares?

**Mr Moorhouse:** I do not have that with me. I would have to take that on notice. It may be very difficult for us to identify that, though, because it is not something that is easily disaggregated from the total.

**Senator CASH:** From a total of what?

**Mr Moorhouse:** Of departmental travel.

**Senator CASH:** Then how about you provide me with the total travel costs for IMAs in the last financial year?

**Mr Moorhouse:** For IMAs—yes, no problem.

**Senator CASH:** That would be greatly appreciated. Are you able to provide me with the total cost of charter flights?

**Mr Moorhouse:** Yes. The total cost of charter flights until 29 April was \$15,171,000.

**Senator CASH:** That is obviously going to be a different figure when you actually provide me with the total cost of travel for the same period?

**Mr Moorhouse:** That is correct. So that number that I gave you—\$15 million—includes the \$14 million that I gave you before.

**Senator CASH:** Is it true that on one of those charter flights some detainees refused the instruction of the flight crew to extinguish cigarettes?

**Mr Moorhouse:** I would need to inquire about that. I would need to take that on notice.

**Senator CASH:** So you are not aware? Is anybody aware of that?

**Mr Moorhouse:** I would need to ask. I have been in the job for five weeks. It is not something that has been drawn to my attention.

**Senator CASH:** Mr Metcalfe, are you aware of that particular allegation?

**Mr Moorhouse:** If I can just make a comment on that: it is the responsibility of the captain of the aircraft to maintain the safety of the aircraft. So the aircraft should not have taken off if that was occurring.

**Senator CASH:** There have certainly been media reports to the extent that, on some of those flights, detainees have refused an instruction to not smoke. Mr Metcalfe, are you aware of that?

**Mr Metcalfe:** I am not aware of that.

**Senator CASH:** Would you be able to take that on notice to see whether or not that has actually been raised?

**Mr Moorhouse:** We will inquire whether it has been raised. What I am unable to do is to rule it out if it was something that was minor that was not reported.

**Senator CASH:** I would not have thought that smoking on an aeroplane was minor, seeing as it is an offence.

**Mr Moorhouse:** We will take it on notice, Senator.

**Senator CASH:** In an instruction on a flight to extinguish a cigarette they are actually smoking. Have any IMAs been formally charged with smoking on a flight?

**Mr Moorhouse:** Not that we are aware of.

**Mr Metcalfe:** We will correct our response if there is any advice—

**Senator CASH:** Could I now refer to the answer given to question on notice No. 191 from the February additional estimates. It is in relation to records of cash belonging to detainees being stored in facilities at detention centres and the answer states that, 'Serco has advised that a central register is not maintained. There is no contractual obligation on Serco to maintain a central register or disclose money which may arrive in the possession of clients.' Why is there no contractual obligation on Serco to maintain a central register or disclose money?

**Ms Lynch-Magor:** I do not think there was determined to be a need.

**Mr Moorhouse:** It does not mean that there is not a register. What we are saying is that there is not a central register where we can compile the data.

**Senator CASH:** All inbound arrivals to Australia are subject to Australian Customs legislation which requires arrivals to declare amounts of \$10,000 or more in Australian currency. Are irregular maritime arrivals subjected to the same Customs procedures and declarations as air arrivals?

**Ms Lynch-Magor:** The Australian Customs Service provides services to our clients on arrival at Christmas Island and certainly has oversight of their belongings and everything that they bring with them.

**Senator CASH:** So that would be better directed to the Australian Customs Service?

**Ms Lynch-Magor:** Yes.

**Senator CASH:** Is the department aware of any occurrences of IMAs arriving in Australia with \$10,000 or more in Australian currency or the equivalent in foreign currency?

**Ms Lynch-Magor:** I am not aware of that, Senator.

**Senator CASH:** I am now going to go to a series of questions in relation to age testing. I refer to the answer to question on notice No. 333 from the supplementary budget estimates hearing on 19 October 2010, which I asked: 'How confident is the department that these males—referring to the 339 Afghan males under the age of 18 that were currently detained—are in fact under the age of 18 years?' The answer provided stated:

Determining age is an important element in the process to establish a person's identity and therefore an important part of ensuring the integrity of the Department's processing arrangements and the level of care provided to clients.

Is this still the case?

**Ms Pope:** I was not actually in the position of discussing age determination in October last year and I do not have the question in front of me. If you would not mind repeated what you just quoted and I will try to confirm it.

**Senator CASH:** The answer provided in relation to my question was:

Determining age is an important element in the process to establish a person's identity and therefore an important part of ensuring the integrity of the Department's processing arrangements and the level of care provided to clients.

My question now is: is that still the case? Is that still departmental policy?

**Senator CASH:** I now refer to an article in the *Herald Sun* dated 16 May 2011 entitled 'Asylum seekers pretending to be teenagers for faster processing,' in which it says an investigation has discovered that Victoria's biggest youth immigration centre in Broadmeadows is filled with many asylum seekers claiming to be under 18 to escape tougher regulations for adults.

**Ms Pope:** I am aware of the allegations in the media.

**Senator CASH:** Are there any formal claims in place?

**Ms Pope:** What do you mean?

**Senator CASH:** You are aware, obviously that it is alleged that these people have provided dates of birth that would have them at either 17 or 16.

**Ms Pope:** It is alleged by the media.

**Senator CASH:** Yes. But they look considerably older. Has a formal investigation been undertaken in relation to any of these claims?

**Ms Pope:** I am not sure if it is in relation to the clients pictured in those photographed, but we have run one pilot of an age determination process and we are currently working on finalising the outcomes of that pilot to establish a business-as-usual approach to age determination because, as you commented earlier, it is a complex part of our considerations.

**Mr Moorhouse:** Perhaps I could help a little bit with that. As you indicated when you read the question to us, identification of age is a significant issue for the department for a number of reasons. You mentioned appropriate care—in other words, so that we are not putting adult men in with children because they claim to be under 19, and that we are not giving them access to other concessional benefits. So it is an ongoing issue for us. In fact,

trying to establish age with by reliable means is part of any substantive immigration application process. So it is something we are very much involved in. It is part of the establishment of identity. It is one of those risks that we manage through all of our processes. It is not something to which there is an easy answer.

**Senator CASH:** No, there is not. Now that you have been made aware of these allegations—I assume you can identify these particular people—will the department be undertaking an investigation into each of these people to determine that they are 17, 17, 16, 17, 17 and 16?

**Mr Moorhouse:** I would leave to other colleagues whether an investigation is appropriate.

**Senator CASH:** Is that Ms Pope?

**Ms Pope:** No, not solely. This is the sort of work that spans a whole range of areas in the department and brings into consideration a whole range of issues, including place of detention and so on. So we have not yet confirmed the identities of those in the photographs and—

**Senator CASH:** You have not confirmed their identities?

**Ms Pope:** No, because we are not aware of where the photographs came from or how they were obtained. We have not yet confirmed that they are residents of the Melbourne immigration transit accommodation as alleged in the article.

**Senator CASH:** Are you undertaking steps to ascertain who these people are, and, if they are detainees, to ascertain their age?

**Ms Pope:** Yes.

**Senator CASH:** What is the process of that investigation at the moment? How far have you progressed?

**Ms Pope:** We are very much at the initial stages of working through whether these are clients of ours and that they are residents of that centre and, if so, looking at any issues we may have around their age.

**Senator CASH:** Separate from these six people in the *Herald Sun* article, is the department aware of any claims that asylum seekers are pretending to be teenagers for faster processing?

**Ms Pope:** There are allegations made about that and we have investigated, as I said, a number of cases. That initial pilot involved interviewing 60 clients.

**Senator CASH:** Were these 60 clients that you thought were representing themselves as minors when they were actually adults?

**Ms Pope:** Yes. We thought there was a possibility that that was the case.

**Senator CASH:** What was the outcome of that pilot project?

**Ms Pope:** The description of it is quite detailed but the outcome was basically that around half of them were found to be over 18 and around half of them were found to be under 18.

**Senator CASH:** So, of 60 people 30 were found to be adults and 30 were found to be minors.

**Ms Pope:** To give you the precise information it would be better for me to take that on notice but it was roughly half and half.

**Senator CASH:** How old was the oldest adult in that group?

**Ms Pope:** We were not seeking to determine how old they are, because it is not possible to do that unless the person tells you how old they are—

**Ms Pope:** It is a balance of evidence drawn from a range of sources, but the case of the pilot particularly involved a pretty detailed interview going to life chronology, basically, with questions like, 'How old are your parents,' 'How old are your brothers and sisters,' 'Where do you fit in that series of relationships'—

**Senator CASH:** But someone could be coached into answering those questions.

**Mr Metcalfe:** Sadly, there is no exact science. There is a common myth that a wrist X-ray will provide exact science, but my understanding—

**Senator CASH:** Do you dispute that?

**Mr Metcalfe:** Wrist X-rays have been and can be used.

**Senator CASH:** Does the department use wrist X-rays?

**Mr Metcalfe:** It is one of the things that we can do. Ms Pope can elaborate, but I understand that the contemporaneous medical evidence is that it still may have a variation of up to five years and that may vary depending upon diet, ethnicity and various other factors. There is no determinant where you could tell I was 51 as opposed to 49, 57 or whatever. Therefore, the department, aware and concerned about the situation that people may be passing themselves off as under the age of 18 when they are in fact over the age of 18, has developed a whole range of mechanisms. That has been done in consultation with medical and other professionals as to the best arrangements that can be made. As Ms Pope indicated, that has confirmed that we should have concerns and we are now looking at how to ensure that that applies right through our case load of people. I think I probably interrupted Ms Pope—

**Senator CASH:** I will get Ms Pope to expand, but if I could go back to the asylum seekers article before I look more closely at—

**Mr Metcalfe:** I think I should make it clear: if there is a specific allegation that a particular person has misled the department, it is my expectation that we would follow that up and that we would seek to appropriately resolve that. I had seen that media article and certainly my expectation of the investigations area of the department is that follow-up action will be taken in relation to those specific allegations. I interrupted Ms Pope in describing the more general processes because it is quite clear that some of our clients are claiming to be younger than they are and seeking to take advantage of that.

**Senator CASH:** There are quite serious consequences of that because, as you said, they are put in a separate place.

**Mr Metcalfe:** Absolutely, very serious consequences, and so we are mindful of our responsibilities. But, like a lot of what we do, there is no precise science that you can say that this person is exactly this person or this age. We have to employ the tools that we can. Ms Pope has been leading some very valuable work in updating and refining our procedures in this area.

**Senator CASH:** Ms Pope, returning to the *Herald Sun* article—and this may be a question to Mr Metcalfe—the article claims:



Inmates at the Broadmeadows facility have boasted about escaping at night to get McDonald's. Is the department aware of such claims?

**Mr Moorhouse:** We are aware of it from the media. It was not something—

**Senator CASH:** But is that the only way you became aware of it? It has not been formally raised with you?

**Mr Moorhouse:** It has not been formally raised with me personally; I do not know whether it was raised before I arrived. The key point is: if that was something of which we became aware we would be seeking to do something about it straightaway.

**Senator CASH:** You have only been in your role for five weeks. Mr Metcalfe, do you know if anyone in the department is aware of what these detainees are boasting about?

**Mr Metcalfe:** No. I will have to check on whether they are boasting that and, more importantly, whether there is the veracity to that claim.

**Senator CASH:** If there were, what would the department then do? Would you undertake a review or investigation?

**Mr Metcalfe:** Yes. The Maribyrnong facility is a very low security facility. It is designed as an alternative place of detention—specifically it is not a detention centre—and we do have a population of young people in there. Allegations have been made and we have for some time had concerns as to the age of some of our clients, which is an issue Ms Pope has been discussing. In relation to media reports about boasts of inappropriate excursions from the centre, that is an issue that we are following up.

**Senator CASH:** Ms Pope, how many tests has the department conducted on IMAs claiming to be minors in the financial year to date?

**Ms Pope:** I am not sure what you mean by 'tests' exactly, but—

**Senator CASH:** Okay, I would call it a 'test'. What would you call it?

**Ms Pope:** We have examined concerns that we have had about whether a client is in fact over 18 or under 18.

**Senator CASH:** You do not call it a 'test'?

**Ms Pope:** Only because I am concerned that you might be referring to medical or other physical examinations, which we do not undertake and did not as part of the pilot that I was referring to.

**Senator CASH:** Okay.

**Mr Moorhouse:** Sorry for interrupting, but can I just add to that. The point I want to make is that the determination of age is, as I said before, an important part of the establishment of identity. So for all IMA arrivals we have what we call entry interviews where we attempt to do what we can to establish a person's identity in as reliable a way as possible. It is also part of the RSA—the refugee status assessment—to look at the credibility of a person's claims and their circumstances. As I said before, examination of claims of any sort, including in relation to age, is a core part of the departmental business. Just to reinforce what Ms Pope was saying, and what the secretary was saying earlier, we do not have access to a reliable test that tells us how old a person is. We engage in a number of different strategies primarily focused on what we would call focused interviewing in order to determine that.

**Senator CASH:** So you do not undertake any medical testing—the wrist testing?

**Mr Moorhouse:** We can take that into account, but we do not completely rely upon that. We have, as Ms Pope mentioned, the option of actually bringing in some specialist staff to do focused interviewing in cases where we believe that the person's age is in doubt, and that is what we have done in the trial that she mentioned.

**Senator CASH:** Okay. Perhaps that is a better way to put it. If I asked Ms Pope: in how many cases has the department considered that the person's age is in doubt and brought in these specialised people? If you need to take that on notice, that is fine.

**Ms Pope:** I can answer it. As I said, we conducted a pilot which involved approximately 60 cases that we interviewed in the way that Mr Moorhouse was describing—so our focused interview.

**Senator CASH:** Over what period are we talking here? When did you start this pilot?

**Ms Pope:** Again, I can confirm on notice, but I believe we commenced it in about July-August last year.

**Senator CASH:** But as a result of that pilot 30 people were found to be adults. That is a fifty-fifty split, basically. Fifty people are, 50 people aren't.

**Ms Pope:** Sorry, it was 30 and 30.

**Senator CASH:** Which is a fifty-fifty split.

**Mr Moorhouse:** Yes.

**Senator CASH:** Fifty per cent one way, 50 per cent another way.

**Mr Metcalfe:** Ms Pope is talking numbers, you are talking percentages.

**Senator CASH:** That is a pilot program. Based on those results, will the department be taking any further action in relation to the procedure that it employs to determine whether or not someone actually is over the age of 18 or under the age of 18?

**Ms Pope:** Yes. The point of the pilot was to test the approach that we were going to use and to try it out. As a consequence, there are some issues that we would do differently as part of our business-as-usual model. Quite a bit of work has been done since then on how we would operationalise this as a business-as-usual model and how many cases we might apply it into the future. We are still finalising that.

In relation to the discussion about wrist x-rays, we do not ask for them in relation to IMAs. Sometimes clients have them and they might have them for some other purpose, in which case we are prepared, of course, to take them into account—along with any documentary evidence that a person can produce: for example, school graduation records; birth certificates, if they have them; and so on—any documentary evidence; along with the outcomes of that focused interview that I discussed. That also involved us, with the consent of the individual, phoning their families where that was possible to confirm details that were being provided. That was met with mixed success, but nonetheless some quite useful information was provided by family members. The officers in question always made it clear to the person they were speaking to the reason that they were phoning and what information was in relation to. So, in other words, we take the broadest spectrum of information that we can bring together and we come to an on-balance view that the person is more than likely an adult as opposed to more than likely a minor.

There is a very good piece of work written by the Royal College of Paediatrics and Child Health in the UK about age testing in the refugee context. It is a very useful summary of the span of result accuracy that you can get from a range of different approaches. It recommends the approach that we are taking, which is take account of the widest range of evidence. It warns that tests and physical evidence tend to be more heavily emphasised where they are requested, because they seem to have a scientific weight, and that there are risks in over-relying on physical evidence. It also talks about the medical risks of requiring X-rays for these sorts of purposes.

**Senator CASH:** Are you able to provide us with a copy of that?

**Ms Pope:** Yes, most certainly.

**Senator CASH:** Thank you.

**Ms Pope:** It is quite readily available on the internet, but I am very happy to supply you with it.

**Senator CASH:** I would like to very briefly turn to Inverbrackie.

**Mr Moorhouse:** Senator, before we do that, I wonder if it is possible for me to give the responses to Senator Barnett's earlier questions.

**Senator CASH:** As long as it does not eat into my time on Inverbrackie, Chair.

**CHAIR:** Yes, I was going to finish with you and go to that.

**Senator CASH:** Could I quickly ask my questions on Inverbrackie?

**CHAIR:** Yes, let's do Inverbrackie and then we will do Senator Barnett's answers.

**Senator CASH:** Can the department confirm whether Serco has reported any incidents where Serco officers at the Inverbrackie detention facility were assaulted in the course of their duties? If so: when did the assaults occur, did any of the assaults involve female officers and were any of the assaults perpetrated by minors?

**Mr Moorhouse:** The officers here are not aware of that, but we will take that on notice.

**Senator CASH:** Who are the officers?

**Mr Moorhouse:** Me, Ms Lynch-Magor—

**Senator CASH:** So Serco has not reported any incident to you where Serco officers at the Inverbrackie detention facility were assaulted in the course of their duties?

**Ms Lynch-Magor:** No, I am not saying that; I am saying I am not aware of that but I will take it on notice.

**Senator CASH:** In the entire time at Inverbrackie you are not aware of any report from Serco.

**Ms Lynch-Magor:** Sorry; I misunderstood your question. Yes, of course there have been reported incidents from Serco. I am sure there have been. But I thought you were asking about a specific incident.

**Senator CASH:** No, I will ask about a specific incident shortly and whether it involved female officers. Are you aware of Serco reporting incidents where Serco officers at the Inverbrackie detention facility of officers being assaulted in the course of their duties?

**Ms Lynch-Magor:** I am not aware of that specifically. I would—

**Senator CASH:** What would you be aware of, then?

**Ms Lynch-Magor:** Inverbrackie is a facility that has been operating for some time. I would imagine that that would have occurred in that period of time, given the number of incidents we have had that have involved—

**Senator CASH:** But what are you actually aware of?

**Ms Lynch-Magor:** That is what I said to you, Senator: I am happy to take it on notice. I am assuming that there would have been incidents involving Serco staff. I am not aware of the specifics of any incident but I am happy to look at that.

