



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION
COMMITTEE

Consideration of Additional Estimates

FRIDAY, 22 FEBRUARY 2002

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SENATE
LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
Friday, 22 February 2002

Members: Senators Cooney, Greig, McKiernan, Mason, Payne and Scullion

Senators in attendance: Senators Bartlett, Brandis, Collins, Cooney, Faulkner, Mason, McKiernan, Ludwig, Payne, Ray and Scullion

Committee met at 9.02 a.m.

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS
PORTFOLIO**

Consideration resumed from 19 February.

In Attendance

Immigration and Multicultural and Indigenous Affairs Portfolio

Senator the Hon Chris Ellison, Minister for Justice and Customs and Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs

Departmental Executive

Mr Bill Farmer - Secretary

Mr Andrew Metcalfe - Deputy Secretary

Mr Ed Killesteyn - Deputy Secretary

Department of Immigration and Multicultural and Indigenous Affairs

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

Output 1.1 Non-humanitarian entry and stay

Output 1.2 Refugee and humanitarian entry and stay

Output 1.3 Enforcement of immigration law

Output 1.4 Safe Haven

Output 1.5 Offshore asylum seeker management

Mr Abul Rizvi - First Assistant Secretary, Migration and Temporary Entry Division

Mr Phil Thurbon - Acting Assistant Secretary, Temporary Entry Branch

Mr Bernie Waters - Assistant Secretary, Business Branch

Mr Chris Smith - Assistant Secretary, Migration Branch

Mr Robert Illingworth - Assistant Secretary, Onshore Protection Branch

Mr Vincent Giuca - Acting Assistant Secretary, Humanitarian Branch

Mr John Okely - Assistant Secretary, International Cooperation Branch

Ms Philippa Godwin - First Assistant Secretary, Unauthorised Arrivals and Detention Division

Ms Christine Sykes - Assistant Secretary, Unauthorised Arrivals and Detention Services Branch

Mr Vince McMahon PSM - First Assistant Secretary, Detention Infrastructure and Corporate Facilities Division

Ms Mary-Anne Ellis - Assistant Secretary, Detention Infrastructure Branch

Ms Lesley Daw - Acting Assistant Secretary, Detention Strategy Branch

Mr John Moorhouse - Acting First Assistant Secretary, Border Control and Compliance Division

Ms Nelly Siegmund - Assistant Secretary, Border Protection Branch

Mr Des Storer - First Assistant Secretary, Parliamentary and Legal Division

Mr John Matthews - Assistant Secretary, Legal Services and Litigation Branch

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

Output 2.1 Settlement services

Output 2.2 Translating and interpreting services

Output 2.3 Australian citizenship

Output 2.4 Appreciation of cultural diversity

Mr Peter Hughes - First Assistant Secretary, Citizenship and Multicultural Affairs Division

Mr David Doherty - Assistant Secretary, Citizenship and Language Services Branch

Mr Peter Vardos PSM - Assistant Secretary, Settlement Branch

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

Internal Products

Mr Steve Davis - Acting First Assistant Secretary, Corporate Governance Division

Ms Louise Gray - Acting Assistant Secretary, Resource Management Branch

Mr Douglas Walker - Assistant Secretary, Visa Framework Branch

Mr Matt Kennedy - Acting Assistant Secretary, Ministerial and Communications Branch

Ms Cheryl Hannah - Acting Chief Information Officer, Business Solutions Group

Indigenous Affairs:

Indigenous Affairs

Departmental Executive

Mr Bill Farmer - Secretary

Mr Andrew Metcalfe - Deputy Secretary

Mr Ed Killesteyn - Deputy Secretary

Mr Peter Vaughan - Executive Coordinator, Office of Aboriginal and Torres Strait Islander Affairs

Aboriginal and Torres Strait Islander Commission (ATSIC)

Mr Geoff Scott - Acting Chief Executive Officer

Mr Jim Ramsay - Manager, National Corporate and Commission Support

Mr Rod Alfredson - Director, Office of Evaluation and Audit

Mr Les Turner - Manager, National Programs

Mr Paul Barrett - Acting Chief, Finance Officer

Mr Joe Mastrolembro - Acting Registrar of Aboriginal Corporations

Office of Aboriginal and Torres Strait Islander Affairs

Outcome 3: Sound and well-coordinated policies, programs and decision-making processes in relation to indigenous affairs and reconciliation