**Senator CASH:** Are you in charge of Inverbrackie?

**Ms Lynch-Magor:** No.

**Senator CASH:** Who is actually in charge of Inverbrackie—who is the relevant officer?

**Mr Moorhouse:** The challenge we face here, Senator, is that I and also the First Assistant Secretary for Detention Operations have only been in our jobs for five weeks. If it is not something that has happened in the past five weeks, the officers that are here are not aware of—

**Senator CASH:** That was very convenient, wasn't it?

**Mr Moorhouse:** I am not sure if other officers who were involved can help with this but that is—

**Senator CASH:** Is there anyone here who can provide any information in relation to Inverbrackie?

**Mr Metcalfe:** It depends on what the question is, Senator.

**Senator CASH:** I have just asked the question twice. There is no-one in the room who can talk about Inverbrackie other than people who have been conveniently shifted into jobs five weeks ago and have no information.

**Mr Metcalfe:** Again, people move through jobs over time. Mr Moorhouse has been promoted to his job recently and clearly does not have a long background, but he is rapidly acquiring that.

**Senator CASH:** Who was the deputy secretary previously?

**Mr Metcalfe:** Ms Wilson was previously the—

**Senator CASH:** Ms Wilson, are you able to provide any information in relation to Inverbrackie?

**Ms Wilson:** Could you ask the question again, just so I am clear?

**Senator CASH:** Can the department confirm whether Serco has reported any incidents where Serco officers at the Inverbrackie detention centre have been assaulted in the course of their duties?

**Ms Wilson:** I am not aware of any incidents about Serco officers being assaulted, but we could check. Unless you know the specific timeframe in which this happened—

**Senator CASH:** No, I was going to ask you for a timeframe.

**Ms Wilson:** We would need to check in that case.

**Mr Metcalfe:** We could take that on notice. Presumably, since Inverbrackie was made operational—

**Senator CASH:** Can you also then take notice whether or not any of these assaults have involved female officers and whether any of the assaults were perpetrated by a minor.

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

**Senator CASH:** I have a lot more questions so I might defer to Senator Furner and Senator Bartlett until dinner.

**CHAIR:** All right. We will do Senator Barnett's answer first.

**Mr Moorhouse:** Could I come back to you, Senator? I apologise for not finding this straightaway but in the statistical reporting that I have there are two reported assaults on Serco officers in this financial year.

**Senator CASH:** So there are two reported assaults on Serco officers?

**Mr Metcalfe:** And we have taken notice on the more detailed aspects of the question—

**Senator CASH:** That was before you worked out that you actually have some information to provide to the committee. That was before that. We now have worked out that we have got some information so perhaps I could be allowed to continue questioning Mr Moorhouse as to what information he has. He might find some more information he can share with us.

**Mr Metcalfe:** What information is there is that there have been two assaults. It does not provide a breakdown as to whether they were on female staff or whether they were undertaken by minors. We have taken that on notice, Senator.

**Senator CASH:** Does it provide information on when these assaults occurred and where?

**Mr Moorhouse:** It indicates that there are two assaults in this financial year at Inverbrackie.

**Senator CASH:** And it indicates nothing else?

**Mr Moorhouse:** That is the statistical report that I have in front of me. I can provide you with more information on notice, Senator.

**Senator CASH:** I will come back after dinner and ask a series of questions.

**CHAIR:** Now the answer for Senator Barnett—

**Mr Moorhouse:** In relation to the process of establishing a community reference group in Pontville, I am advised that the state director in Tasmania has held two meetings, one on Wednesday, 13 April with a selected group of key stakeholders, and of course the public meeting on Wednesday, 20 April. Also on Thursday, 28 April, the current state director plus some other staff met with the Mayor of Brighton who had been unable to attend the two earlier meetings to which I referred, and consulted him about his possible participation in a community reference group and asked whether he was able to suggest others who may be able to make a contribution to a community reference group. The advice I have here indicates that unfortunately, because of the delays in establishing at Pontville, our facility manager has not remained in Tasmania and therefore the progress in establishing the CRG has not been as fast as we would have otherwise expected. But what I do have here is—

**Senator BARNETT:** So the facility manager has left—

**Mr Moorhouse:** The facility manager is an officer who was being appointed from Canberra to take over the facility. He is currently back in Canberra and will move to Pontville as soon as there is progress on establishing the facility.

**Senator BARNETT:** Was he or she ever sent to Tasmania?

**Mr Moorhouse:** He attended each of the meetings that I mentioned.

**Senator BARNETT:** So why hasn't he been sent down earlier, say, on 5 April when the minister announced it, or in and around that time?

**Mr Moorhouse:** Because there is not enough for him to do until construction starts on the facility.

**Senator BARNETT:** So you are waiting for the construction to start—

**Mr Metcalfe:** We are back into that with the issuing the approvals—

**Mr Moorhouse:** What I do have here also, Senator, is a draft terms of reference which I can pass to you. It is a skeletal one but it is the one which we use for other facilities. Finally on this subject, the PWC meeting, I am advised, was 12 May.

**Senator BARNETT:** And you met with a PWC?

**Mr Moorhouse:** Steve Ingram, who is the assistant secretary of our facilities branch, and I met with the PWC.

**Senator BARNETT:** Did they advise you that it would be a formality or did they say that you had to fulfil certain terms and conditions to have the funding approved?

**Mr Moorhouse:** Actually the meeting was interrupted by a division in the House and so the meeting was unable to be properly concluded with only the chair being present.

**Senator BARNETT:** The chair of the Public Works Committee?

**Mr Moorhouse:** That is right.

**Senator BARNETT:** Did you meet the secretary?

**Mr Moorhouse:** We met the secretary, yes.

**Senator BARNETT:** Did you not have an official meeting because of the division in the House?

**Mr Moorhouse:** We had an official meeting. The meeting started but it was not able to conclude in a structured manner because of the division.

**Senator BARNETT:** Do you have to have another meeting?

**Mr Moorhouse:** We have been advised that there are some questions that will be provided to us. I was expecting the questions yesterday or today but I have been in these hearings so I am not sure if they have been received.

**Senator BARNETT:** So you will get those questions and respond to them. Are you hoping, based on that response, that you will get further feedback from the committee to say that the spending is approved?

**Mr Moorhouse:** Approval is not required for a medium project. It is a consultation process where we advise them what we are proposing to do. It is not a formal approval that is required. However, we would want to provide the PWC with the information they require.

**Senator BARNETT:** Of course. It is a requirement to have a consultation, because it is \$14.8 million.

**Mr Metcalfe:** I have made it very clear to officers that we should very properly and openly engage with the Public Works Committee on all of these issues.

**Senator BARNETT:** You were also going to check on the Aboriginal heritage issue. Do you have any feedback? You got that at late notice last night. Is there any advice you can give the committee on the status of that Aboriginal heritage permit issue?

**Mr Moorhouse:** I think we are still checking that, but I will get back to you.

**Senator BARNETT:** Okay. I have an ABC report today which says that the construction will proceed by the end of the month. Is that correct? I assume it is not correct but I need you to advise us.

**Mr Metcalfe:** We do not know about that report—where it is from, its source.

**Senator BARNETT:** It is an ABC Radio report that quotes a DIAC representative and says, 'He says construction is due to start this month.'

**Mr Metcalfe:** You were here when we provided the evidence. If the media took an indirect assumption from that, that is a matter for the media. We are very clear on where we are on this issue.

**Senator BARNETT:** So it is clearly not starting this month?

**Mr Metcalfe:** Given where we are, it is pretty clear it is not happening this month. I do not know how that comment came to be in an ABC report.

**Senator BARNETT:** I do not know either, but it was also reported in the *Sunday Examiner* on the 22<sup>nd</sup>, just a couple of days ago, where it said the Pontville development was 'expected to begin the six-week build before the end of the month'. That is before the end of this month, according to your representative.

**Mr Metcalfe:** We stand by our evidence to you today.

**Senator BARNETT:** I draw that to your attention because there is clearly a conflict in the evidence.

**Mr Moorhouse:** Senator, I have just been advised that the information in relation to the Aboriginal heritage issue has been provided by our colleagues. If I can just read this to you: 'A previous study had found that no significant Indigenous artefacts will be disturbed by the development. However, Aboriginal Heritage Tasmania requested a new audit be undertaken to confirm the earlier findings. The department commissioned a desk audit which confirmed the earlier study. A field audit was arranged but the requirements are that an Aboriginal heritage officer accompany the archaeologist during the assessment. A local dispute over the impact of the nearby Brighton Highway Bypass means that Aboriginal heritage officers are refusing to take part in any assessments in the area.'

**Senator BARNETT:** Therefore?

**Mr Moorhouse:** That is what we do not know—

**Mr Metcalfe:** Therefore, we will be engaging as to the next step.

**Senator BARNETT:** But, clearly, you do not have an Aboriginal heritage officer to be involved in that field audit in Tasmania, which, with respect, we have known for many weeks

and probably months because it has been on the public record in Tassie. You are aware of that now. The question is: what are you going to do?

**Mr Metcalfe:** We are going to carefully consider our position as to how we take this forward.

**Senator BARNETT:** If we get to a position where you no longer need the temporary detention centre, because your developments in Northern Australia are nearly ready, I presume you will not proceed with the detention centre development.

**Mr Moorhouse:** That would be a decision for the minister.

**Senator BARNETT:** When will the detention centres in Northern Australia be ready for accommodation?

**Mr Moorhouse:** We have recently received the Northern Territory government's approval for the facility and so we will be moving ahead with that as quickly as possible. The construction will be completed in stages. The first stage, which includes an initial 500 beds, is scheduled to be complete 20 weeks after planning approval, which we received very recently.

**Mr Metcalfe:** What that means in terms of the future of other facilities is clearly an issue we will consider closely.

**Senator BARNETT:** You have planning approval and are going to proceed. So, five months from today, all being well, based on that advice you will have 500 people moving in?

**Mr Moorhouse:** That is our expectation.

**Senator BARNETT:** Therefore, in five months time will you need the Tasmanian temporary detention centre?

**Mr Moorhouse:** That will be a decision for the minister. A number of other facilities are operating at surge capability. We would like to move those facilities back to their normal capability as soon as we can. As I said, it is a complex balancing issue, but that will be something to be decided by the minister.

**Senator BARNETT:** Is that document something you could table for the committee? I am not sure of the veracity of the document you read from regarding the Northern Territory development.

**Mr Moorhouse:** I was just reading from my briefing notes that told me the timing for the first stage of Wickham point.

**Senator BARNETT:** I draw to your attention the fact that the department's website says the Pontville facility:

... will be operational after April 2011, contingent on the availability of local contractors.

**Mr Metcalfe:** We will have to update the website. That is the issue with websites; they constantly need updating.

**Senator BARNETT:** Indeed. Thank you, and I appreciate the indulgence of the committee.

**Proceedings suspended from 18:27 to 20:02**

**CHAIR:** We move to program 4.4, Foreign fishers, and then we will come back to programs 4.2 and 4.3.



**Senator FURNER:** Could you identify what the current number of foreign fishing vessels in the region is, based on interceptions?

**Mr Metcalfe:** We have seen a very significant reduction in the number of illegal foreign fishers coming into immigration detention in recent times. I am advised that as of 6 May there were no illegal foreign fishers in immigration detention in Australia. This represents a very good situation considering the quite high numbers we saw some years ago.

**Senator FURNER:** Do you have any idea what the figure was for the last annual period?

**Mr Metcalfe:** I can advise that the number of persons in immigration detention as illegal foreign fishers from 1 July 2010 to 6 May 2011 totalled 75 persons. In the previous financial year, 2009-10, the number was 147; in 2008-09, 181; in 2007-8, 1,232; in 2006-07, 1,437; and, in 2005-06, 2,888. The current position of no such persons being in immigration detention obviously represents a significant reduction in the apprehension of illegal foreign fishers in Australian waters, and that is obviously a very good outcome.

**Senator FURNER:** You mentioned persons. Is the statistic based on the number of people on the boats as opposed to the number of vessels that entered our waters?

**Mr Metcalfe:** Yes. I would suggest that you ask questions of the Australian Customs Service or the Australian Fisheries Management Authority in relation to the numbers of vessels and the incidence of detected foreign fishing. However, where a vessel is arrested in Australian waters, the crew are placed in the care of my department pending any prosecution or removal activity. Clearly, we have seen a major reduction in the number of illegal foreign fishers. You would have to ask AFMA or Customs but I think that, by definition, that would mean a great reduction in the number of vessels being apprehended as well.

**Senator FURNER:** I think it was last year, from memory, that I was up on Operation Resolute talking to our defence personnel about this particular area and other matters. They explained that there is collaboration between us and neighbouring nations. Is that continuing?

**Mr Metcalfe:** Yes. We do not have the primary responsibility for that, AFMA have the major responsibility, but certainly there has been a significant engagement with the villagers where the vessels and the crew were coming from to explain the consequences of illegal fishing and also, I understand, to address some of the root causes or reasons people were illegally fishing. I would suggest that you perhaps ask questions in the relevant portfolios about that. But certainly, while my department is busy with many things, at the moment we are not busy with illegal foreign fishers.

**Senator FURNER:** Would that be the reason there has been a significant reduction in the number of arrivals?

**Mr Metcalfe:** Again, I would suggest that the experts on that would be in AFMA. We obviously engage with the various agencies with responsibility for the issue. Customs, AFMA, the Department of Agriculture, Fisheries and Forestry, Foreign Affairs and Trade, and the Great Barrier Reef Marine Park Authority all have an interest in the issue, but the primary activity in relation to engagement and education of potential illegal foreign fishers is led by AFMA, and of course Foreign Affairs and our Embassy in Jakarta in particular have a key role in that.

**Senator FURNER:** How do they differentiate those detainees in relation to other detainees in the centres?

**Mr Metcalfe:** Foreign fishers are removed from Australia as soon as they possibly can be. We of course have also seen the incident in the past of minors, people under the age of 18, coming into the departments care as well. Essentially there is a view that people should be removed from Australia. Usually the vessel is forfeited and subject to destruction by other authorities. However, if there is a recidivism, a frequent incursion by a person, then that person would be the subject of prosecution action by those other authorities.

**Senator FURNER:** I take it you would not have any figures on the prosecutions?

**Mr Metcalfe:** No, that is not something we do. Our role is largely the detention pending removal and then putting into effect the removal arrangements, sending the people back home.

**Senator FURNER:** Thank you. That is all I have at this stage.

**CHAIR:** We are going back to 2 and 3.

**Senator CASH:** I just have some brief questions about the detention centre at Northam in Western Australia. Can you confirm how many asylum seekers will now be transferred to the Northam detention centre?

**Mr Moorhouse:** I had better just check the numbers. Excuse me for one second—I will just confirm. I am not sure whether the revised number is 400 or 600. My belief is that it is 600.

**Senator CASH:** Why was that number revised down?

**Mr Moorhouse:** It was revised down because of the projections in relation to the number of arrivals. That also took into account concerns that had been expressed about the number of people who it was proposed would be accommodated there.

**Senator CASH:** So those were community concerns that were taken into consideration?

**Mr Moorhouse:** Primarily, it was because of the reduced projections for the number of arrivals.

**Senator CASH:** What was the initial cost of the contract when it was announced last year by the minister? Was it \$160 million?

**Mr Moorhouse:** I am trying not to work from memory, but from memory it was \$164 million.

**Senator CASH:** That is what it was--\$164 million.

**Mr Metcalfe:** We will check and make sure that is right. We will let you know if it is not.

**Senator CASH:** Are you confirming the numbers for me or the cost?

**Mr Moorhouse:** The numbers: it is 600.

**Senator CASH:** So it is 600. And the initial cost of the contract was based on 1,500 detainees, and I understand that it was \$164 million.

**Mr Metcalfe:** That is Mr Moorhouse's recollection. But if that is wrong, we will correct that.

**Senator CASH:** Has the cost been revised down?

**Mr Metcalfe:** Because of the reduction in anticipated capacity?

**Senator CASH:** Correct.

**Mr Metcalfe:** Yes.

**Senator CASH:** What has it been revised down to?

**Mr Sheehan:** The announcement suggested that there would be a reduction of \$40 million.

**Senator CASH:** \$40 million?

**Mr Sheehan:** From the announcement that was made there—

**Senator CASH:** So it went from \$164 million down to—

**Mr Sheehan:** That makes it \$124 million, or thereabouts.

**Senator CASH:** So it is not a huge reduction in cost, even though you have more than halved the number.

**Mr Metcalfe:** A lot of the costs are the basic infrastructure. Obviously, putting the first person in costs a lot and then the costs reduce after that. But it is a significant reduction.

**Mr Sheehan:** There is a whole range of site works, such as roads and general infrastructure.

**Senator CASH:** What is the status of the detention centre or the site works et cetera? What is the status of the construction of the proposed detention centre at Northam?

**Mr Moorhouse:** We are proceeding with the facility. There are some issues at the moment in relation to the proposed access road, and so we are seeking to clarify that. But we are proceeding with the construction.

**Senator CASH:** When it is expected that the first detainee will be taken to Northam?

**Mr Moorhouse:** We were projecting for September. But the need to renegotiate the contracts for the reduced size means that we are now probably looking to do that towards the end of October.

**Senator CASH:** You will be aware, because it has been highlighted many times in the press, of the concerns of the couple who back on to the detention centre, Mr John and Mrs Cathy Edwards. I have been out to their property twice and I have viewed the proposed detention centre site from their property. Is the government considering any compensation payments to them—

**Mr Moorhouse:** No.

**Senator CASH:** in relation to the diminution of the value of their property?

**Mr Moorhouse:** No.

**Senator CASH:** Is the government considering moving the site of the sewerage so that it is not directly in their line of vision?

**Mr Moorhouse:** I would need to take that on notice.

**Senator CASH:** Okay. Is the department aware of the inadequacy of the fire break that has been put in by FISA?

**Mr Moorhouse:** We are aware of concerns about the fire break.

**Senator CASH:** What has the department done to rectify those concerns? I have seen the fire break and I have to say that one match and the whole property is going to go up. And it is something that could be rectified overnight for absolutely minimal cost.

**Mr Moorhouse:** I will just check my notes. I am not familiar with the detail of what we are doing in relation to the fire break, but I will take that on notice.

**Senator CASH:** Would you mind? And preferably, if it is only in relation to this issue, could you get back to me sooner rather than later because it is something that is of real concern to the couple. Obviously, it would alleviate those concerns if they thought that a proper firebreak was actually going to be put in.

**Mr Metcalfe:** We certainly understand that, Senator, and thank you for your advice on this.

**Senator CASH:** Has there been any quantification of the reduction in the economic benefit to Northam based on 1,500 detainees not being placed there? One of the highlights of this for the Northam community was that allegedly there would be a considerable economic input into the town with 1,500 people. Has the department done any work surrounding the potential reduction in the economic benefit?

**Mr Metcalfe:** No, we have not.

**Senator CASH:** Is it anticipated that with only 600 asylum seekers or detainees being placed in Northam that there would be a reduction in the economic benefit to the town? Obviously, there will not be as many staff et cetera being housed up there.

**Mr Moorhouse:** One of the key concerns was whether there would be an impact on people's employment prospects. We did confirm with Serco that the number of people that they had already recruited would still be needed for the facility of a reduced size. In other words, they had recruited for what we were proposing as the first stage of the complex—

**Senator CASH:** Which would only have been—

**Mr Moorhouse:** Which would have been the 400 or 500. Those people will still be required for the reduced sized facility.

**Senator CASH:** I will now return to Inverbrackie: prior to the dinner break we were talking about potential assaults on some of the officers there.

**Mr Moorhouse:** I have been making attempts over the dinner break to identify the incidents that you were speaking about.

**Senator CASH:** Thank you very much.

**Mr Moorhouse:** I apologise: one of them had occurred in the recent weeks, and on being reminded of it I did recall it. It related to an eight-year-old child who apparently kicked one of the guards.

**Senator CASH:** So it was an eight-year-old child who kicked one of the guards. And was that guard a female?

**Mr Moorhouse:** I do not have the gender of the guard, I apologise, but I believe that the mother and the child were late for the school bus, and there was an altercation over whether they would be allowed to board the school bus when it was late.

**Senator CASH:** Has the department conducted its review into that particular incident?

**Mr Moorhouse:** The police were called in relation to the incident and they declined to pursue it, given the age of the child.

**Senator CASH:** What is Serco's or DIAC's responsibility there in that you have been made aware that an incident has actually occurred—an assault? Even if the police do not pursue charges, what is DIAC's responsibility here?

**Mr Moorhouse:** I do not know the details. I can look into it for you, but I would expect there would be a behaviour management plan put in place, which would include the child. Without wanting to downplay in any way the impact of the assault on the officer, at the end of the day it was an eight-year-old child.

**Senator CASH:** Did the officer suffer any injuries as a result of that? Was there bruising?

**Mr Moorhouse:** I would need to take that on notice. I was not able to get that amount of detail.

**Senator CASH:** During the dinner break were you able to ascertain any further information on other assaults that occurred at Inverbrackie?

**Mr Moorhouse:** We were having difficulty identifying any further assaults. There have been a number of domestic incidents—two or three—that we were able to identify. I am not sure whether the reference to the second assault relates to what happened in one of those incidents. There was an incident between three males, all of whom were accompanied by children, and there was some dispute between them. I believe that some staff went to hospital after being involved in separating that domestic incident.

I apologise: that is not precise information, and I am happy to provide you with more precise information on notice. That was all I was able to obtain from the recollection of staff involved.

**Senator CASH:** In relation to the eight-year-old child who assaulted the officer: was it a boy or a girl?

**Mr Moorhouse:** I would need to take that on notice.

**Senator CASH:** Did the child eventually board the bus?

**Mr Moorhouse:** I do not know.

**Senator CASH:** Would you be able to provide the committee with information—

**Mr Moorhouse:** Yes, we will give you an account of the incident on notice.

**Senator CASH:** Again, you are not able to say what injuries the guard suffered? You will take that on notice as well?

**Mr Moorhouse:** That is correct.

**Senator CASH:** Have any of these assaults resulted in workers compensation claims being made?

**Mr Moorhouse:** Are you aware of any?

**Ms Lynch-Magor:** I am not aware of any, but that does not mean that it has not occurred.

**Senator CASH:** Are you able to provide the committee with information as to whether or not workers compensation claims have been made?

**Ms Lynch-Magor:** We can make those inquiries of Serco.

**Senator CASH:** Do you have information in relation to how many workers compensation claims have been made by Serco officers and how many of these incidents related to assaults?

**Mr Moorhouse:** No, we do not.

**Ms Lynch-Magor:** We just agreed to take that on notice.

**Mr Moorhouse:** No, we do not have that information. That information would be with Serco.

**Senator CASH:** Are you able to provide that in relation to each detention centre, each site?

**Ms Lynch-Magor:** We would have to ask Serco whether or not they were prepared to provide that advice to us and, in addition, whether or not they were able to provide that advice to us, so we will take that on notice.

**Senator CASH:** Specifically then, if I could start with Inverbrackie if you are able to get further information. Do you know if there are still Serco officers on compensation claims at Inverbrackie resulting from assaults?

**Mr Moorhouse:** No, we do not have that information.

**Senator CASH:** Ms Wilson, do you have any information that you are able to add to this?

**Ms Wilson:** No.

**Mr Metcalfe:** I think it is pretty clear that the employment relationship between Serco and their employees is where the issue of any workers compensation claims would arise. That is not information held by the department. But on all of these questions, we can ask Serco whether they have that information and whether that can be made available to us.

**Senator CASH:** In asking for that information, could you also request information as to how long they have been workers compensation?

**Mr Metcalfe:** We will include that in the request.

**Senator CASH:** Have any threats, including death threats, against Serco staff been made and reported at Inverbrackie? Is the department aware of any death threats?

**Mr Moorhouse:** I am not aware of any.

**Senator CASH:** Have any families been moved from Inverbrackie to community detention in Brisbane?

**Mr Metcalfe:** We would have to check on that fact.

**Senator CASH:** You do not have that information?

**Mr Moorhouse:** We do not have the precise information in relation to individual cases like this. It might be better to put these sorts of questions on notice.

**Senator CASH:** Are you aware of any families that have been moved, even if you do not have the specific information?

**Mr Metcalfe:** We have given evidence about the quite significant numbers of people who have been placed in community detention. Whether some have come from Inverbrackie is something that we will need to check for you.

**Senator CASH:** Could you also take on notice: what are the reasons for their departures, were they complete family groups, what was the composition of the family groups moved, and did any move include a father and two sons?

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

**Senator CASH:** Have any minors attending local schools from Inverbrackie been suspended from those schools, and if so why?

**Mr Moorhouse:** As I indicated before, that particular information relating to individual cases—we do not have that degree of briefing material with us today.

**Senator CASH:** If you could also then take on—

**Senator Lundy:** I am not sure what point you are trying to make in asking a question about the suspension of children from a school. Are you trying to make a political point?

**Senator CASH:** No, why?

**Senator Lundy:** I am just curious. You asked the question in the pejorative.

**Senator CASH:** It is merely a question to ascertain information.

**Senator Lundy:** I am just checking.

**Senator CASH:** And in terms of how many minors from Inverbrackie attending local schools have been suspended from those schools, and if so why, have any been transferred to another facility in Brisbane?

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

**CHAIR:** The suspension of children from school would surely be a matter for the state education department and the school concerned, wouldn't it?

**Mr Metcalfe:** That is probably correct, Chair, but as the detaining authority, the department obviously has responsibility in relation to what people are doing. We are happy to take that on notice and see if we can assist Senator Cash. From the line of questioning, it seems that she has a particular situation in mind.

**Senator CASH:** Yes, there is a particular situation.

**Mr Metcalfe:** She has been asking some fairly specific questions, and we will follow up on that.

**CHAIR:** These are unaccompanied minors, are they?

**Senator CASH:** No, these are—

**Mr Metcalfe:** No, the questions seem to be driving at a father and two children and whether they had been moved from Inverbrackie to Queensland. It would appear to be the gist of the questions. We have said that we will take that on notice and we are happy to assist.

**CHAIR:** The father might want permission to be sought as to whether that information is made public about his children.

**Mr Metcalfe:** In providing any information to the committee we would be mindful of any privacy obligations that we have.

**Senator CASH:** I turn now to Scherger Air Force Base. How many detainees are currently at Scherger, and how long has each of them been there? Perhaps if you start with how many are currently at Scherger.

**Mr Metcalfe:** While the officers are checking that information, I suspect the question of how long each person has been there will require 600 answers, or answers as to how many persons there are. So is there some way we can provide you with a spread of stay of a particular period of time to aggregate it rather than provide answers for 600 cases?

**Senator CASH:** What is the longest time that someone has been at Scherger?

**Mr Metcalfe:** Scherger was opened at a particular time. We would have to check whether anyone who was there when it opened is still there. Perhaps we could provide advice as to whether there are reasonable groups and indicate how many people have been there since the centre opened or for a period of three months or something like that.

**Senator CASH:** That would be acceptable.

**Mr Metcalfe:** We will be helpful but I would prefer to try to find an aggregate way to do it rather than 600 individual answers. That would be a very major effort.

**Senator CASH:** How many detainees are currently at Scherger?

**Mr Moorhouse:** There are 592 detainees at Scherger. The initial transfer to the centre was on 25 October 2010.

**Senator CASH:** What is the current status in the assessment process of these people?

**Mr Metcalfe:** Again that will depend on the 592 individuals.

**Senator CASH:** Are you moving through the processing of them at Scherger?

**Mr Metcalfe:** We are doing that at all centres, so activities in relation to refugee status determination and reviews are occurring across the network. Again, it might not be possible to find a way to aggregate how many persons are at a particular stage in processing, for example, yet to be in receipt of a decision as to whether they are a refugee or whether they are seeking a review of that decision or whatever, to provide you with a sensible grouping of people. Does that sound sensible?

**Senator CASH:** Did you say that the first person was transferred to Scherger on 25 October 2010?

**Mr Metcalfe:** Yes.

**Senator CASH:** At that stage how long was it anticipated that Scherger would be operational as a detention centre?

**Ms Lynch-Magor:** The government announced it would place 300 single adult men at the Scherger facility for three months.

**Senator CASH:** So we are now up to 592 and it has been considerably longer than three months. When was the decision made to extend the time detainees would be held at Scherger?

**Mr Moorhouse:** I do not have the exact date of the decision. My recollection is that in making the decision to extend we took into account the views of local stakeholders. There was a strong view expressed to us that we should seek to retain the facility at Scherger.

**Mr Metcalfe:** I am advised the date is 3 March.

**Senator CASH:** That was the announcement, but when was the actual decision made?

**Mr Metcalfe:** We would have to check on that – obviously prior to 3 March.

**Senator CASH:** Please also provide us with the date of the actual decision to extend Scherger.

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

**Senator CASH:** When did the department inform the local community of their decision to extend the time frame?



**Ms Lynch-Magor:** I just want to clarify something. The original announcement said that Scherger was intended to be adapted for use for six months. I apologise.

**Senator CASH:** Not three months?

**Ms Lynch-Magor:** Not three months. I apologise, Senator.

**Senator CASH:** When did the department inform the local community of the decision to extend the time frame?

**Ms Wilson:** I visited Scherger and Darwin with the minister about two or three weeks before that announcement. During the visit to Scherger we met with the local community reference group. At that meeting with the minister over lunch the reference group asked that the minister make a commitment to stay in the community for a longer period and their strong preference was for an extension of 12 months rather than doing it three months or six months at a time. I think that influenced the minister significantly during that visit.

**Senator CASH:** Who actually sat on the reference group?

**Ms Wilson:** There were members of the Weipa Town Authority—I do not have the exact positions—members of Rio Tinto, representative groups—I think we could provide the detail—

**Senator CASH:** Could you provide me with that?

**Ms Lynch-Magor:** I gather also traditional owners, including the Napranum town council, Rio Tinto, local religious leaders, the Western Cape College, Queensland government representatives, local shopkeepers and traders, and commercial accommodation providers.

**Senator CASH:** Were any objections raised in relation to the potential extension of the Scherger facility?

**Ms Wilson:** It was more that the duration of the extension should be a significant one. The comments made when I was in the room during lunch were that they often had a good tourist trade coming up north during the cold in the south and they could do pretty well over that period in terms of accommodation bookings but what they wanted was something that would be continuous and cover all seasons and that would be of benefit to the local community.

**Senator CASH:** Has any damage been caused to the facility as a consequence of detainee actions?

**Mr Moorhouse:** We are not aware of that.

**Senator CASH:** Ms Wilson, are you aware of any damage that has been caused to the centre as a result of detainee actions?

**Ms Wilson:** No, I am not.

**Senator CASH:** Is that a definite no or you are just not aware? Do you need to take it on notice?

**Mr Metcalfe:** I think the officers have said they are not aware of it. There is an enormous amount of detail that we are being asked and, to be prudent, we will check and advise you if the answer is incorrect.

**Senator CASH:** If the answer to that question is yes, could you also provide the committee with information in relation to the nature of the damage, the cost of repairs for the

damage, what action was taken against those who caused the damage, whether those who caused the damage to the facility or other property were subject to criminal charges and, if not, what was the justification for not charging the detainees?

**Mr Metcalfe:** We will take that on notice; however, the last part of the question as to the reasons not to charge would be a matter for the police authorities and not within the purview of the department.

**Senator CASH:** What has been the cost of running Scherger in the financial year to date and what is budgeted for it next financial year?

**Mr Moorhouse:** The costs of operating Scherger in the financial year until the end of March was \$24.6 million.

**Senator CASH:** And what is the anticipated cost till the end of June and what is the budget for the next financial year?

**Mr Moorhouse:** I do not have that information. I will have to take it on notice.

**Senator CASH:** Do you have the budget for the next financial year? It is budget estimates.

**Mr Moorhouse:** I am not sure whether anyone else would have it, but I have the expenditure figure for this year, which is \$24.6 million. That is all I have, I am afraid.

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

**Senator CASH:** I want to turn to a report in the *Cairns Post* on 23 May 2011, which states:

Ex-security guards from the Scherger immigration detention centre at Weipa claim asylum seekers are watching violent videos on YouTube, downloading porn, and logging on to terrorist-run websites.

Was the Department of Immigration and Citizenship aware of these allegations before they were reported in the *Cairns Post*?

**Mr Moorhouse:** As far as we are aware, the detention services provider has an internet filter. All of the facilities are required to have an internet filter which should block access to pornography and other sites with other specified characteristics, which would include terrorist websites.

**Senator CASH:** That was not my question, Mr Moorhouse. My question was: was the department aware of these allegations before they were reported in the *Cairns Post*?

**Mr Moorhouse:** If we were aware of them we would have acted on them. If you are asking me if anyone in the department was aware of them, I would have to take that on notice. Generally, if we were made aware of that—

**Senator CASH:** Ms Wilson, do you have any information in relation to those allegations?

**Ms Wilson:** That is a fairly recent article—so not to my knowledge.

**Senator CASH:** Mr Moorhouse, were you aware of the article in the *Cairns Post*?

**Mr Moorhouse:** I was not aware of the issue until it was in the media, but if we had been aware of it we would have acted in relation to it.

**Senator CASH:** Are these allegations correct or are they just allegations?

**Mr Moorhouse:** I cannot tell you that. I would have to take it on notice.

**Senator CASH:** So your evidence is that you do not know whether anyone in the department was aware?

**Mr Moorhouse:** It is virtually impossible for me to comment on whether something has happened in the past if it had not been brought to our attention.

**Senator CASH:** So this has not been brought to your attention other than through the media?

**Mr Moorhouse:** It was the media article that brought it to my attention.

**Mr Metcalfe:** It is a careful answer. Mr Moorhouse said he was not personally aware.

We will check to see if the department was aware. We are a big department. What Mr Moorhouse said is that, if we had been made aware, it certainly would have been looked at and acted upon. We now have been made aware of the allegation and of course it is being examined.

**Senator CASH:** So you are now taking action to examine the nature of those allegations?

**Mr Metcalfe:** Yes.

**Senator CASH:** Ms Magor, were you aware of this?

**Ms Lynch-Magor:** I was not aware of it, Senator.

**Mr Metcalfe:** Ms Lynch-Magor, Senator.

**Senator CASH:** What action has been taken over the reported brawl also referred to in this article, involving up to 100 men last Monday evening? Was the department aware of that allegation?

**Mr Moorhouse:** We were aware of an altercation.

**Senator CASH:** Involving up to 100 men?

**Mr Moorhouse:** We do not have the precise numbers. We were aware that there was an altercation, yes.

**Senator CASH:** When you say that you do not have the precise numbers, 100 is a significant number. Were you made aware that a significant number of people were involved in the brawl?

**Mr Moorhouse:** Yes.

**Senator CASH:** Were you given any estimation of the number of people?

**Mr Moorhouse:** I would need to go back to the situation report to confirm the number provided in it. My recollection is that it was recorded in those sorts of terms. It was a large group of clients from different ethnicities that were involved in a brawl with each other.

**Senator CASH:** What action has now been taken by the department in relation to the alleged brawl?

**Mr Moorhouse:** I would have to take that on notice.

**Senator CASH:** An investigation is being undertaken?

**Mr Moorhouse:** I will take on notice whether any investigation has been undertaken or any charges laid.

**Senator CASH:** If an investigation has been undertaken and the results of the investigation.

**Mr Moorhouse:** Yes.

**Senator CASH:** Why did Serco managers travel to Scherger last weekend? Is the department aware that that occurred?

**Mr Metcalfe:** Again, I suspect some people in the department would have been aware of that, but that is not an issue—

**Senator CASH:** Are those people—

**Mr Metcalfe:** Our centre manager at Scherger would be aware if it had occurred. So we can check and see whether they knew about it.