Output 3: Indigenous Policy

Mr Peter Vaughan - Executive Coordinator, Office of Aboriginal and Torres Strait Islander Affairs

Internal Products

Mr Steve Davis - Acting First Assistant Secretary, Corporate Governance Division

Ms Louise Gray - Acting Assistant Secretary, Resource Management Branch

Mr Douglas Walker - Assistant Secretary, Visa Framework Branch

Mr Matt Kennedy - Acting Assistant Secretary, Ministerial and Communications Branch

Ms Cheryl Hannah - Acting Chief Information Officer, Business Solutions Group

CHAIR—Good morning, ladies and gentlemen. The Senate Legal and Constitutional Legislation Committee committee will now resume its public hearing with the examination of proposed expenditure for the Immigration and Multicultural and Indigenous Affairs portfolio. On 14 February 2002 the Senate referred to the committee the particulars of proposed additional expenditure for the year ending on 30 June 2002 for the Attorney-General's and the Immigration and Multicultural and Indigenous Affairs portfolios. The committee will consider the portfolio in the order in which it appears on the circulated agenda, beginning with general questions in the area of immigration and multicultural affairs and then moving on to outcomes 1 and 2 for the department.

Today's hearing will be suspended for a lunch break from 1 p.m. and a dinner break from 6.30 p.m. to 7.30 p.m.. Depending on progress, morning and afternoon breaks will be from 10.40 a.m. to 10.45 a.m., and 3.30 p.m. to 3.45 p.m.. All of those will be taken as close to the scheduled times as possible.

The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. Keeping in mind that budget estimates occur in May, the committee has agreed to the return date of 2 April 2002 for receipt of answers to questions taken on notice and any additional information. I would ask everyone present to please ensure that your mobile phone is either turned off or silent during the hearing. It is very distracting when they ring during proceedings.

I welcome Senator the Hon. Chris Ellison, Minister for Justice and Customs and Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, and officers of the Department of Immigration and Multicultural and Indigenous Affairs and associated agencies. When officers are called upon to answer a question for the first time, I ask them to please state their full name and the capacity in which they are appearing and to please speak clearly and directly into the microphones to assist the Hansard's recording of proceedings.

I also remind all officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, 'Procedures to be observed by Senate committees for the protection of witnesses', and in particular to resolution 1(10), which states in part:

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

Also, resolution 1(16), which states:

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

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Minister Ellison, do you or Mr Farmer wish to make an opening statement?

Senator Ellison—Good morning, Madam Chair. I do not have an opening statement. I do not believe Mr Farmer has either.

CHAIR—Thank you both very much. Just on the procedures for today and the facilities open in the building, it is expected that this will be a long day, and possibly a long evening. Given that it is Friday, this evening only limited meals will be available in the cafeteria between 6.30 p.m. and 7.30 p.m.. It is possible that, if proceedings look like extending further than 11 p.m., the committee may determine to hold a further hearing at another time. However, I do not believe that is the committee's preferred option. The committee prefers to continue and to complete its estimates by, if possible, 11 o'clock tonight. We will begin with general questions.

Senator McKIERNAN—Madam Chair, could I draw attention to a problem that was experienced following Tuesday's estimates committees in the delivery of the *Hansard* of Tuesday's proceedings? The first part of the *Hansard* was up on the web on Wednesday morning, but the rest of it did not get up certainly until after 8 p.m. that day. It caused some difficulty, not least to me. I experienced that. It was compounded by the problem that the morning's *Hansard*, which was up first thing in the morning, was actually taken down during the day. I raise this only because, during my finding out what went wrong, I was told that the House of Representatives was receiving priority in terms of delivery of *Hansard* and that the Main Committee—a decision was made only last week that the Main Committee would be sitting this week—was to receive second priority, followed by the Senate estimates committees proceedings. If that is the case—and I have been told different stories—I think it should be looked at because these proceedings of the Senate are as if the Senate itself was sitting and they should not be subservient to the requirements of the Main Committee. I put that on the record because I think it should be followed through for another time. I do not want to waste any more time on it now.