**Senator CASH:** Would there be a reason that the Serco management travelled to Scherger?

**Mr Metcalfe:** If they went to Scherger they would have reason to go there.

**Senator CASH:** But you are unaware of what that reason was?

**Mr Metcalfe:** No-one here has that knowledge at the moment but we can check.

**Senator CASH:** I also now refer to an article in the *Courier Mail* dated 23 May, in which it states:

PHONE bills at the Scherger defence facility near Weipa have soared by more than a quarter of a million dollars in the first six months of the centre being used to house asylum seekers. The hidden cost is revealed in a bill for \$259,455 that Defence sent to the Department of Immigration this month.

**Mr Moorhouse:** I cannot confirm the precise figures at the moment. I will see whether someone can do that. The point about the charges is that the charges cover the cost of telephone calls by DIAC staff and by Serco staff and the telephone calls that are required for the operation of the centre.

**Senator CASH:** I understand that. How do you distil that—that is all for the department?

**Mr Moorhouse:** That is the running costs for the department and Serco's business.

**Senator CASH:** Are you able to distil overseas versus local calls, like you would on your local bill at home?

**Mr Moorhouse:** I do not see the point of the question. The clients use phone cards.

**Senator CASH:** The clients use phone cards?

**Mr Moorhouse:** Yes. This is for the operations of the centre.

**Senator CASH:** So this has nothing to do with IMAs?

**Mr Moorhouse:** If you want to be precise, I would want to make sure that there was nothing related to IMAs included in it. For example—

**Mr Metcalfe:** It is all related to IMAs, Senator, because all the phone calls are about our clients or their circumstances.

**Senator CASH:** In relation to IMAs calling home at the taxpayers' expense?

**Mr Moorhouse:** Yes, that is what I want to clarify, whether there are other expenses—if I will be able to identify there are client expenses included in that, I doubt we would be able to separate the client expenses from the other—

**Senator CASH:** Would you please confirm for me whether or not there are detainees calling home at taxpayers' expense within that figure?

**Mr Moorhouse:** If they are calling home at taxpayers' expense, it would be for the calls that we allow them to make when they first arrive. But that should be on Christmas Island rather than at Scherger. But I will confirm that.

**Senator CASH:** My understanding is that detainees have access to telephones are able to make unlimited phone calls of unlimited duration, subject to, for example, at the Curtin detention facility, a very polite sign saying 'please try and keep your phone call to 30 minutes maximum'.

**Mr Metcalfe:** I think that is where the use of phone cards comes in.

**Senator CASH:** Can you take me through the difference between using a phone card and using one of the public telephones that we provide at the detention centres?

**Ms Lynch-Magor:** A phone card is a where you purchase a card for a certain amount of money and you use—

**Senator CASH:** But they do not have any money.

**Ms Lynch-Magor:** A certain number of points then. You use the telephone and you use the numbers in the card to make the telephone call.

**Senator CASH:** So the taxpayer is still paying for it?

**Ms Lynch-Magor:** Of course, yes.

**Senator CASH:** So there are additional costs in relation to a quarter of a million—

**Ms Lynch-Magor:** They would show up differently, though—because they have purchased the card with their points, they are using the numbers on that card, so it shows up differently than it would for example—

**Senator CASH:** Does the Department of Defence send the department telephone bills for Curtin, Inverbrackie or any other defence related facilities? Or is it only in relation to Scherger?

**Ms Lynch-Magor:** I am not aware; I would have to take that on notice.

**Senator CASH:** Mr Metcalfe, perhaps you can enlighten the committee in relation to the telephone bills. Does the Department of Defence send DIAC telephone bills for other detention centres or just for Scherger?

**Mr Metcalfe:** I would have to check on that. I do not have personal knowledge on that issue.

**Senator CASH:** If the Department of Defence does bill the department in the same way for other detention centres, could you please provide the contract notices and the costs in relation to the same period as stipulated in contract notice c in 307522 for all of the other detention centres?

**Mr Metcalfe:** It would not be all of them, but I suspect Curtin—

**Senator CASH:** All other relevant detention centres.

**Mr Metcalfe:** Where we are on the defence facility—Curtin and Scherger are the principal ones—but we will take that on notice.

**Senator CASH:** What is the cost of calls on Christmas Island made by detainees in this financial year to date?

**Mr Metcalfe:** 2010-11 to date?

**Senator CASH:** Yes please.

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

**Senator CASH:** In terms of the telephone cards, what is the maximum value that can be placed on a card?

**Ms Lynch-Magor:** Cards that would be obtained with points could only be obtained with the number of points that a client had. I would need to take on notice the cost of an individual card, the highest price of a card that you could buy.

**Senator CASH:** Can you also then please taken on notice to provide to the committee the cost of phone cards for every centre for 2009-10 and 2010-11 to date.

**Ms Lynch-Magor:** Yes.

**Mr Metcalfe:** We explained that. Staff pick up the phone and dial the number; detainees use a machine that requires a phone card.

**Senator CASH:** So you can separate it out?

**Mr Metcalfe:** Yes.

**Senator CASH:** And that is what you will be doing for me?

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

**Senator CASH:** Are the telephones available for staff use restricted in any way in terms of overseas dialling ability? Are DIAC staff able to pick up the phone and dial wherever they want to dial?

**Mr Metcalfe:** We would have to check whether there are any physical limitations placed upon it, but certainly there are expectations that any calls will be for business purposes only.

**Senator CASH:** So they cannot call relatives in the UK?

**Mr Metcalfe:** If they did, that would be a breach of departmental guidelines and would be subject to appropriate action under the Public Service Act.

**Senator CASH:** So staff do not have the ability to make unlimited overseas calls—

**Mr Metcalfe:** Our staff do not sit at work making unlimited overseas calls to their families and friends. If they did, I would have a very strong view about that.

**Senator CASH:** I now refer you to contract notice CN350097, again in relation to Scherger, which states that Skymesh Pty Ltd is contracted by DIAC to provide internet services for the period 19 October 2010 to 30 June 2011 at a cost of \$118,730.71. What are the exact details of the internet services provided? Sorry, that is actually in relation to all sites.

**Mr Moorhouse:** We will take it on notice, but can I ask you to specify the question a bit more. I am not quite sure I understand you.

**Senator CASH:** Contract notice CN350097 states:

Agency Department of Immigration and Citizenship

Publish Date 2-Dec-2010

Category Internet services

Contract Period 19-Oct-2010 to 30-Jun-2011

Contract Value (AUD) \$118,730.71

And it gives supplier details as Skymesh in Fortitude Valley. What internet services were provided and where were they provided to?

**Mr Moorhouse:** We will take it on notice.

**Senator CASH:** I also refer to contract notice CN299855, which states that the Department of Immigration and Citizenship contracted Christmas Island Internet to provide internet connection for the period 24 May 2010 to 30 June 2011 at a cost of \$38,500. Please provide the cost of providing internet access to Christmas Island for the previous three financial years and who was responsible for providing the internet connection.

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

**Senator CASH:** Which ISPs provide internet connections at each of the facilities within the immigration detention network?

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

**Senator CASH:** Is it that time of the night when we are not going to provide any more information or do we actually have no idea?

**Mr Metcalfe:** It is a very detailed question to expect a—

**Senator CASH:** It is a lot of taxpayer money that has been spent.

**Mr Metcalfe:** It is a great deal of taxpayer money and you will get an answer on notice.

**Senator CASH:** Will that be before the due date or six months after the due date?

**Senator Lundy:** There is no need to be sarcastic, Senator Cash.

**Senator CASH:** Mr Metcalfe is not having a bad go of that tonight.

**Senator Lundy:** The officers are doing their very best to answer all your questions.

**Mr Metcalfe:** Senator, that is the second time you have implied that I am being sarcastic and I can assure you I am not. I am simply indicating that information on which internet service provider provides services at each detention facility is a very detailed question. We are committed to providing a correct answer. You will get that answer on notice.

**Senator CASH:** Thank you very much, and I assure you I was not expressing sarcasm; I was expressing disappointment at the fact that this department for two estimates now has failed to provide any answers on notice by the due date.

**Mr Metcalfe:** What I can say is that we provided all of the answers before the committee hearings.

**Senator CASH:** Yes, Friday night at what time were the last few sent through?

**Mr Metcalfe:** The last few came through on Friday, but many were provided well before that.

**Senator Lundy:** Which is a step up on the previous government.

**Senator CASH:** In terms of the ISPs, what was the cost of providing these internet connections per site for the last three financial years?

**Ms Wilson:** I note a lot of these questions are probably going to have to go through Serco to unpack the costs, so that will add time to the answer. It is not all direct invoicing directly to DIAC in relation to the last series of questions we have just had.

**Senator CASH:** What reporting does the department receive from the content host with respect to the sites accessed at each detention facility?

**Mr Moorhouse:** None.

**Senator CASH:** You are not told what sites clients might access?

**Mr Moorhouse:** We do not seek to monitor clients' behaviour in that respect.

**Senator Lundy:** Are you suggesting that they should?

**Senator CASH:** I have suggested on several occasions that they should.

**Senator CASH:** Absolutely—and telephone calls. That is my position.

**Mr Moorhouse:** I have mentioned that we have internet filters in place in all detention facilities to avoid inappropriate access, but we do not seek to monitor detainees' behaviours beyond that.

**Senator CASH:** Are the internet content hosts obligated to report material that they have reasonable grounds to believe is child pornography or child abuse material to the AFP under amendments to the Criminal Code 1995 that commenced on 1 March 2005?

**Mr Metcalfe:** That would be a matter for the Attorney-General's Department to advise you of.

**Senator CASH:** I now have questions in relation to the detention network capacity.

**Senator Lundy:** You have raised your concerns about child pornography sites at several estimates. What allegations have been presented to you about access to such sites, and have you reported those allegations to the authorities?

**Senator CASH:** The good news about estimates is that I get to ask the questions.

**Senator Lundy:** I am asking you because, in asking those questions, you are implying that in fact there is some incidence of it, and yet you are able to present no evidence and no-one has heard of any allegation to this effect. Therefore, you are trying to cast aspersions on the character of asylum seekers generally by continually raising the issue of accessing child pornography in the absence of any evidence whatsoever.

**Senator CASH:** Not at all. My question was whether or not the ISPs had any responsibility to report material that they have reasonable grounds to believe is child pornography or child abuse, because that is actually the law.

**Senator Lundy:** Have you received allegations to that effect?

**Senator CASH:** As I said, the good news about estimates is I get to ask the questions.

**Senator Lundy:** You have not, have you? You are just casting aspersions by asking questions of that nature. It is a reflection on your character.

**Senator CASH:** It may well be that.

**CHAIR:** I would have thought, Mr Metcalfe, that anywhere in this country where there are concerns about accessing that sort of pornography over an ISP it would be reported or monitored through the regular authorities—who will be before us in the next two days.

**Mr Metcalfe:** I am not an expert in that matter apart from the fact that we would regard that material as quite appalling—an observation that I think everyone here would share. But the matter for internet service providers to comply with the law would be a matter for either



the Attorney-General's Department or, possibly, the Department of Broadband, Communications and the Digital Economy. I am sure the senator will pursue questions with them.

**CHAIR:** I think it would be the Attorney-General's Department. I am sure an ISP, though, would be monitored by those people. In fact, it may well be that DIAC would not know about it at all until the Australian Federal Police or the relevant police acted on it.

**Mr Metcalfe:** Certainly it is an area of law for them to administer, and I expect they do their job.

**CHAIR:** Thank you.

**Senator CASH:** In relation to the response to questions on notice, are you able to advise when the department provided the questions on notice to the minister's office?

**Mr Metcalfe:** I would have to take that on notice because there were many hundreds of questions that were taken on notice both during the hearing and subsequent to the hearing. The department, as it has over many, many years, drafts responses to those, provides them for clearance to the minister's office, sometimes needs to make updates or changes, and then provides them to the committee. I do note that we received many hundreds of questions and we answered all of those questions before these hearings. I recall seeing a report in the media on Sunday suggesting that there were hundreds of unanswered questions, which disturbed me because I knew that all the questions had been answered.

**Senator CASH:** And isn't it a shame when the media misreport things?

**Mr Metcalfe:** It happens, doesn't it?

**Senator PRATT:** How many?

**Mr Metcalfe:** I recall reading a report that there were hundreds of unanswered questions and—

**Senator CASH:** I recall a report stating that there were 105. If you could show me where that report is, Mr Metcalfe, that would be greatly appreciated.

**Mr Metcalfe:** It was a Sunday paper, I recall, where that suggestion was being made. But I do not believe everything I read in the paper so I did not take it much further. I was worried whether there had been some breakdown in communication within the committee secretariat because we had certainly provided answers before the hearing.

Senator Pratt, we did take 357 questions on notice but with sub-parts that totalled 742 questions that required a response. We took 85 of those on notice at the hearing but, subsequent to the hearing, received another 272 written questions.

**Senator PRATT:** Could you estimate how long it takes to answer each question? Clearly they are very diverse.

**Mr Metcalfe:** I could not. Some are—

**Senator PRATT:** Clearly there are many hundreds of—

**Mr Metcalfe:** Some would be relatively straightforward; some would take many hours. Sometimes we form the view that it would be an unreasonable diversion of resources. I must note that in that respect senators have been cooperative. There could have been a question before where we were being asked for 592 individual responses and we were able to have a

discussion about how we might categorise things and make that task easier. I note that more than half of the responses had been lodged by 29 April 2011 and that the last couple were answered as late as last Friday. We endeavour to ensure that we provide that information before the hearings and we seek to comply with the requirements of the Senate. We have sought to do that over many years.

**Senator CASH:** When will Wickham Point be on line? And also do you have information about when

Pontville be on line?

**Mr Moorhouse:** I think we answered the question about when Wickham Point will be on line, earlier.

**Mr Metcalfe:** I do not think we have anything to add about Pontville on top of what we discussed with Senator Barnett earlier.

**Senator CASH:** I was not here for all of Senator Barnett's questions. I actually left the room. I know the gist of it—

**Mr Metcalfe:** Senator Barnett raised the issue of the assessment in relation to Aboriginal heritage issues. Clearly, there is an issue associated with the cooperation of the local authorities on that aspect. We are considering how best to move that forward and until that is resolved we cannot provide an estimate. In terms of Wickham Point I think Mr Moorhouse also gave some advice earlier but if you wish we can—

**Senator CASH:** Yes, just in terms of when you believe it will be on line.

**Mr Moorhouse:** Our expectation is that the first stage will be on line 20 weeks after planning approval.

**Senator CASH:** Twenty weeks after planning approval. When do you anticipate planning approval?

**Mr Moorhouse:** I need to clarify whether there are any further approvals required, but we have been notified of approval by the Northern Territory government in relation to the planning objections that have been lodged. I am not sure whether there is anything further outstanding in that regard but it will be 20 weeks after we get the final approval.

**Senator CASH:** In Pontville at this stage you have to work with the Aboriginal heritage issues.

**Mr Metcalfe:** We clearly have some issues to work through, and that will be done.

**Senator CASH:** And you believe Northam has been pushed back to October.

**Mr Moorhouse:** The end of October at the latest.

**Senator CASH:** The end of October 2011. Can you confirm that Aqua and Lilac wings at North West Point on Christmas Island are now closed?

**Mr Moorhouse:** What were previously Aqua and Lilac compounds of North West Point are in the process of being fenced as separate facilities. The fence has been completed around Lilac and I believe the fence will be completed around Aqua in the very near future. They will not be, as they were in the past, extensions of North West Point. North West Point will be an integral facility, and then Aqua and Lilac will be stand-alone facilities outside of that. So the fence should be up very soon around both of them.

**Senator CASH:** Are they currently accommodating any detainees?

**Mr Moorhouse:** I am not absolutely sure. When the next boat arrives, we will need to use Lilac in order to be able to provide separation between the families and the single males in the population that are affected by the announcement of 7 May.

**Senator CASH:** How many beds does Lilac have?

**Mr Moorhouse:** Lilac has around 200—let me confirm that for you.

**Senator CASH:** And can I also ask, if you are looking for figures: how many people will you be looking to house at Wickham Point stage 1?

**Mr Moorhouse:** Lilac has a capacity of 200 beds, approximately, and Wickham Point stage 1 will have 500.

**Senator CASH:** Okay. Before these facilities are online, what is the anticipated bed shortage?

**Mr Moorhouse:** Before they are online?

**Senator CASH:** Yes. What is your anticipated bed shortage?

**Mr Moorhouse:** We do not have a bed shortage. At the moment, we have a capacity, albeit a contingency capacity, of 6,505 as of 16 May and we have 6,197 people in detention.

**Senator CASH:** 6,197 in detention?

**Mr Moorhouse:** That is correct.

**Senator CASH:** Were there any people also being housed in tent accommodation?

**Mr Moorhouse:** We are using marquees in Scherger and Curtin.

**Senator CASH:** Were any of them burnt down?

**Mr Moorhouse:** Not at those sites.

**Senator CASH:** Was tent accommodation burnt down at other sites?

**Mr Moorhouse:** At Christmas Island, yes. I will just add that we are also using marquees at Phosphate Hill's Bravo compound.

**Senator CASH:** If you have a capacity of 6,505 and you have a current population of 6,197, why do need additional beds?

**Mr Moorhouse:** As I mentioned, we are using marquees at a number of different sites. The 6,505 represents contingency capacity. Bringing the other sites online means that we will no longer need to use marquees; we will be able to use the amenities in the other facilities, in the way that they were originally intended. There is a surge or contingency capability which we are using at many sites at present which we would be able to use for detainee amenities.

**Senator CASH:** Given that Wickham Point, Pontville and Northern are not going to be online for some time yet, are there any plans to expand the Curtin detention facility?

**Mr Moorhouse:** No.

**Mr Metcalfe:** No, Senator.

**Senator CASH:** So what is the combined capacity of the new facilities going to be in terms of beds? My calculations are that there are would be approximately 2,500.

**Mr Moorhouse:** I could do a quick calculation for you, if you want me to.

**Senator CASH:** Could you, please?

**Mr Moorhouse:** We have a projected capacity of 400 in Pontville, 600 in Northern, 500 in the first stage of Wickham Point and 500 in the second stage of Wickham Point.

**Senator CASH:** Is Lilac added into that as well?

**Mr Moorhouse:** We are not intending to use Aqua or Lilac in a long-term detention capacity.

**Senator CASH:** Okay. So what figure did you get to?

**Ms Wilson:** It is 1,500 in total for Wickham Point, at the end of the third stage.

**Senator CASH:** Fifteen hundred in total for Wickham? That is where they were missing.

**Ms Wilson:** Yes.

**Senator CASH:** Okay, so it gets to 2½ thousand. So why do you need another 2½ thousand beds?

**Mr Moorhouse:** Just to clarify, I used the figure of 6,505, which the contingency capability—the surge capability. The longer term capability that we would like to move back to is 3,960 in the existing sites.

**Senator CASH:** So in terms of the additional 2,500 beds, what facilities is the department planning on closing and when?

**Mr Metcalfe:** We have indicated that Pontville is intended to be a bridging capability. We discussed that in some detail before. At the moment, Scherger has been given the extension of time that we have discussed. Those are two sites that ultimately we would be looking to move away from. We would also reduce the numbers in some of the other facilities.

**Senator CASH:** Are there any plans at this stage to close down any facilities?

**Mr Metcalfe:** I have just answered that question in relation to Scherger and also Pontville, which is intended to be used as a bridging facility to cover a period of time until some of the other facilities come on track.

**Mr Moorhouse:** For clarify, we are also looking to move out of some of the alternative places of detention that we are utilising. The additional capacity will allow us to move away from some of those facilities.

**Senator CASH:** We are also looking at opening PNG and we are sending to 800 to Malaysia. Why is there still the need for all of these additional beds?

**Mr Metcalfe:** We have said that we want to return the facilities to what we would regard as a normal operating level. If those facilities are not full, then that is a good thing. But it does provide us with options and flexibility within the overall network. The current planning, in what has been a fairly dynamic situation, is for these facilities to proceed and be made available. That does not mean that they all need to be full all the time. It does provide you with the sort of flexibility that Mr Moorhouse has described, the ability to separate particular groups if we think that that is important—that type of flexibility.

**Senator CASH:** Are you considering shutting down the airport lodge in Darwin?

**Mr Metcalfe:** Mr Moorhouse can probably answer that.

**Ms Lynch-Magor:** The minister has announced that we are going to withdraw from the Virginia Palms and from the Asti Motel in Darwin. They are the first family accommodations that we will be withdrawing from.

**Senator CASH:** How many families and unaccompanied minors have been moved into community detention, over what period and where are they?

**Mr Metcalfe:** We gave extensive information on that earlier today.

**Senator CASH:** Who was asking those questions? I may not have been in the room?

**CHAIR:** Senator Pratt and Senator Hanson-Young.

**Mr Metcalfe:** Yes, Senator Pratt and Senator Hanson-Young.

**Senator CASH:** I left the room when Senator Hanson-Young was here. Seeing as you have given that extensive information, do you have it on hand for me?

**Mr Metcalfe:** I am happy to refer you to the *Hansard*, but—

**Senator CASH:** I was not in the room.

**Mr Metcalfe:** We have given information in relation to that. We can—

**Senator CASH:** But I was not the person asking the questions and I am asking the questions now.

**Mr Metcalfe:** If you want to use time to repeat those questions, we are happy to take those questions. Ms Pope is the relevant division head for community detention matters.

**Ms Pope:** If I got the question correctly, you asked about the numbers who have been moved into community detention.

**Senator CASH:** The families and unaccompanied minors who have been moved into community detention.

**Ms Pope:** Certainly. The total number who have been approved by the minister for movement into community detention to date is 942.

**Senator CASH:** And over what period?

**Ms Pope:** Since the announcement on 18 October 2010.

**Senator CASH:** Where are they located?

**Ms Pope:** They are in five different states and territories. They are in Brisbane, Sydney, Melbourne, Adelaide and Perth. There are a small number in a couple of regional centres. We are looking at placing people in Canberra and Hobart in the not too distant future.

**Senator CASH:** What is the cost per person per day of these arrangements?

**Ms Pope:** We do not know that yet. I can tell you how much has been spent to date, which is to the end of March. That is approximately \$2.4 million.

**Senator CASH:** And that is from 18 October 2010?

**Ms Pope:** Yes, but it is not indicative of the costs. If you divide that number by the number of clients, you would not get a—

**Senator CASH:** A cost per day per person?

**Ms Pope:** It does not give you an average or anything approaching that.

**Senator CASH:** Are you able to work out an average?

**Ms Pope:** No, not validly at this point, because the funding that I have mentioned is through to the end of March. Clients are ramping up and the program is not fully operational at the moment. There are some start-up costs in there, but there are also other costs that have not yet been reflected. So it is not possible to get a valid number at this stage.

**Senator CASH:** What agreements or contracts have been entered into with NGOs to manage those released under residence determinations?

**Ms Pope:** The lead agency for the implementation of community detention is the Red Cross. They are in the process of finalising a series of agreements with a range of subcontractors. I do not have the list and I am not sure that it is a public list at this stage because it is subject to their negotiations. But it is a significant number of other organisations.

**Senator CASH:** What are the Red Cross's obligations and responsibilities in relation to those released?

**Ms Pope:** I would just like to be clear: it is not released, it is movement out of a detention centre into community detention. Their responsibilities are in relation to daily welfare, provision of accommodation, assisting people to register their children in school and health and welfare.

**Senator CASH:** Do you actually have a document that you would be able to provide to us setting out those obligations?

**Ms Pope:** I can take it on notice, if you wish me to describe it, but it is basically their daily needs met by the Red Cross or their service providers—as you would imagine, similar to being in a detention centre.

**Senator CASH:** What obligation is placed on NGOs to have failed asylum seekers available for removal?

**Ms Pope:** That is part of the expectation that is established with both the Red Cross and their subcontractors and they understand what is involved.

**Senator CASH:** In terms of the families and unaccompanied minors who have been moved into community detention, what entitlements are they receiving—for example, by way of welfare payments, Medicare, health and transport benefits, cash payments, clothing allowances and work rights? Is there a list of payments that they are given?

**Ms Pope:** I can make that quite clear now. Their daily needs are met, so they are provided with health care through the IHMS contract, the same as in detention centres, but it is applied in the community. Their daily costs in terms of food, clothing and so on are drawn from an allowance that they are paid, which is roughly equivalent to about 89 per cent of what they would receive as a Centrelink benefit if they were living in the community.

**Senator CASH:** Is that the Centrelink benefit that an Australian would get? Are you talking about 89 per cent of that benefit?

**Ms Pope:** Yes, but it varies from client to client, based on their family composition and other issues. It is not administered by Centrelink; it is paid by Red Cross. The 89 per cent is really just indicative of enough to manage on but not more than that.

**Senator CASH:** Do they have any work rights?

**Ms Pope:** No, they do not.

**Senator CASH:** Transport benefits, if they have to get somewhere; how is that actually paid for?

**Ms Pope:** They use the money, that 89 per cent payment that I mentioned.

**Senator CASH:** Are they entitled to any other forms of benefits?

**Ms Pope:** No.

**Senator CASH:** Very briefly, in relation to Broadmeadows, have the two detainees involved in the Villawood riots and who were transferred to Broadmeadows been separated from the main community?

**Mr Metcalfe:** Broadmeadows?

**Senator CASH:** Maribyrnong—sorry.

**Mr Metcalfe:** We would have to check on the precise circumstances of their detention arrangements.

**Senator CASH:** I have some final questions in relation to self-harm. They have disappeared!

**CHAIR:** I will go to Senator Pratt, then I will come to you, Senator Parry.

**Senator PRATT:** I just want to go back to questions on notice before this committee. I would like to formally get some information out of the department largely because we know that it has been debated publicly. I would like to make sure the information is at hand for us to see the department's record on these questions. Mr Metcalfe, do you recall the history of the department in terms of its record of meeting its requirements to answer questions on notice for this year and the previous year? I am also interested in pre-2008.

**Mr Metcalfe:** As secretary of the department for the last six years, it is a matter that I have taken great interest in and concern about. I am well briefed on the last six years.

**Senator PRATT:** Can you outline those figures for me please?

**Mr Metcalfe:** The department has received significant numbers of questions, particularly in recent times. I think I indicated earlier that, when you include subparts of the February 2011 additional estimates hearings, we received 742 questions requiring a response. The number of questions asked in October 2010 was 445; May 2010, 136; February 2010, 143; 20 October 2009, 123.

**Senator PRATT:** So these are all questions answered before estimates?

**Mr Metcalfe:** These were in the supplementary budget estimates, the budget estimates and the additional estimates—three occasions per year. The highest number taken at an estimates in 2006 was 290 questions. In 2007 the highest number was 178. In 2008 the highest number was 96 at a particular hearing. In 2009 it was 123. At supplementary budget estimates in 2010 there were 445, and 357 in February this year but, with subparts, 742 questions.

**Senator PRATT:** Can I ask about the department's record this year and whether it has answered all questions before estimates in comparison to previous years.

**Mr Metcalfe:** The department has struggled over the years, I am sorry to say, with meeting the committee deadline. As Ms Wilson has indicated, sometimes that is because we are reliant on third parties for provision of information. So it has been unusual for us to meet the committee deadline but we certainly endeavour to do so in relation to all questions.

However, we have a very good record in answering questions before the committee hearing. Indeed, I recall Senator Humphries, Senator Lundy's colleague in the ACT, saying only last year that our performance in responding to questions on notice was certainly better than some departments, which I was very pleased to hear.

**Senator PRATT:** Clearly we again have a debate about what the department looks like under this government versus what it looked like under previous governments. What did that record look like prior to 2008?

**Mr Metcalfe:** It showed that senators showed a great deal of interest in our activities,. In addition to us answering, I would suspect, thousands of questions in the actual hearings we took a significant number of questions on notice. While we did not meet the committee deadline, the due date, certainly we were able to get responses lodged before the hearing itself.

**Senator PRATT:** You clearly have a large number of questions that you answer, as you have just outlined. You have gone through it verbally. I will put it on notice so we can get a structured record.

**Mr Metcalfe:** We will add it—it will be one more to the number of questions.

**Senator PRATT:** It would be good to have a structured record of that, thank you.

**Senator PARRY:** Can I just go back to the surge capacity of 6,505 beds, I believe it was. How many of those are marquee beds and how many are fixed-in, can I say, under rigid accommodation?

**Mr Moorhouse:** I am not sure that I have that information but I will do my best for you. The marquees are used for accommodation in Scherger.

**Senator PARRY:** And that is part of the surge capacity?

**Mr Moorhouse:** That is part of the surge capacity in Scherger.

**Senator PARRY:** But I am talking just about the total. The total surge capacity is 6,505. How many beds would be in marquee capacity?

**Mr Moorhouse:** I would need to either calculate that for you or take it on notice.

**Senator PARRY:** If it is a quick calculation I am happy to wait while you do that.

**Mr Moorhouse:** It would be in the order of about 600, but no more than that.

**Mr Metcalfe:** As you know, Senator, we are very concerned about marquees. We have seen what happens when non-compliant clients decide to act in an unlawful, aggressive manner. This is a concerning area and so we are very committed to working as quickly as we can to have people moved into better accommodation than tents. But, because of the arrival numbers we have seen, we have had to use all possible means to accommodate people.

**Senator PARRY:** Thank you, Mr Metcalfe.

**Mr Moorhouse:** I would like to correct myself. When I did that quick calculation, I forgot about the marquee at Phosphate Bravo, which takes about another hundred.

**Senator PARRY:** So we are saying in the order of 700. I do not hold you to it exactly.

**Mr Moorhouse:** As a maximum.

**Mr Metcalfe:** It sounds like about 10 per cent, or slightly more.



**Senator PARRY:** So it is certainly in excess of 600; that is an accurate statement?

**Mr Moorhouse:** I will come and correct it if I have it wrong.

**Senator PARRY:** Yes, if you need to.

**Senator CASH:** Does that 600 include the 250 that were burned down at Christmas Island?

**Mr Metcalfe:** No, they are currently available. It does not include destroyed accommodation.

**Senator PARRY:** You also gave a figure of 6,197 as being the capacity at present.

**Mr Moorhouse:** No. The number of IMAs—

**Senator PARRY:** The number of occupied beds, can we say.

**Mr Moorhouse:** The number of beds occupied by IMAs.

**Senator PARRY:** So surge capacity is 6,505 and the current occupancy is 6,197. That is a gap of roughly 300.

**Mr Moorhouse:** I may need to correct myself, I beg your pardon. The number I gave before of 6,197 was the number of irregular maritime arrivals. When I include the number of what we would call compliance related clients, that comes to 6,332.

**Senator PARRY:** Which means that there are about 400 to 500 under canvas.

**Mr Metcalfe:** Under canvas tonight.

**Senator PARRY:** Thank you. That is all I needed to clarify.

**Senator CASH:** I have some questions in relation to self-harm, but as we are delving into the area of the provision of answers to questions on notice and taking questions on notice at estimates I would like to ask, Mr Metcalfe, whether in your position as department secretary you have given advice, whether it be verbal or written, to any of the officers as to how they are to answer questions at budget estimates.

**Mr Metcalfe:** We have a discussion to prepare for the estimates. It is a fairly routine part of our calendar now, so a week or so before Senate estimates would occur I would sit-down with the draft folder and we would have a discussion as to what matters are included in my folder, which is not the full extent of the briefing material that officers have available to them but it holds the highlighted issues. We would discuss whether the appropriate issues have been identified as possible areas for questions and we would discuss the need to ensure that we have the available facts and figures. So there is a preparation for Senate estimates, which is a quite routine process that I suspect happens in every department, and has for many years. Occasionally, where issues may move across more than one portfolio, there may be a discussion between departments to ensure that there is appropriate coordination of the facts and figures in relation to it.

**Senator CASH:** Is there just one folder, or is there a set of folders prepared for senior officers?

**Mr Metcalfe:** There is one folder that is provided for me and the minister. Most of the deputy secretaries would also have a copy of that folder, but most of the deputy secretaries or other senior officers who are potential witnesses would quite often have additional material that they would draw upon. Obviously we try to anticipate the sorts of questions that we

might be asked by committee members. You would expect us to do that. Sometimes we are good at picking it, and sometimes you surprise us.

**Senator CASH:** Very briefly, just in relation to some self-harm incidents about which you provided me with answers to questions on notice: of the total of the self-harm incidents, how many involved children or minors?

**Mr Moorhouse:** We do not have the self-harm incidents broken down in that way.

**Mr Metcalfe:** This is question 190 from 21 February that you are referring to, Senator? I do not know if Mr Moorhouse can update that now or whether we will need to—

**Senator CASH:** Are you able to break that statistic down or take it on notice?

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

**Senator CASH:** Thank you. I would appreciate that.

**Mr Metcalfe:** We will provide an update to today's date.

**Senator CASH:** Is this figure in relation to self-harm higher than in previous years?

**Mr Moorhouse:** The children or—

**Senator CASH:** In relation to the figure itself but then also in relation to children and minors.

**Mr Metcalfe:** We would have to check the previous years, so we will take that on notice as well.

**Senator CASH:** What steps are being taken by the department to prevent such rates of self-harm?

**Mr Moorhouse:** A number of measures. There are a number of detention health policies. Three new detention health policies were introduced last year to help manage the mental health of people in detention. Also we have been working with the CISSR group to look at strategies for keeping people better informed in relation to their processes. Also, of course, there is the way in which we are trying to process applications as quickly as possible. Essentially, there are a number of different strategies: firstly, to move those people who are genuine refugees out of detention as quickly as possible so they are not suffering the effects of prolonged detention; secondly, working with community organisations, with CISSR and with our own case managers to ensure that we are engaging with our clients, keeping them informed about the process and reducing the risk of them feeling out of control and having to scream for attention through self-harm—we are trying to give them as much information as we possibly can; and then there is, as I mentioned, managing mental health to try to mitigate the risk of suicide or other forms of very, very serious self-harm through better management of detention health.

**Mr Metcalfe:** Senator, I am sorry; I just had a glance at Hansard and I think we should point out that, when we refer to CISSR, that is the five-letter acronym that stands for the Council for Immigration Services and Status Resolution, which is a key advisory body to the portfolio. I will get a Christmas card from Hansard!

**Mr Moorhouse:** I am sorry; it is also a bit of a tongue twister, so I am not sure that I can say Council for Immigration Services and Status Resolution all the time.

**Senator CASH:** Mr Moorhouse, how many mental health staff are stationed at each of the detention centre facilities?

**Mr Moorhouse:** We have that information somewhere, I believe, but I am not sure where I would find it.

**Senator CASH:** Can I also ask then: is this proportionate to the rates of self-harm in each of the centres?

**Mr Metcalfe:** Sorry?

**Senator CASH:** Is the number of mental health staff at each detention centre proportionate to the rate of self-harm at each of the detention centre facilities?

**Mr Metcalfe:** Certainly the answer to that is that our expectation would be yes—that it is proportionate. However, as I indicated in my opening statement yesterday, this is an area of real concern for us, as we are essentially dealing with a population of people in detention who are sometimes either desperate or despairing. They have sought an outcome and they want something that they may not be getting or getting in the way that they want. We are very engaged as to how we can seek to uphold Australian law and policy but at the same time do so in a way that does not manifest itself in this sort of activity by people. It is an area of genuine concern that we all have, I know. Mr Moorhouse I think can provide some advice, but this is an area that we will continue to focus on to seek to do everything we possibly can.

**Mr Moorhouse:** You were asking about the number of mental health staff at each facility. I have the information by facility if you wish. The total is 91.

**Senator CASH:** Ninety-one across the detention centre network?

**Mr Moorhouse:** That is 91 FTE, so part-time staff are part of that. Would you like me to go through each centre?

**Senator CASH:** Would you mind, very briefly. Thank you.

**Mr Moorhouse:** Not a problem. This data is valid at 6 May. Do you want just mental health staff? I can give you medical, mental health and administrative.