CHAIR—Thank you, Senator McKiernan. The committee will take up your concerns with the appropriate officers of the parliament. We will start with general questions in the area of immigration and multicultural affairs. I invite Senator Faulkner to begin in that area.

Senator FAULKNER—I do have a number of general questions. Thank you, Chair. Minister, I would like to commence by asking Mr Farmer a question, if I could. I wonder if you could inform the committee, please, Mr Farmer, when you told Minister Ruddock about the so-called 'children overboard' affair.

Mr Farmer—I told Mr Ruddock in a phone call on the morning of Sunday, 7 October.

Senator FAULKNER—On what basis did you call him?

Mr Farmer—He rang me while I was in the meeting—the high level officials meeting.

Senator FAULKNER—He contacted you; and what did you say to him about the 'children overboard' issue?

Mr Farmer—Mr Ruddock, as I recall, was about to begin a press conference, and he rang me to ask for any updates on the handling of the SIEV4. I do not recall everything I said to Mr Ruddock, but in the nature of things I would have told him things like the latest information available to us about the position of the ship and the activities being undertaken by the Navy as passed to us by the Defence representatives at the meeting or otherwise. So, among the things I said to Mr Ruddock, I recall clearly I said to him that we had been told by Defence that the passengers on SIEV4 were wearing life jackets and that some people had jumped into the water and that some children were thrown. Those were new elements.

Senator ROBERT RAY—At the time you spoke to Mr Ruddock, had the committee, as is noted in one of the reports, discussed press lines for Mr Ruddock?

Mr Farmer—No. The committee generally did not discuss press lines.

Senator ROBERT RAY—But hold on, it did on this day, didn't it, at some stage, or is that an error in the report?

Mr Farmer—I am sorry, which report are you talking about—the report of the committee on that day?

Senator ROBERT RAY—I am sure I read, as reported in either the Bryant or the Powell report, that press lines for Mr Ruddock were discussed at the meeting.

Mr Farmer—At the meeting—and I made this clear in my—

Senator ROBERT RAY—Therefore I ask you again: had the committee discussed the press lines before Mr Ruddock rang in?

Mr Farmer—No. I am trying to answer your question, Senator. In my evidence to Ms Bryant—and I believe that is reflected in the report—I said that when Mr Ruddock rang I spoke to him while I was at the conference table and I told him the information that we had been discussing in the committee.

Senator ROBERT RAY—And then, subsequently, did you or the committee discuss press lines for Mr Ruddock?

Mr Farmer—I do not believe so. I have no recollection of discussing press lines for Mr Ruddock. We would have discussed later in the day the nature of a report to ministers.

Senator Ellison—Perhaps, Madam Chair, we could refer to the part of the report where it says that so it might assist Mr Farmer.

Senator FAULKNER—Let me take Mr Farmer to the top of page 7 of Ms Bryant's report. I do not know if you have a copy of the report. I take you to the first full paragraph on that page. It states:

The record of the IDC meeting on 7 October prepared by Ms Edwards records that "those on board were jumping in the water and throwing children in (sailors were returning them to the boat)" and that "Media lines were considered and provided orally to Mr Ruddock".

I do not think there is any question here about Senator Ray's memory. I think that is the reference to which his question goes.

Mr Farmer—And you are asking me my recollections. I recollect sitting at the table and talking to Mr Ruddock after we had been discussing the latest developments in relation to the handling of the SIEV4. It is also said in the report that unusually for me I stayed at the conference table with a mobile phone talking to Mr Ruddock. I do not normally do that because I think it is discourteous actually to people in the meeting to do it, but I did it because we had been having a general discussion and, in talking to Mr Ruddock, I wanted to make sure that what I was saying to him was in accordance with the understanding of everyone else at the meeting.

Senator FAULKNER—So the record of the IDC is wrong, is it, in your view?

Mr Farmer—No. Senator, I do not know whether you are asking me for my recollection—

Senator FAULKNER—No, I am asking about the record of the IDC meeting in Ms Bryant's report: 'Media lines were considered and provided orally to Mr Ruddock'. That is the record of the IDC meeting. Are you saying that the record of the IDC meeting is wrong?