**Senator CASH:** I would prefer mental health for the purposes of self-harm questions.

**Mr Moorhouse:** Okay. There are three at Leonora; 20 on Christmas Island; two at Perth; 10 at Curtin; two at Port Augusta; three at MIDC—sorry, that is the Maribyrnong Immigration Detention Centre; four at the Melbourne ITA; eight at Villawood; none in Brisbane—

**Senator CASH:** None in Brisbane?

**Mr Moorhouse:** Sorry, none at the BITA but two at the Brisbane APOD; nine at the Northern Immigration Detention Centre; seven at Darwin airport lodge; two at the Asti APOD; nine at Scherger; seven at Inverbrackie; two at Jandakot APOD in Perth; and one at the Adelaide ITA.

**Senator CASH:** Thank you very much. Madam Chair, that concludes my questioning on this outcome.

**CHAIR:** Marvellous. The committee will now break for 10 minutes.

**Proceedings suspended from 21:31 to 21:43**

**CHAIR:** Let's get to the really pointy end now: outcome 5.

**Senator CASH:** I turn to the contract to provide settlement services in the Newcastle region. What process was in place to check the services being provided by Navitas and Resolve FM in the Hunter region to new entrants?

**Mr Fox:** Could I just seek clarification on your question.

**Senator CASH:** What processes do you have in place to check on the services that were being provided by Navitas and Resolve FM in the Hunter region to new entrants.

**Mr Fox:** I guess I was seeking clarification about the period of time.

**Mr Metcalfe:** It was more the contract management arrangements that you were after, was it, Senator?

**Senator CASH:** It was more to ensure that services were being provided properly.

**Mr Fox:** Under the contracts that we had in place from 2005 until earlier this year, we had a quality assurance program where the service providers were required to report to us regularly. We had quarterly visits with those providers to see how things were going in that area. The region was much broader in that time than it currently is. At that time the region included all of Sydney so the quarterly meetings involved the Sydney area as well as the Hunter area. But we have now established new contracts which just cover the Hunter region, which is why I was seeking clarification.

**Senator CASH:** Now I understand. What were the departmental processes that were in place to actually say, yes, these people are performing as we require under those contracts?

**Mr Fox:** As I mentioned, we had quarterly visits with the providers where we would have a general update. We also ran a program of client contact visits where we would go and see clients as they were leaving the Integrated Humanitarian Settlements Strategy Program, which is usually between six and 12 months. We would follow up with a number of those. We would not do 100 per cent but we would go and visit a number of those clients.

**Senator CASH:** And that was over that five- or six-year period for the contract?

**Mr Fox:** That was over the entire period of those contracts from 2005 up to 2011.

**Senator CASH:** Has the new contract now been issued?

**Mr Fox:** That is correct. It commenced on 4 April.

**Senator CASH:** What post-evaluation follow-up was done prior to the new contract being awarded again to Navitas and Resolve FM to provide this suite of services? Was there any postevaluation done or were the contracts merely reissued?

**Mr Fox:** There was a very extensive process of redesigning the program that we engaged in. During 2008-2009 we ran a consultation process around the country where we visited more than 260, as I think was the number, people in every capital city and in a number of regional areas including Newcastle. We conducted a number of client focus groups and we invited written submissions—I believe we had 86 written submissions—to help us design a new program for the delivery of settlement services. Under the new program that we have improved we have separated out short- and long-term accommodation provision, which was a change from the previous contract.

**Senator CASH:** What is the definition of short term?

**Mr Fox:** Under the old contracts the providers were expected to provide accommodation for a client and then they would find the best accommodation that they could. That might be short term in the form of serviced apartments or a motel or a caravan park, in some cases, or they would move them straight into a house in the private rental market. What we have allowed under this new contract is much greater flexibility to provide both short-term and long-term accommodation, because for some clients that is the best model. The process of consultation that we have been through is to make new contracts much more client focused and needs focused, so on the individual rather than delivering a suite of packages that was applicable to all clients. So that gives us much greater flexibility in terms of accommodation solutions and the delivery of household goods.

**Senator CASH:** What was the total value of the contracts being provided to each company contracted to provide settlement services in the Hunter region? It is specifically in relation to the new contracts.

**Mr Fox:** In the Hunter region the contracts for Navitas ACL are in the order of \$7 million.

**Senator CASH:** And over what period of time?

**Mr Fox:** That is three years.

**Senator CASH:** So it is a three-year contract this time. So you have shortened the contract period?

**Mr Fox:** That is right.

**Senator CASH:** Was there a reason that you shortened the contract period?

**Mr Fox:** We felt that five years was too long. What we have gone with is three years with an option for a further three-year extension.

**Senator CASH:** So \$7 million for Navitas?

**Mr Fox:** Yes.

**Senator CASH:** And that was the only contract provided?

**Mr Fox:** In the Hunter region.

**Senator CASH:** Have Resolve FM ended up with any contracts?

**Mr Fox:** Yes. They have been awarded the contracts for the provision of accommodation services in the two Sydney regions.

**Senator CASH:** And that is how you changed, with the two Sydney regions. And what is the value of those contracts?

**Mr Fox:** Those are just under \$6 million each.

**Senator CASH:** And how does that compare with the value of previous contracts?

**Mr Fox:** I would have to take that on notice. It is not a directly comparable contract.

**Senator CASH:** Because of the contract time period?

**Mr Fox:** Yes. I would have to disaggregate that. I cannot actually give you that figure.

**Senator CASH:** So under the new three-year contract, what services are Navitas actually contracted to provide?

**Mr Fox:** Given the way we structured the contracts, companies could tender to provide either generalist services, accommodation services or both. In the Hunter region,

Navitas/ACL have been contracted to provide both generalist services and accommodation services.

**Senator CASH:** Is that the same as the previous contract?

**Mr Fox:** The structure was different. We did not have the separation out of generalist and specialist services. The way that was done in the previous contractual arrangements was that we asked companies to form consortia to deliver the full spectrum of services, so the relationship in the Sydney and Newcastle regions previously was that ACL had the lead contract but subcontracted Resolve as a consortium partner.

**Senator CASH:** Under the previous contract, what were Navitas contracted to provide? Can you explain that again.

**Mr Fox:** Under the previous contract with Navitas/ACL, we had one single contract and they were responsible for delivering all services, but they did that with some consortium partners, which included Resolve FM.

**Senator CASH:** Were there agreed milestones in their settlement services funding agreement?

**Mr Fox:** Yes.

**Senator CASH:** This is in relation to the old contract?

**Mr Fox:** Yes.

**Senator CASH:** Did they achieve these entirely prior to the new contract being awarded in April 2011?

**Mr Fox:** That is my advice. I would need to check if there were any milestones that were missed during the period of the contract, but the advice we had in establishing the new contracts was that they had been performing according to the milestones in the contract.

**Senator CASH:** Would you be able to take that on notice and confirm that they did in fact meet each milestone? If they did not, which ones did they not meet, and why?

**Mr Fox:** I will confirm that.

**Senator CASH:** Thank you. Could you also do that in relation to Resolve FM under their old contract as well.

**Mr Fox:** We did not have a specific contract with Resolve FM.

**Senator CASH:** For Resolve it was the one contract?

**Mr Fox:** Yes, so that would have been incorporated. Any milestones missed by Resolve would have been reported on Navitas.

**Senator CASH:** Automatically. What reports were provided to the department during the life of the previous settlement contracts?

**Mr Fox:** There is quite a long list. Rather than running through them, I will take it on notice to provide you with what that list was.

**Senator CASH:** That would be greatly appreciated. My understanding is that DIAC guidelines stipulate three-month, six-month and 12-month reporting for such contracts.

**Mr Fox:** Yes, that is correct.

**Senator CASH:** Are you able to provide those reports from Navitas and Resolve FM only as they relate to the Hunter region?

**Mr Fox:** I do not think I can disaggregate them.

**Senator CASH:** If you cannot disaggregate them, I will have whatever reports you are able to provide in relation to the whole region.

**Mr Fox:** Yes. I do not have those with me. I will have to take that on notice.

**Senator CASH:** If you did, I would be very impressed, let me assure you. When was the department first advised of problems with housing in the Hunter region?

**Mr Fox:** With housing specifically? Let me answer that in a different way. There were some issues associated with the Hunter region back in 2005, which were well canvassed at that time. I started in the job that I am in now in July 2009, and I had not seen a single complaint about the Hunter region until about late January or early February this year, when I started to see some general complaints. Then on 21 February this year I saw a letter that contained some quite detailed allegations of poor housing and other poor services provided in the Hunter region. I then asked my Sydney office to go and visit the Hunter region to try and understand whether there was any substance to those allegations. Shortly after that, the minister received a letter from the member for Newcastle that he referred to in the chamber yesterday, and that prompted the Ernst and Young investigation that we mentioned there.

**Senator CASH:** So, on 22 February 2011, you became aware of the letter that was sent making the allegations in relation to the poor housing. Prior to that, you said, you had been made aware of complaints. How many complaints were there?

**Mr Fox:** I am sorry; I missed the question.

**Senator CASH:** You stated that 21 February 2011 was the date of the letter.

**Mr Fox:** That is right, yes.

**Senator CASH:** Prior to that, you said, you had been aware of complaints.

**Mr Fox:** No, I had not been.

**Senator CASH:** Oh, you had not been. Sorry.

**Mr Fox:** There had been some issues raised in regular contact visits with our Sydney office, but those were more general issues rather than specific complaints.

**Senator CASH:** What type of general issues were they?

**Mr Fox:** The general issues were along the lines of concerns that the accommodation being provided was substandard and that in some cases people were facing financial hardship in meeting the rents associated with properties.

**Senator CASH:** Was that because the rents were too high?

**Mr Fox:** I do not know. That was the just the way it was reported.

**Senator CASH:** That was just the general conversation.

**Mr Fox:** I have just checked the value of the contract for Navitas in the Newcastle region. It was not \$7 million, I beg your pardon, it was \$5,123,000.

**Senator CASH:** Thank you very much. For the Navitas contract in the Hunter region what was the dollar value of the contract to cover housing, health, schooling and employment? I understand that those four areas were covered.

**Mr Fox:** That is right. I do not have with me the total amounts that we have paid under those contracts but I will be able to get those for you on notice.

**Senator CASH:** Thank you very much. Has any employee of Navitas or a subcontractor in the provision of resettlement services in the Hunter region been investigated by the police for fraud after the allegations of money scamming from Congolese people as reported recently.

**Mr Fox:** During the course of the Ernst and Young inquiry it was drawn to their attention that there was a complaint from a client that they had had some money stolen from them they claimed by a caseworker working for Navitas. We have referred those issues to the New South Wales Police.

**Senator CASH:** So they have been referred to the police.

**Mr Fox:** Yes.

**Senator CASH:** Has the department received complaints from members of the community in relation to the settlement services provided in the Newcastle Hunter region?

**Mr Fox:** I mentioned that I had not seen any complaints until early this year. The department has received some general information rather than specific complaints about services in the Newcastle region. Often those are minor issues such as, 'I've got a scratchy blanket,' and that was replaced. We have not seen systematic concerns such as the ones raised but then there may have been some other information that I was not privy to. I will need to double-check whether there was any information provided to the department that I have not seen.

**Senator CASH:** When you say 'general information' is that written information or verbal information? How is that information collected?

**Mr Fox:** It was mentioned in the Ernst and Young report that, in one of the regular quarterly contact visits that I mentioned that we have with the providers, there was information provided to the effect that some of the accommodation was substandard. It was more general than, 'This house is unsatisfactory.'

**Senator CASH:** When you say something is substandard, what is the definition of 'substandard'. Is there a standard below which the department says, 'That's wrong, it's substandard.'

**Mr Fox:** We give some guidance as to standards in the new contract arrangements. It is subjective of course. What we try to do is to make the accommodation suitable to the family composition and that, if it be a house that is suitable to, for example, a family, it has equipment that is suitable to the size of the family. Simplistically, if it is a family with two adults and four children, that there are an adequate number of plates and chairs, for example. We do not actually define what is a required standard but we give guidance as to community expectations.

**Senator CASH:** Are you able to provide us with a copy of those standards?



**Mr Fox:** Those are included in the request for tender and the draft contract that was released with the request for tender. They are available on our website or they certainly were during the tender. If they are not, I will be able to make a copy available.

**Senator CASH:** Thank you very much. I want to go now to questions related to the press release by the minister in relation to the Ernst and Young audit report and the recommendations. If I could turn to suggested action 1 which is that DIAC and the service provider should immediately rehouse the five families to more appropriate accommodation—which five families were they talking about?

**Mr Fox:** I do not think I would be prepared to disclose the names of the families.

**Senator CASH:** I do not want the personal details but were they people living within the Hunter region?

**Mr Fox:** Yes.

**Senator CASH:** And they were families, meaning they had children as well?

**Mr Fox:** Not necessarily.

**Senator CASH:** That is not the definition of a family? It does not include children?

**Mr Fox:** I will need to double check. I think most of them did have children but I would need to double check.

**Senator CASH:** In relation to suggested action 1—and I note the departmental response: the department has instructed the service provider to immediately source alternative accommodation for these clients—have the five families referred to in that particular action been rehoused?

**Mr Fox:** One family has physically moved. Another family has changed its family composition, if I can say that. There were actually two families in the one house and one of those families has moved out. So that addressed the problem because the problem was one of overcrowding in that house.

**Senator CASH:** So one has moved out and that means two families have been rehoused, effectively, because now there is only one family in the house?

**Mr Fox:** Correct. And the others have all been offered alternative short-term accommodation and are in the process of seeking long-term accommodation. Repairs have been made to a number of the properties to make sure that they are habitable.

**Senator CASH:** When you say that repairs have been made to the properties to make them habitable, how did these people end up in a situation where they were in a property that was not habitable?

**Mr Fox:** I suppose the simple answer is: I do not know the answer to that question. At least two of those families were in premises that they had themselves sourced and had signed leases for, so in a sense it was a relationship between them and their landlord that led to the accommodation being unsatisfactory. Where steps perhaps should have been taken was to monitor those more closely and to check that the family understood what the consequences of entering into those contracts were and, indeed, what their rights were to be able to seek improvements to be made to the properties.

**Senator CASH:** So, when you say that perhaps further steps should have been taken to monitor, why were those steps not taken? Is that a failure in the departmental monitoring system?

**Mr Fox:** Yes, I think that is what Ernst and Young suggested and what the minister acknowledged, and why we are taking some steps as we go through those departmental actions to make sure that we improve significantly on our performance in that area.

**Senator CASH:** When did you actually receive a copy of the Ernst and Young recommendations?

**Mr Fox:** I believe the date was 9 May. If that is incorrect I will confirm that on notice.

**Senator CASH:** But did the department take steps to immediately source alternative accommodation?

**Mr Fox:** We certainly gave instructions to our providers to do so, yes.

**Senator CASH:** And, in terms of ensuring that the monitoring takes effect, have you monitored those instructions to providers?

**Mr Fox:** Yes, we have been getting daily updates from the providers and some of my staff themselves went to visit. One of my team from Canberra and one of our Sydney team went to Newcastle last week to check on those arrangements—

**Senator CASH:** And what is the hold-up in relation to getting the final families in? You are looking for long-term accommodation?

**Mr Fox:** Yes. I was going to expand on that. A couple of the families were reluctant to move from their existing short-term accommodation, inadequate as it is, to alternative short-term accommodation pending long-term accommodation. A number of bids have been made for longer-term accommodation. A number of those have been unsuccessful. So our providers are continuing to try and source the appropriate accommodation for those clients.

**Senator CASH:** So the accommodation itself was not substandard; it was the overcrowding issue?

**Mr Fox:** That is right.

**Senator CASH:** As to the one family that has physically moved, are they still within the Hunter region?

**Mr Fox:** Yes. The alternatives that we are seeking are all in the Hunter region.

**Senator CASH:** So we are still looking within the Hunter region. In terms of the cost of the accommodation, were they paying above market rate, at market rate or below market rate?

**Mr Fox:** I do not know the answer to that. The Ernst and Young report tells me that some of the people had been charged above market rate, but I do not know whether they are saying that.

**Senator CASH:** But you are examining that are you—the fact that people are being charged within this service above market rate?

**Mr Fox:** Yes.

**Senator CASH:** Is that a breach of contract, to charge above market rate?

**Mr Fox:** It is, and that is why we have asked for a forensic audit to take place of some of the providers.

**Senator Lundy:** I would like to also add that, as stated in the minister's press release, Professor David Richmond AO has been asked to conduct an independent review into the adequacy of the performance measures and framework as well as the department's contract management processes, which I think addresses the points you are making about what the government's action has been to improve that oversight.

**Senator CASH:** So there will be an independent review?

**Senator Lundy:** We will then be taking advice from Professor Richmond in that regard. I acknowledge the efforts by the department to move immediately to address the inadequacies of the contract management and the performance of the contractor in this case.

**Senator CASH:** What is the bidding process if Navitas are being paid to provide the service? How do you determine how you will get the properties? Navitas have been providing a service. How do they then go and source the properties?

**Mr Fox:** That is a matter for them. There are a number of different models in place from different providers around the country. What we ask people to do is to source that accommodation. They use a variety of options. Some providers will head-lease properties and then sublease them to clients. Others will use a real estate agent to source private rental markets. Others have in fact purchased properties themselves, which they then lease out to clients.

**Senator CASH:** Was that an issue with the process?

**Mr Fox:** I am not sure if that was at fault in this case. We specify the types of accommodation that are appropriate in the contracts. Our providers contract with us to deliver those services.

**Senator CASH:** So they should be sourcing those accommodations, regardless of how they source it?

**Mr Fox:** As I mentioned earlier, with the IHSS, what we are trying to do is encourage flexibility whether that be in the form of group housing in some cases, which would be appropriate. I know that one of our providers owns a property which is an old nursing home facility in Melbourne. They put people in there often for short-term accommodation until they can find longer term accommodation. That works really well.

**Senator CASH:** Is that deemed acceptable?

**Mr Fox:** Yes.

**Senator Lundy:** The department has commissioned PricewaterhouseCoopers to conduct a forensic audit of Resolve FM's financial management under the IHSS contract. The outcome of that will give us a greater insight into their methodologies.

**Senator CASH:** On the basis that you have PricewaterhouseCoopers conducting the audit of Resolve FM, how have they ended up then with the new contract if there are concerns surrounding their ability to properly manage the process?

**Mr Fox:** When we went through the process of assessing the tenders that we had received for contracts, obviously we looked at the tender responses themselves. We also went to referees for the companies involved and we sought comment from our own state officers who

had had direct contract management relationships with those people. We put a risk tiering on each of the tender responses. There was nothing that came to our attention in that process that would have prevented me from giving a contract to them.

**Senator CASH:** How does that occur, given that we now have the Ernst and Young report and we have the two reviews that have been referred to by the minister? How does it happen that your processes did not identify the problems that Ernst and Young have identified? Where was the fundamental failing?

**Mr Fox:** I do not know that there is a simple answer to that question. It was a combination of factors, which is partly why I am looking at our contract management and QA processes within the new contract. As Senator Lundy mentioned, Professor Richmond is going to give us some advice on whether the QA and performance indicator processes into the new contract are in fact adequate.

**Senator CASH:** I am genuinely concerned because I really believe in the settlement area and it really does benefit the immigrants who come to this country. If concerns are identified as a result of these reviews, is there an ability for the department to terminate the contracts?

**Mr Fox:** There are processes within the contract for us to engage with the providers. Ultimately there are termination clauses in the contract.

**Senator CASH:** There is the ability, if worse came to worse, to terminate the contract?

**Mr Fox:** Yes.

**Senator CASH:** I turn to recommendation 2, which is that:

... the service provider and DIAC examine all long-term accommodation and short-term accommodation for adequacy and appropriateness.

This is the departmental response:

The Department has commenced reviewing accommodation arrangements for clients.

Can you please provide details of what reviews have happened to date and across which regions they have occurred?

**Mr Fox:** Obviously I started with Newcastle and, as I have just mentioned, I sent some of my team from Canberra and one of my Sydney team up to Newcastle to do those immediate checks there. We will be replicating that across the country. I am meeting on Friday this week with my global manager, who has responsibility for our service delivery network, to map out the process through which we will undertake that exercise. Obviously it is a big exercise but it is one we think is important to do.

**Senator CASH:** And when do you anticipate that process will be completed?

**Mr Fox:** I do not have an end date in mind. The question which runs through my mind is whether we make that an annual process or a once-off. Obviously we will be looking at taking a risk-managed approach. I will be looking at whether there have been any complaints in other regions which might require me to go there sooner rather than later. There are something like 1,700 properties in Melbourne, for example. That is where I have to prioritise and make sure that—

**Senator CASH:** Do you have the total number of properties you will need to look at across Australia?

**Mr Fox:** I know that was emailed to me but I do not have it off the top of my head. I will have to take it on notice.

**Senator CASH:** Please, if you could provide it on a state by state basis, if you could break that down. I understand you have been to the Newcastle region. Are you able to provide details of reviews which have occurred in other places?

**Mr Fox:** I have not done any in any other places.

**Senator CASH:** You have been to Newcastle. What does the nature of the review entail?

**Mr Fox:** Essentially a physical inspection of the property.

**Senator CASH:** Of each house?

**Mr Fox:** Yes. That is why I am saying it is a big job.

**Senator CASH:** Do you have a team help you?

**Mr Fox:** Yes. We have officers in each state and territory. I may be out of the office for about eight year driving around the country!

**Senator CASH:** Doorknocking?

**Mr Fox:** We have a team of staff across our state and territory offices who have the day-to-day relationship with our providers and with clients and they will be working with me to do this process.

**Senator CASH:** Is this going to end up resulting in a diversion of resources, that you now have people who have to undertake this process who should be doing something else?

**Mr Fox:** No. I see this as part of their normal duties of contract management. It is just that I am putting a different priority on it. I might need to ask my secretary for some additional resources to help over that period but if I find I need to do that, I would be seeking some extras.

**CHAIR:** Senator Cash, can we go to Senator Fielding for five minutes.

**Senator FIELDING:** I have a more general question going to some thinking of the Australian public. How do we measure success in settling refugees into Australia? I have heard a lot about how efficient you may be, but how do you measure success in our refugee settlement activity?

**Senator Lundy:** The department has a range of measures which the officer will describe, but there has been a recent report, Settlement Outcomes of New Arrivals, which I am sure you have seen referred to. This particular document contains for the first time a wonderful insight into the success of settlement outcomes in Australia. The backdrop of all of it is the nature of multicultural policy where we invest significantly in the successful settlement of migrants, whether they are skilled migrants, humanitarian entrants, refugees, family entrance and so forth. One of the great successes in this early period when they first arrive is our resettlement services program. We have English language tuition, and we have complex case support where required. All of this lends itself to some really positive outcomes. Some of those outcomes were contained in the SONA report. For example, overall humanitarian entrants display a higher involvement in further education activities than on average in the Australian population; most humanitarian entrants are strongly focused on creating a new life and studying for a qualification in Australia, and see that as a really important step for their

successful settlement. We know from the SONA survey that 85 per cent of humanitarian entrants find the English language classes we provide appropriate for them. And that figure of perceived appropriateness is even higher, up to 90 per cent, for both family and skilled migrants. We know that around a quarter of humanitarian entrants obtain a technical or university qualification after arriving in Australia, which is about the same as the proportion of Australians who achieve that tertiary qualification. So they are really good outcomes overall. Nearly all of the refugees and humanitarian entrants indicate that they want to become citizens of Australia. We do have the highest rate of citizenship in the OECD, which I think reflects the very positive experience of many of our new migrants to this country.

**Dr Southern:** I can add to the minister's remarks. We have some further research that has been commissioned from Professor Graeme Hugo into the social, economic and civic contributions made by first- and second- generation humanitarian entrants and we expect to have that report fairly soon. So we have quite an active research program in relation to humanitarian interest.

**Senator FIELDING:** When is that report due?

**Dr Southern:** I do not have the exact date. We are expecting it fairly soon.

**Senator Lundy:** Another interesting point I would like to mention is that regional settlement appears to contribute very positively to the settlement experience of new migrants. It is a little counter intuitive because of assumptions about proximity to services in our cities, but that is the feedback we are getting from migrants who participated in the survey, of which there were about 8,500 so it was a substantial analysis.

**Senator FIELDING:** Dr Southern, could you please come back with that date?

**Dr Southern:** Certainly.

**Senator FIELDING:** Given that there are 13,000 or 14,000 – it goes up from year-to-year – that we take into the refugee program, I am interested to know about longitudinal studies. How are they doing after five years, and again at 10 years? Then we can actually look back. Then it is not just activities that we are doing; we can see where they are working in the long term. There is this belief out in the community that maybe these people are not integrating and performing. So unless you actually get that data back out – I understand we are doing a lot of activity but activity does not mean it is going to be successful. It may be, and they may like what we are doing and they may like the way we are treating them, but if it is not successful, that is, if they are not integrating properly or something else, then we need to know. There is a perception that something is not working well in that regard over the longer term. Is the research that you mentioned before going into that type of thing? What happens to these refugees five years, 10 years down the track?

**Senator Lundy:** SONA research does reflect what happens over time and we know that over time things like better language skills, increased education and employment all flow with time. So the longer people are in Australia the better all of those outcomes are and those indicators are. I do want to touch on an issue because there has been some misreporting and, I am concerned to say, some deliberate misleading information about the statistics. A figure on page 19 of the SONA report says, '85.5 per cent of humanitarian households are in receipt of Centrelink payments.' This was reported in very negative terms, implying a high percentage of humanitarian entrants were on unemployment benefits. That is not true. The detail of the

report shows, and this is on page 27, that 11.7 per cent of humanitarian entrants are unemployed and looking for work or not looking for work. What that 85.5 per cent figure reflects is that anyone in that household may be in receipt of a Centrelink payment and that includes, for example, a teenager receiving Austudy. It could include crisis or parenting payments, mature age payments, Newstart, partner, sickness, widow or youth allowance or a Centrelink special benefit or child-care rebate. So I was concerned to see this negative perception that you describe in your question misleadingly promoted as a negative reflection on humanitarian entrants as a result of this report. It is actually a very positive reflection on the performance and participation of humanitarian entrants. It is worth noting that some seven million Australians generally are in receipt of some kind of Centrelink payment. Again, it is a positive reflection on a group of people who are facing extraordinary challenges and I think doing very well in tough circumstances, settling into a new country.

**Senator FIELDING:** Thank you.

**Senator FURNER:** Minister, maintaining the focus on the SONA report: you have already covered off on the appropriateness of the language classes; what was the level of involvement of humanitarian entrants in the education activities?

**Senator Lundy:** I do not know if Dr Southern has more details, but there are a couple of key points. Nearly 50 per cent of those who arrive with trade qualifications go on to obtain more technical or university qualifications in Australia, and 43 per cent of those arriving with a university degree obtain further university qualifications after arrival. I think I have already mentioned that around a quarter of humanitarian entrants obtain a technical or university qualification after arriving in Australia.

**Senator FURNER:** That is fantastic.

**Senator Lundy:** When you combine that picture it is an incredibly high-performing group in our population. I know, having spoken to refugees, that they place such high value on furthering their own education, bettering themselves and their opportunities for their children.

**Senator FURNER:** Would you be able to summarise the changes to the HSS program?

**Senator Lundy:** Yes, we can do that.

**Mr Fox:** I outlined a number of those changes a little earlier in responding to one of the questions from Senator Cash. I think probably the main areas that we have focused on are improving our outcome measures. Senator Fielding was asking about outcomes. We have tried to make the HSS much more client-centric and achieve outcomes that allow the humanitarian entrants to be active participants and self-reliant in Australian society. I have got a much improved quality assurance program, and we will be doing some more work on that, as we have mentioned.

I mentioned that we had separated out short- and long-term accommodation into two distinct services. That is to help us get greater flexibility in the solutions for clients. As part of the consultation process that I mentioned earlier, it became very clear to us that each entrant's needs were going to be very different; we could not have a one size fits all. So one question we asked people in the consultation process was whether they would like us to use group housing or whether they would prefer to move to stand-alone accommodation. It was really interesting the mixture of responses that we got. Some groups of people—typically those who had lived in a camp situation—were very reluctant to move into a group housing situation, but

others, for example from Nepal and Bhutan, thought that group housing was an outstanding solution for them. So we have built into the contracts and into the HSS program the capability to be much more flexible with the responses that we give to people.

We have also much strengthened and much better defined the basic household goods package so that all the household goods that are provided must meet relevant Australian standards. We make sure that they are of good quality and we will ask the providers to get better quality stuff if we think it is inappropriate. Perhaps importantly we have developed a very strong case management focus to the services we deliver to the clients under the HSS, compared with the previous contractual arrangements. That means that, when each client arrives, our service provider will meet with them and actually go through and identify their needs rather than giving them stuff they do not want or giving them stuff that is way over and above their needs. We have seen some of that. In particular, as part of that case management approach we are developing youth subplans, because we recognise that humanitarian entrants and young people are a particular cohort that may need some extra help. We have also introduced something which I am very excited to see develop, that is, an onshore orientation program. For many years we have run an offshore orientation program called AUSCO, which is provided to refugees before they get on a plane and arrive in Australia. Part of the new settlement services suite gives an orientation program and training on life in Australia to them once they arrive in the country as well. We are also very conscious of the fact that much of the work to support refugees in local communities is done with the support of volunteers and other community members as well as our providers. So we have developed local area coordination mechanisms that we ask providers to deal with as well.

**Senator FURNER:** Minister, it did concern me when you mentioned to Senator Fielding this misnomer out there in society about 85 per cent of refugees on Centrelink. You know I am a strong proponent of multiculturalism. On many occasions I have to correct some of my friends when they mention things. I am just wondering where those vexatious claims are coming from. Is it something that has been propagated by the media?

**Senator Lundy:** My understanding is that the coalition put out a press release in relation to that. I do not have it with me, but I think it was either a deliberate attempt to portray humanitarian entrants as somehow over-reliant on Centrelink or it was a mistake.

**Senator FURNER:** Is that a recent press release that you are familiar with?

**Senator Lundy:** Yes. When the SONA report was released I remember doing media on it and found myself defending some of the claims that were being made against humanitarian entrants and the good outcomes.

**Senator CASH:** Chair, on a point of order: I do not think it is fair for the minister to actually pre-empt why the coalition issued the release. I am happy for you to make your statements in relation to how you think the press release was wrong.

**Senator Lundy:** I thought I was very generous in putting forward that it could have been a mistake.

**Senator CASH:** I do not think it is fair. You do not know why the coalition issued that press release. I can assure you it was not for the reason you stated.

**Senator Lundy:** Thanks, Senator Cash. I am relieved.

**CHAIR:** Let's move on.



**Senator FURNER:** What measures are in the budget to encourage regional settlement?

**Dr Southern:** We discussed these under outcome 1 yesterday. They were around the regional migration agreements, new agreements that could focus on regional Australia and employment needs in those regional parts of Australia. We talked also about work around the Regional Sponsored Migration Scheme and work that is going on there. So there was quite a regional focus around the migration program outcomes for regional Australia in this year's budget.

**Mr Fox:** Within the context of outcome 5 we have also had a deliberate attempt to settle some refugees outside the metropolitan area. We talked about Newcastle, perhaps in an unfortunate context, but we have also had very successful settlements in places like Shepparton, Mount Gambier in South Australia and a number of other places. That is certainly something that we will be continuing to work towards under the new contractual arrangements as well.

**Senator FURNER:** Have there been any changes to the government's English language programs at all?

**Mr Fox:** We are about to commence new services under the Adult Migrant English Program. Those new services will commence on 1 July this year. We have recently been through a tender process for those as well. Again, we have taken a very conscious approach where we sought to look at the individual needs of people learning English under the AMEP and we have appointed, for example, counsellors who will work with clients to try to understand why they might not be taking up their entitlement to 510 hours of English language. One of the best successes of any new migrant into Australia, whether they be a refugee or otherwise, is their capacity to speak English and to communicate in the English language. That helps open up all sorts of opportunities for them around whether they can become successful citizens. I will just turn to my update to give you some further information if you like on the AMEP program and the changes that have been made.

**Senator Lundy:** While Mr Fox is looking for that information, I would like to add that one of the strengths of the AMEP and the way that the contracts are put in place is that we are able to finesse the program as time goes on and respond to the needs of the client base, including, as Mr Fox mentioned, through the provision of counsellors so the program is able to be supportive of and tailored to the participants' needs. I think that is a positive development and part of the character of the contract approach to these services.

**Mr Fox:** One of the other parts of the new introduction of counsellors who will help provide the educational and vocational guidance to the people learning English is that we have an individual pathway, taking the very client centred approach that I mentioned with respect to our settlement services contracts and applying that to the English language. We did have a model that said everyone had to learn the same curriculum at the same pace. We have recognised that that does not work for all clients, so we have introduced an individual pathways approach to clients to take them through there. We have also increased the access to the AMEP to people aged 15 to 17. Previously it had only been available to people aged 18 and over. So we recognise that people who might have dropped out of school in that age group also need some help with the English language and have opened AMEP up to them as well.

We will continue to provide free child care to parents. That was under the old program as well. We will have a much improved distance learning model as well to facilitate people who are not in metropolitan areas to learn English. Importantly, the content of the AMEP will be very much focused on settlement and helping people learn the skills they need to successfully operate in Australia.

**Senator FURNER:** Finally, the report identifies some challenges as a result of settlement programs and services that support eligible new arrivals most in need. What is the department doing in that respect?

**Mr Fox:** Which report?

**Senator FURNER:** The SONA report.

**Mr Fox:** Some of the improvements to both the HSS and AMEP that I have been talking about recently give some guidance on the improvements that we are making. We are also working very closely with consultative groups like the Refugee Resettlement Advisory Council to help us structure our programs to help achieve those better outcomes for clients. But I think the key really comes down to those improvements we are making to the settlement services, working with other agencies to encourage them to look at the way their services are provided to refugees. We work very closely with our colleagues in the Department of Education, Employment and Workplace Relations, for example, to look at Job Services Australia and the work they provide to refugees and to help them improve the outcomes they have as well.

**Senator Lundy:** I think the point about the pathway from the English-language tuition into employment is the critical one, and we know employment is a key determinant for long-term successful settlement. So there is a very strong emphasis now, as you have heard, through AMEP and the HSS on finding sustainable employment opportunities. That is what is being pursued at the moment. It is a key outcome of the SONA report and something that we had already sharpened our focus on through the service provision that the department provides via contract service providers.

**Senator FURNER:** Thank you.

**Senator CASH:** I turn to the Settlement Outcomes of New Arrivals report that you released on 29 April. If you go to page 27, one of the findings that is made is:

... after 4 years living in Australia, around 40% of Humanitarian entrants have a job of some type.

Does the department consider that to be an adequate or reasonable figure?

**Dr Southern:** I think we would all acknowledge that many of the humanitarian entrants have come to Australia under very difficult circumstances and from very difficult backgrounds and that it takes time to learn to live in a new country, to learn English and to find work. What the study showed was that, while it was 40 per cent at the period you have just mentioned, over time it did improve. That is a very positive outcome, and I think we would all acknowledge that these are difficult circumstances for people and it takes time.

**Senator CASH:** In terms of the effectiveness of the program, is it acceptable that after five years, only 40 per cent have a job of some type?

**Mr Fox:** As Dr Southern said, when you look at it, it is improving over time. There is always more that we can do, which is why we have structured our programs to encourage greater opportunities to participate.

**Senator CASH:** That leads directly into my next question: what strategies are being considered to improve on this figure?

**Mr Fox:** Let me complete what I was about to say there. I think that perhaps an even more telling figure that I personally took a great deal of comfort from was with regard to not just those in employment but those who are also studying in Australia. A large number of the people who were not in a job were receiving Centrelink benefits but were studying—I do not have the figures in the top of my head—and I took that as a very positive indicator. I was fortunate enough to be in Europe a few weeks ago talking to some colleagues from other countries about outcomes of integration. I mentioned the SONA findings to them and they were astonished at how high that figure was. I think it is all relative. Yes, of course we can do more.

Leading into your next question, some of the improvements to the Adult Migrant English Program that I mentioned to Senator Furner in answer to his question go squarely to improving the ability of people to enter into jobs. As I mentioned, we also work very closely with our colleagues in DEEWR to make sure that their programs are delivering services to humanitarian entrants, and we can always improve on that. The new job services tenders will be going out shortly—or that already have; I am not sure of the timing. We have been working with them to help make sure that our clients are picked up in their processes as well.