Mr Farmer—No. What I am saying is I am giving you my recollection of what happened at the meeting. I do not claim to have a 100 per cent recollection of everything that happened at every meeting I have attended during the last six months—

Senator FAULKNER—So you do not say that the record is wrong but you do say that media lines were not considered and provided orally to Mr Ruddock?

Mr Farmer—Senator, I have said to you that I knew that Mr Ruddock was going to do a press conference and I was talking to the committee. It knew I was talking to Mr Ruddock and I wanted to make clear that the points I was making to Mr Ruddock for his use with the press were known to and agreed by the committee.

Senator ROBERT RAY—What I want to find out is whether you were putting to Mr Ruddock the considered media lines of the committee or it was all your own doing. That is all I am trying to distinguish. That is why I am asking for the timing of that discussion. It could well have come before; it could well have come after.

Mr Farmer—At that morning meeting the facts of the matter are that we were discussing the handling of the matter. Mr Ruddock rang me to say he was going to a media conference. He asked me for any update on developments and I gave him the update, making clear to the committee that I was speaking to Mr Ruddock and staying at the table so that the information I was giving Mr Ruddock was accurate not only to the best of my recollection and summary of discussion at the meeting but also to the knowledge of others at the meeting.

Senator ROBERT RAY—I have no doubt that that is an accurate reflection of what happened to that point. But what I need to know is whether, prior to Mr Ruddock ringing in, the committee had discussed how these issues were to be handled with the media, or whether it happened afterwards or whether Ms Edwards in the recording of these minutes has in fact got it wrong. I need to know that.

Mr Farmer—I of course have never seen any PM&C records. Nor do I know what was in Ms Edwards's mind. It is certainly possible that, from my having spoken manifestly and overtly to Mr Ruddock during the committee meeting and giving him an update on facts which he could use in discussion with the media, that conclusion was drawn.

Senator ROBERT RAY—I am sympathetic to the fact that you cannot have 100 per cent recall of every meeting, because if you did you would not be doing your job. But you did have other immigration department officers there at the time?

Mr Farmer—Yes.

Senator ROBERT RAY—Could we have them at the table to see if they can assist us in regard to this media line stuff.

Ms Godwin—Senator, I was at the meeting. I recall Mr Farmer speaking to the minister. I do not recall a specific discussion of media points as such.

Senator ROBERT RAY—Thank you.

Mr McMahon—Again, my recollection is that it was basically in the heat of battle, if you like. The information had not long been there when the phone call to Minister Ruddock was made and the information—

Senator FAULKNER—Let me interrupt you here. It was not that a phone call was made to Minister Ruddock; Minister Ruddock makes this phone call.

Mr Farmer—That is right.

Senator FAULKNER—I want to be clear. Does Minister Ruddock make the phone call to Mr Farmer or vice versa?

Mr McMahon—I was asked the same thing by Jenny Bryant, and I could not remember. I simply remember the secretary talking to the minister across the table.

Senator ROBERT RAY—If there is any doubt, you can have your phone records checked, can't you, Mr Farmer?

Mr Farmer—Yes. I would like to ask Mr Storer, First Assistant Secretary in charge of the Parliamentary and Legal Division of the department, because he was with Mr Ruddock at the other end.

Senator ROBERT RAY—In what capacity?

Mr Farmer—As First Assistant Secretary, Parliamentary And Legal Division.

Mr Storer—I could give the context in which capacity, if you are asking that now, Senator.

Senator ROBERT RAY—I think we just want to nail down once and for all who rang who.

Mr Storer—It would help a little bit to know that the minister had been going to an event where he was briefing media and ethnic communities about the package of bills that had gone through two weeks ago. The event had been set up well before the election. It was a factual briefing. When he arrived at the function about quarter to 10—the event was to start at 10 o'clock—the news was running hot that a boat had been intercepted by the *Adelaide*. It was running hot on the news. All the media were interested to see what was happening. When he arrived he said, 'What's going on?' I said, 'This is running hot on the news. That's why there are more people than were expected here. You better check in with Bill Farmer.' So, on that basis, he rang in to where Mr Farmer was on his mobile.