Understanding the market and the clients' needs are critical to our helping to redesign or continue to improve those programs. We have talked a bit about the SONA report and the forthcoming Graeme Hugo research. We want to continue to understand where we can continue to improve our programs. While people will argue about whether 40 per cent is an acceptable figure or otherwise, we can always improve and we will continue to do so.

**Senator CASH:** One of the other findings in the report was that humanitarian entrants are working fewer hours and for less money than other types of entrants. Why is that?

**Dr Southern:** I suspect some of those comparisons might be made across the broader migration program. Clearly a substantial proportion of our permanent migration program is skilled migrants who are clearly coming and will immediately go into jobs and have—

**Senator CASH:** So is that where they have not made a comparison across the board?

**Senator Lundy:** From memory, I think they are compared against the skilled migrants group and the family migrants group.

**Dr Southern:** So you would anticipate.

**Senator CASH:** Okay.

**Dr Southern:** I will just add to something Mr Fox mentioned earlier about things we are doing to assist in strengthening the outcomes, particularly employment outcomes for humanitarian settlers under the program. From July we are introducing what are called the Settlement Language Pathways to Employment and Training Programs, which will specifically combine aspects of earlier programs we have had—the Employment Pathways Program and traineeships in English and work readiness—which are specifically around

giving newly arrived entrants exposure to the workplace, as well as learning English in a work situation. There are some specific measures which are directly aimed at improving those employment outcomes.

**Senator CASH:** What pathways to employment are currently in place for humanitarian entrants? Are there specific pathways?

**Dr Southern:** The two programs which are currently in place, and I believe have been since 2009-10, are the Employment Pathways Program and the traineeships in English and work readiness initiatives. As I mentioned, they were about providing newly arrived migrants with that combination of English language tuition and exposure to work situations. Mr Fox mentioned the new job services contracts which, from memory, include the differentiation between the different levels of assistance needed for job seekers, humanitarian entrants and people from non-English-speaking backgrounds.

**Senator CASH:** The concern that I have is that there are two employment pathways and you have identified them. Knowing that only 40 per cent of humanitarian entrants have a job after five years, are these employment pathways adequate?

**Dr Southern:** We are reviewing those two particular pathways programs now to feed into the Settlement Language Pathways to Employment and Training Program. Again, this is a case of having a close look at those programs and the outcomes that they have achieved in relation to getting people employment.

**Senator CASH:** And looking at what can be done to improve that.

**Dr Southern:** Exactly, that is correct.

**Senator CASH:** You may have to take this on notice: what was the total cost of Centrelink benefits paid to humanitarian entrants in the 2010-11 financial year?

**Mr Fox:** I am not sure that we would have that. You might have to ask Centrelink for that.

**Senator Lundy:** For accuracy's sake, so we do not get into the same trap of misleading, can I suggest that you break down the different types of Centrelink benefits, otherwise you are in danger of fostering the same misconception that was discussed earlier.

**Senator CASH:** The next part of my question is to have it all broken down. Would it be better to refer to Centrelink for that figure?

**Dr Southern:** The Department of Human Services, yes.

**Senator Lundy:** I also caution your reference to the 40 per cent because, as you have heard, officers have referred to the high proportion of humanitarian entrants engaged in furthering their education or indeed their family responsibilities. I do not want the implication to go by that 40 per cent of a group of people seeking work or eligible to work are unemployed while they are, in fact, occupied doing other things. I think it is important to place it in that context.

**Senator CASH:** Mr Fox, I go back to the contract to provide settlement services in the Newcastle region. One of the issues discussed was in relation to the review that is now happening across the region and that you are going out and having a look at all of the accommodation. In relation to resources, I asked you whether you considered the current staff that you have to be adequate and basically you said what they were doing was part of their usual duties. If that is part of their usual duties then they have clearly failed in that duty based

on the findings of the Ernst and Young report. If they have failed in their duties in the first instance, how can you ensure that they will not fail in their duties again? What procedures are being put in place by the department?

**Mr Fox:** I think what I said was that I would see this as part of their normal duties, but with a new set of priorities.

**Senator CASH:** Yes, you did.

**Mr Fox:** We mentioned earlier that we do have a good level of QA within our program, but it needs improving. We have already outlined that we have asked Professor Richmond to help us look at that and see whether we need to make any further changes. Yes, some problems have been identified. I would hope those are not replicated across the country. But, as the minister said, we need to make sure whether that is the case or not. That is why we will be changing priorities for those staff to do almost a stocktake of the accommodation at the moment.

**Senator CASH:** Who is overseeing this review?

**Mr Fox:** The internal one?

**Senator CASH:** Yes: is it you?

**Mr Fox:** Yes, me.

**Senator CASH:** In the process undertaken to determine the order in which the reviews are to take place, Newcastle was your first priority. How have you determined that priority list?

**Mr Fox:** I mentioned that I am confirming that priority list on Friday in a meeting with the rest of my staff.

**Senator CASH:** So you are in the process of confirming it. What is the thinking behind it? I can understand why Newcastle was a priority, but how will you determine the areas that need to be looked at urgently?

**Mr Fox:** I also mentioned that I would look at whether there has been any complaints that have come to the department's attention about other service providers and I would use that as a risk prioritisation. I will also look at the volume of arrivals and patterns of arrivals to see whether there are any issues that might have come up in the past. I will talk to my state and territory office colleagues about any issues that might have come up there. I will also seek some advice from our stakeholders in the sector, with whom we have a very good relationship, to see if they might be able to suggest to me a framework. I will then sit down with my team and we will come up with a prioritisation process

**Senator CASH:** That will happen this will Friday?

**Mr Fox:** Yes.

**Senator CASH:** Will reviews be undertaken in all 24 regions?

**Mr Fox:** Yes.

**Senator CASH:** In the review that you have done to date, has any accommodation been found to be inadequate?

**Mr Fox:** Happily I can say that my staff were very impressed with the accommodation that they saw in Newcastle, apart from the ones that were identified in the report. Certainly

some of the accommodation that I have personally seen has been good. It is not multimillion dollar mansions, but it is very comfortable housing on the whole.

**Senator CASH:** When you say 'review', one review is one accommodation?

**Mr Fox:** Yes.

**Senator CASH:** So how many reviews have been undertaken to date?

**Mr Fox:** I think I mentioned that we had already gone to Newcastle. My staff there had seen—I think the figure is 11 of the properties in Newcastle.

**Senator CASH:** So it is not a lot to date; we do not have a lot to go on yet?

**Mr Fox:** No, that is right.

**Senator CASH:** Okay. How many families across all regions are living in short-term accommodation longer than the six- to 10-week department specified guidelines?

**Mr Fox:** I would have to take that on notice.

**Senator CASH:** Just in relation to suggested action 4, my understanding is, Minister, you have actioned that action; PwC has been commissioned to conduct a forensic audit of Resolve FM management?

**Senator Lundy:** Yes.

**Senator CASH:** Are any other service providers under or going to be under forensic audit?

**Mr Fox:** No, the recommendation is only to look at Resolve FM at this stage.

**Senator CASH:** In looking at the Ernst and Young report, Ernst and Young could not find any documentation of approval of properties for refugees or any spot inspections. Have any approvals been sighted by the department?

**Mr Fox:** I do not know the answer to that. I will have to take that on notice.

**Senator CASH:** Have any spot checks been carried out across the country?

**Mr Fox:** Yes. I mentioned earlier that we do client contact visits. We do regular—

**Senator CASH:** Is that a spot check, is it?

**Mr Fox:** Yes.

**Senator CASH:** Can you tell me how many spot checks have been undertaken for the past three financial years on a state-by-state basis?

**Mr Fox:** I would have to take that on notice. I should also add that in part of the framework that we have built in for the new contracts, we encourage many more unannounced client contact visits. I saw a press release suggesting we should do spot checks, but we already are.

**Senator CASH:** I want to turn very briefly to Western Australian settlement services. Earlier this year there were reports of local parishioners in Perth in Western Australia being asked to allow the department to use rooms and their homes to house people recently released into the community. Were you aware of those reports?

**Mr Fox:** Not specifically. That sounds like it might have been community detention, but I would be speculating.

**Senator CASH:** So you are not aware of reports where local parishioners have asked the department. Could you check with your office in Perth to see whether or not—it local parishioners, so church communities, have asked the department to use rooms in their homes to house people who need a home under this settlement program. If they are, how is this occurring and where are the locations?

Briefly going back to the report that we were talking about previously, *Settlement outcomes of new arrivals*, the report also identified that 80 per cent of households are dependent on some form of Centrelink payment and this decreases very slowly over time. What strategies does the department have in place to improve the financial security of the humanitarian entrants?

**Mr Fox:** Obviously the primary key to financial independence, if you like, is the ability to have a job.

**Senator CASH:** So they are linked.

**Mr Fox:** One of the key drivers to that is to be able to speak English. When you break it down, as Senator Lundy said earlier, those Centrelink benefits may well include study type assistance as well as—

**Senator Lundy:** The childcare rebate and the sort of thing

**Senator CASH:** I acknowledge that. I am as concerned as you are in relation to people being on these benefits, especially if it means they do not have a job. Is the department actively looking at—

**Senator Lundy:** We are talking about 11.7 per cent of people who specifically identified in that survey as being unemployed and therefore seeking work. It is a relatively small percentage of people seeking work. So you can make some assumptions about the 40 per cent figure that you are using in relation to the life circumstance. It is also worth mentioning—and I think this is in the spirit of this conversation—that, of course, many of the life experience of our humanitarian entrants often involve a lifetime in a refugee camp, torture and trauma, and getting over a whole raft of quite shocking experiences in coming to Australia. Many of them are not literate in their first language, so the challenge of learning English is more than learning another language; it is learning to write for the very first time and learning to write in a completely new language. I am trying to paint a picture of the magnitude of the challenges that many of our humanitarian entrants and refugees face when they come to Australia. I think that puts in perspective the level of achievement with their educational outcomes.

**Senator CASH:** What I was more looking for was: does the department actually have positive strategies to try and decrease this?

**Mr Fox:** The whole existence of my program is designed to achieve that. The ultimate aim is to make any entrant into Australia a self-reliant and active participant in Australian society.

**Senator CASH:** The report also finds that Afghani and Iraqi humanitarian entrants are less likely to get a job. However, the report itself does not actually make any conclusions as to why this is so. Does the department have any information as to why those two particular ethnic groups find it more difficult to get a job?

**Mr Fox:** No, not specifically.

**Senator CASH:** Are you looking at ways in which you can improve their ability to get a job—specifically looking at programs for Afghans or Iraqis?

**Mr Fox:** Yes, we will look at that. I am doing some work in another part of my division at the moment which looks at a community profile on the Afghani community to try and better understand what their needs are and what factors are driving their success or otherwise. We also have some work that our Refugee Settlement Advisory Council is doing to look at broad mechanisms that we might be able to use to support those communities.

**Senator CASH:** Is this an evolving process? Is this a review or a process that is going to have a time frame on it? Can I expect results in two months or three months to see what you are proposing?

**Mr Fox:** It is probably more in the nature of ongoing work.

**Senator CASH:** Are you able to provide a breakdown of the number and percentage of entrants in the Iraqi and Afghani ethnic groups that have attended the AMEP?

**Mr Fox:** I do not have that with me. I could—

**Senator CASH:** If you could. I would also be interested to know: what are their course completion rates?

**Mr Fox:** We can check that for you.

**Senator CASH:** I think we will find that the numbers are quite low. Can the department do more in recognising that attendance at AMEP and finishing such a course is exceptionally beneficial? Is there more that we can do to ensure that these groups do attend AMEP or will have the opportunity to? One of the issues that was raised with me was the time the classes are held. A lot of the women, because of the time the classes are held, cannot get there. Something as simple as that obstructs them from going to an English class. Is the department looking at ways in which they can re-tailor this program?

**Mr Fox:** Yes. Some of the things I quickly outlined for Senator Furner is that we are now taking a much more individually focused needs based analysis around the AMEP. That is to try and understand what might drive people not to participate in AMEP. One of the biggest reasons people do not complete their entitlement of 510 hours is that they get a job, ironically. Because they get a job they do not come to classes anymore. We offer some evening classes for those groups. We offer child care to help particularly the women who could not get there because—

**Senator CASH:** Or even in terms of family commitments. At 6 pm they need to be home making dinner. It might be easier for them to attend an English class at their child's school if you are able to get a school hall. They could drop the children off at school and attend an English class.

**Dr Southern:** On that, there is a pilot program in Victoria in the Broadmeadows area which this department is involved in with the local government, their state government and the Scanlon Foundation. It was particularly about providing better support for young mothers from a number of communities which I believe included Afghans and Iranians who had small children and were finding it difficult to attend English language classes. We will certainly be looking at the results of that pilot to inform the development of other initiatives.



**Senator CASH:** I am going to ask the secretary to advise in relation to a completely different outcome if there is someone here who could perhaps give the answer. How many protection visas have been provided to IMAs this year so far? It was a question that I missed.

**CHAIR:** I think that was hours ago.

**Senator CASH:** It was and I do apologise. I do recall earlier today we did go back to outcomes 2 and 3, which were from yesterday.

**CHAIR:** This is stretching the friendship though.

**Senator CASH:** I am happy for Senator Barnett to continue his questioning while someone brings the answer.

**Mr Metcalfe:** I think Dr Southern can help on that.

**Senator CASH:** Thank you, I do appreciate that.

**Senator Lundy:** Can I just make the point too that many of the Iraqis—the group you are talking about—came here and were on TPVs. Being on a TPV did apply a great deal of stress because of the uncertainty associated. So I think it is again in the spirit of the context of your questions about the relative difference in the performance of people from Iraq coming in as humanitarian entrants. That is important context.

**Dr Southern:** Can I just clarify your question.

**Senator CASH:** It was the number of protection visas that have been provided to IMAs this year so far.

**Dr Southern:** You will have to bear with me while I add up. It is late at night and I am not very good at the best of times. That is 1,211.

**Senator CASH:** Thank you very much.

**CHAIR:** Senator Furner has some questions on notice for outcome 6 that he is going to table.

**Senator BARNETT:** In light of the time, I will be ever so brief. I want to raise the issue particularly with Mr Fox regarding the Bible ban and the ban of other holy books at citizenship ceremonies, noting that I first raised this in October last year, again in February this year. I wrote to the minister, Chris Bowen, on 28 October with no answer and then again on 12 January with no answer. I then wrote to the Prime Minister on 28 March, again with no answer. I raised it in the Senate on 10 May and then two days later received a letter from the minister. So there is no reflection, in my view, on the department but clearly on the minister, and extreme disappointment for the manner in which he has related to a fellow member of the federal parliament.

I am delighted that on 4 April the department and the minister announced that they would overturn that ban. Today I met with Greg Clarke from the Bible Society who is equally like me—and I think most Australians—very pleased with the final outcome despite the angst and effort that was required to ensure that we got a fair and reasonable consideration of the citizenship code. I am just wondering if Mr Fox wanted to say anything in response to that.

**Mr Fox:** I think Tony Jones would say, 'I'll take that as a comment.'

**Senator BARNETT:** No worries. There was a lot of angst and it all started last October. We have been through a whole process and now the government has seen the light and I think

the community is a better place for it. Thank you for taking that on notice and I am pleased that we have got to a good outcome despite all that hard work.

**Senator CASH:** Very quickly, could I confirm something in relation to the figure that I have provided?

**CHAIR:** No. Put it on notice.

**Senator CASH:** No, I just wanted to confirm in relation to the figure what the timeframes were. Was it 2010-11 or 2011 to date?

**Ms Southern:** That was 2010-11 to date.

**Senator CASH:** Thank you. I have a number of other questions that will be going on notice, though.

**CHAIR:** Mr Metcalfe, I think that you wanted to finish for the night.

**Mr Metcalfe:** With your indulgence, thank you. Firstly, at the end of two days and nights I wanted to thank my officers who have appeared before the committee and the many people who stand behind them in assisting in preparation and responding to questions. More particularly, I want to note that this is the last time that the department will be appearing before this committee in its examination of estimates prior to Senator Barnett retiring from the Senate. I wanted to note that.

**CHAIR:** And Senator Fielding.

**Mr Metcalfe:** And Senator Fielding and Senator Trood, who have been participants in this committee. I wanted to say that the department wishes those senators all the very best for the future. I would like to note their great interest in the issues involved in this and other portfolios. Senator Barnett in particular has participated in this committee over some years and certainly made a contribution to public policy. With particular indulgence, Senator Fielding, I was also going to say to Senator Barnett that you have also represented the great state of Tasmania where many departmental officers come from. Indeed, my only family, when they migrated to Australia in 1829, arrived in Tasmania. I wish you, Senator Fielding and Senator Trood all the very best for the future.

**CHAIR:** Hear, hear. Thank you, Mr Metcalfe. Please convey to all of the officers in your department who are responsible for getting everything ready for estimates—and we do appreciate how long and arduous and time consuming that can be—our appreciation for their efforts and the efforts of the officers who have been with us for the last 28 hours. It is a very long time, really, to be at estimates.

**Mr Metcalfe:** Thank you, Chair.

**CHAIR:** I noticed the newspaper articles today about the House of Representatives. All I can say is that they should come on up here for a while and see what life is really like.

**Mr Metcalfe:** Thanks very much, Chair.

**Senator BARNETT:** Thank you very much, Mr Metcalfe, and to your colleague Mr Correll as well from February and all your other colleagues that you work with. It is an excellent process. I appreciate all the effort that you put in to answering the questions, of which there are many. I realise that you have the record at the moment in terms of departments. As a current deputy chair and a former chair of this committee, it is a great honour to serve the parliament and the Australian people in this way. It is an excellent process

of which I am a fan, and I know many others are as well. Thank you for your words of encouragement and best wishes.

**Senator Lundy:** I thank the committee as well.

**CHAIR:** With that, I declare the estimates hearings for the Department of Immigration and Citizenship adjourned.

**Committee adjourned at 23:03**