Senator ROBERT RAY—Sure. I think we accept that. We never doubted it. It is a phone call to Mr Farmer and no-one can recollect, so we can assume it did not happen, that media lines had been discussed at that stage. Therefore—

Mr Farmer—Senator, we were discussing matters that were clearly being conveyed to Mr Ruddock by me in the context of his preparation for a media—

Senator ROBERT RAY—Can we just stop this a minute before Mr Ruddock rings?

Mr Farmer—I am sorry?

Senator ROBERT RAY—Let us just go back one minute before Mr Ruddock rings you. I think we are knocking down straw men here and there is no necessity to do so.

Mr Farmer—But I did not build the straw man. The point I am trying to make is the reference to media lines is really, if you like, an ex post facto interpretation by someone else and I cannot comment on it.

Senator ROBERT RAY—That is what I am trying to get to. I think we have now established that everything Mr Ruddock learns about this he learns from you, and it is your view, not necessarily a preprepared committee view. That is not putting it unfairly, is it?

Mr Farmer—That is right.

Senator ROBERT RAY—Thank you.

Senator FAULKNER—Just to be clear on one point, you indicate that Mr Ruddock rings for an update on the SIEV4 question. I think Mr Storer is saying to us that the minister is

really made aware of this as a result of media commentary, media reports. Would that be right? You are not with the minister, Mr Farmer?

Mr Farmer—That is right.

Mr Storer—To my understanding, that is correct, Senator. From about 6 o'clock onwards, when I heard it the first time personally, it was on the ABC news that this boat had been intercepted. When Mr Ruddock arrived at this prearranged media briefing and ethnic communities briefing, he asked me, 'What's going on?' So I assumed he probably knew from the news about the interception of the boat, but he asked, 'What's going on?' and that is when I explained to him that all these extra people were there because they wanted to know what was going on re the interception of the boat.

Senator FAULKNER—But does Mr Ruddock have any departmental advice, formal or informal, prior to him ringing you, Mr Farmer, or is that the first?

Mr Farmer—As far as I am aware that is the first, Senator, but there was no opportunity for formal advice—

Senator FAULKNER—Informal advice?

Mr Farmer—As I say, not that I am aware.

Senator FAULKNER—Mr Ruddock, as you know—you can tell us the time frame—makes his first public statement about the 'children overboard' issue how long after his phone call with you?

Mr Farmer—I do not have that information, Senator.

Senator ROBERT RAY—Perhaps Mr Storer could answer that.

Senator FAULKNER—We can ask Mr Storer.

Senator ROBERT RAY—Could I interrupt for a moment. I am sorry, Mr Farmer, you are misunderstanding the questioning style. It is a question to the minister, but if we are looking at you we expect you to respond. But maybe someone else can. So do not feel that if you do not know we are really requiring you to respond.

Mr Farmer—Thank you.

Mr Storer—Perhaps I can help, Senator. On receiving the advice, he went into the press conference. I have to say there were a lot of ethnic community groups there as well because, as I said, this was prearranged, all the material was printed in community languages and so forth. He went in and they—the mainstream media and some of the ethnic media as well—were anxious to ask him questions about that. He said, 'No, I want to tell you about what I came here for first.' He spent, I would say, about an hour and 10 minutes giving quite an insightful overview of the reasons behind the seven bills that were passed in parliament and how they all integrated and so on. So he did not get on then to actually talk about what he learnt from Mr Farmer of the situation until—my guess would be—somewhere about 11.15 or 11.20 of the media and ethnic community briefing.

Senator FAULKNER—But the only advice that the minister has when he starts to respond to questions on the SIEV4 issue or make commentary on the SIEV4 issue is the phone call from Mr Farmer?

Mr Storer—That is my understanding.

Mr Farmer—That is in relation to this issue of the children overboard. Mr Ruddock may well have been told earlier on—and that would have been quite normal—about the arrival or detection of the SIEV4.

Senator FAULKNER—I did ask that before. I think we need to clarify that. Can you tell us what advice the minister—I used the words ‘formal or informal’—had received in relation to the SIEV4 from the department?

Mr Farmer—And I am equally concerned to give you the facts. I am just saying I had thought you were talking about this question of children overboard. In relation to the arrival of the SIEV4—

Senator FAULKNER—I think I used the word ‘SIEV4’, but if I did not I should have.

Mr Farmer—You may well have. I just wanted to make sure. Phillipa Godwin would have been one of the first people to know, and she may have something to say on that point.

Ms Godwin—It was standard practice that when a suspected unauthorised arrival vessel, illegal entrant vessel, was known by Australian government authorities staff in my area would be alerted, just as a normal operational thing, and we would normally pass that information to the minister’s office. Usually that would come from Coastwatch. In this instance I believe we were getting reports from Coastwatch. I would have to check when the earliest report was. I think it was probably some time on Saturday evening. We would not normally pass that directly to the minister, so I cannot speak for what the minister knew, but we would normally pass it to an appropriate contact in the minister’s office.

On the Sunday morning I do recall receiving a call from a member of the minister’s staff asking for an update. I contacted the officer who is our contact with Coastwatch. She contacted Coastwatch. She called me back and I passed that update to the officer that I had previously been called by. But at that point I think they had already received more up-to-date information directly from Coastwatch, but I cannot be sure of that. I think there was the normal reporting, if you like, of the fact that the boat was there and was being approached by a Navy vessel.

Senator FAULKNER—Who was your contact with the minister’s office made with?

Ms Godwin—It would vary, according to who I was—

Senator FAULKNER—On this occasion.

Ms Godwin—On the Sunday morning I spoke to the minister’s chief of staff, Ann Duffield. On the Saturday night I do not recall who it was.

Senator FAULKNER—You do not recall on the Saturday night?

Ms Godwin—No. I would have to check with the officers in my area. But the Sunday morning contact would have been, I think, around seven or 7.30—something of that sort.

Senator FAULKNER—And are you able to just briefly outline the status of the incident that you were able to relay to the minister’s chief of staff?

Ms Godwin—As I recall it, the information I was given was that the boat had been approached by a boarding party, that the normal warnings had been given, that the passengers had disposed of one of the warnings by throwing it over the side—some of those aspects. But I could not say that that was all of it.

Senator FAULKNER—Okay. But did it go to the question of either threats of children being thrown overboard or children being thrown overboard?

Ms Godwin—I do not recall specifically that. I do recall certainly reference to the fact that the passengers were aggressive, that they had life jackets on; they were clearly preparing, I think was the view that was put to us, to respond to any approach.

Senator FAULKNER—But you gave statements to Ms Bryant for her report, didn’t you?

Ms Godwin—I did.

Senator FAULKNER—Did Ms Bryant canvass this contact with you?

Ms Godwin—I did mention it to Ms Bryant, but in the context of this sort of general flow of information, which was happening very quickly at the time.

Senator FAULKNER—I wonder, in the light of that information you provided to her, whether you have been able to refresh your memory and establish what the detail of some of this communication may have been, although I accept it is not as significant as the communication with Mr Farmer.

Ms Godwin—I have not, Senator.

Senator FAULKNER—But are you satisfied, then, Mr Farmer, that the key information that Minister Ruddock acted upon was the information provided to him by you in his call to you while the IDC was meeting?

Mr Farmer—That is my clear understanding.

Senator ROBERT RAY—So the whole IDC stops while you are talking to Mr Ruddock because you wanted them basically to make sure you were putting forward a view that reflected information given to that committee?

Mr Farmer—That is precisely it, Senator. We were dealing with a number of things in the IDC—both fast emerging policy and operational issues. That, I think you will see, is quite clear from the submission to the Prime Minister that was tabled in the House of Representatives the other day. We were dealing with that, but also with very fast moving developments on the ground. That is why, as I said, I received the phone call at the table and that is why I stayed there, because in a fast moving situation I wanted to make sure that my understanding of what was being said at the table was accurate and accurately conveyed to my minister. That was my responsibility as I saw it.

Senator FAULKNER—So is the information that you provide to Minister Ruddock based on the deliberations of the task force only? Do you only have the benefit of what is being said and information being provided to the task force or do you have any other information to hand that you use in passing on this material to Mr Ruddock?

Mr Farmer—I certainly had no information because the department was, in relation to the RAN matters, entirely the recipient of information. We had no independent, if you like, analysis or evidence of the matter.

Senator FAULKNER—So what Mr Ruddock gets when he rings you is information that is being discussed at the People Smuggling Task Force only?

Mr Farmer—That is right. Well, as you know from the report, there is some discussion about whether the information was actually spoken at the task force and/or telephoned through to Ms Halton, the chairman of the task force, from Defence.

Senator FAULKNER—Yes, but are these telephone calls through to Ms Halton on speaker phone?

Mr Farmer—No.

Senator FAULKNER—So you do not know what is in them, do you?

Mr Farmer—No, but the point I am making is that anything that would have come from Ms Halton that I referred to in my conversation with Mr Ruddock would have been conveyed to the task force, in the task force, by Ms Halton.

Senator FAULKNER—That is right. So you only convey to Mr Ruddock information that you hear during the task force meetings or deliberations.

Mr Farmer—That is correct.

Senator FAULKNER—There is nothing else?

Mr Farmer—That is right.

Senator ROBERT RAY—And who raises this the first time? Who actually tells you for the first time?

Mr Farmer—You will see from Ms Bryant's report there are two views of that. When asked some months later I had thought it was Group Captain Walker. Others recall hearing Ms Halton taking a phone call and passing that information to the meeting.

Senator ROBERT RAY—Of course Group Captain Walker, being a member of the uniformed service and fully apprised of the honour system, has denied. Do you accept his denial?

Mr Farmer—I am saying now, and indeed when I spoke to Ms Bryant in January, I do not have an exact recollection of who passed the information. What I can be absolutely clear about, though, is that information was conveyed from Defence to that meeting. That is the basis on which I advised—

Senator ROBERT RAY—It is pretty crucial to our overall view of this issue as to where it came from, because we have been able to track down in another committee, and you may have followed it, that eventually Ms Halton finds out about fifth hand—she is the fifth one in line, which makes you the sixth, which makes Mr Ruddock the seventh—this one piece of oral information. But of course we have not found anyone that has rung Group Captain Walker. He was far too far, to put it honestly, down the food chain to be contacted. Air Vice Marshal Titheridge was. Rear Admiral Smith was. Rear Admiral Ritchie was. Brigadier Silverstone was. There is a whole range there, but not Group Captain Walker. We need to know who conveyed this, because somewhere this has gone from a threat to a child to children actually in the drink. We need to track down—here and elsewhere—exactly how that occurred so we can make sure it never occurs again. Therefore, we are relying on public servants like yourself to stretch your memory banks, and with your colleagues, to try to assist us.

Mr Farmer—Yes. And I am saying to you, Senator, that the recollection of others is that that evening I had thought that it was Group Captain Walker who made the statement. I am saying to you that in January when I spoke to Ms Bryant I did not have an exact recollection of who it was, and I still do not have an exact recollection of—

Senator ROBERT RAY—Well, between—

Mr Farmer—If I could finish, Senator, I would appreciate that. I still do not have an exact recollection of who it was. Can I just also make a statement about your comment about Group Captain Walker's rank. This was a high level group of officials. I was the Secretary of the Department of Immigration and Multicultural Affairs at that stage. I was there. It was chaired by a deputy secretary or executive coordinator of the Department of the Prime Minister and Cabinet. It was a high level group. The senior representative at any meeting from the Department of Defence was regarded by me, and I am sure by others, as speaking for the Department of Defence. I did not send along people that I did not regard as being capable of discharging any obligation or responsibility, and in a high level group of that sort I did not regard anyone else as being there without that sort of—

Senator ROBERT RAY—And neither am I reflecting on them, and I will not have you even implying that I am. I am saying in the Defence hierarchy, the chain of command, he would not have been regarded as the key person to be informed of this. They have a chain of command and, therefore, the chain of command went from the *Adelaide* to NORCOM to Maritime Command to Strategic Command to your committee. It would not have gone to an officer on the committee. There is no evidence anywhere in all the Defence evidence given that Group Captain Walker was told. Someone would by now have tracked those phone calls and have known. So I think we can eliminate him and eliminate whatever defective memory you have on it and concentrate on whether it was Ms Halton.

What I would like to ask is: was anything recorded by you or your two officers of the meeting that day? I realise how busy you are—it is a crisis et cetera—but did anyone record and keep a record of their attendance at that meeting that may indicate to us who in fact initially raised at that committee the ‘children overboard’?

Mr Farmer—I do not think my memory is defective, Senator. I have said I do not recollect who raised it, but I do have a clear memory that the advice was from Defence. I said to Jenny Bryant that, if the weight of the views of others is that that information came to the meeting via Ms Halton at the meeting on the basis of a phone call from Defence, I would have no basis for querying that.

Senator ROBERT RAY—I am surprised you cannot remember who raised this, being such a big issue.

Mr Farmer—Senator, I am sorry. Let me just say something. It is a big issue now. On the morning of 7 October there were, if you like, some new elements in the equation, including particularly the fact that the people on board SIEV4 were wearing life jackets. That and the other bits of the matter were indications of a new approach by the people smugglers, who were clearly preparing their passengers to in effect test the RAN’s resolve.

Senator ROBERT RAY—Going back to my second last question, I asked: did you or any of your colleagues at that meeting take a record of the meeting—in other words, take notes as they went through—that they can subsequently refer to that may assist us in this regard with these questions or any other questions?

Mr Farmer—I can speak for myself, Senator. I very rarely take notes of meetings, except—

Senator ROBERT RAY—Because you have got such a good memory.

Mr Farmer—except to the extent that I need to take action on them afterwards. I am the secretary of the department—

Senator FAULKNER—Did you authorise a note taker, Mr Farmer? There were two other officers, Ms Godwin and Mr McMahon. Is it the responsibility of either of—

Mr Farmer—No.

Senator FAULKNER—You do not take notes. So be it. Did you ask one of the other two officers present at the meeting to undertake that responsibility?

Mr Farmer—No. The meetings were being run by the Department of the Prime Minister and Cabinet. This was a high level officials meeting. Frankly, when I was a division head I was not a note taker either, except to the extent that I needed to take action on matters arising from the meeting. Those matters would, by definition, have been matters falling within the responsibility of the Department of Immigration and Multicultural Affairs.

Senator FAULKNER—And that did not happen?

Mr Farmer—That did not happen in the case of me insofar as the matters you are talking about are—

Senator FAULKNER—But it may well have happened on other occasions when this task force met. It had quite a lot of meetings, did it not?

Mr Farmer—Yes, it did.

Senator FAULKNER—Would there have been matters that required follow-through from the department of immigration?

Mr Farmer—Yes, certainly.

Senator FAULKNER—So who would record those?

Mr Farmer—At some of the meetings we had a number of officers from the department and each would have made mental or written notes of things that had to be followed up. Of course, my colleagues who were at the meetings are here and—

Senator FAULKNER—Why do we not ask them? They may have a better recollection than you. You know it came from Defence. I think you are saying to us it came from Defence, but you are not sure whether it came from Defence via Ms Halton or from Group Captain Walker. I think that is the nub of it, is it not?

Mr Farmer—That is right.

Senator FAULKNER—Why do we not ask—

Mr Farmer—But another element—and I think it is important—is that when Mr Ruddock rang me I gave that information to him, as I have said, at the table so that those who in effect had been party to the information knew what I was saying to Mr Ruddock.

Senator FAULKNER—You are saying that the business of the task force had stopped; everyone was listening to your end of the conversation with Minister Ruddock?

Mr Farmer—I believe that to be the case, yes. It was quite unusual for me to do that, Senator—to say, ‘I’ll take this at the table.’

Senator ROBERT RAY—No-one is saying we regard it as unusual. We think it was commonsense to do it that way.

Mr Farmer—Thank you, Senator. It was unusual, and I believe people were listening to the conversation. I had made clear that was the purpose of my taking that step.

Senator FAULKNER—Anyway, we will ask Ms Godwin and Mr McMahan whether they have a better recollection of where this original advice comes from.

Ms Godwin—My recollection of the events included a recollection that the information was brought into the meeting by the Defence representative, but I actually could not remember at the time who the Defence representative was. As Mr Farmer has mentioned, that could vary from meeting to meeting and sometimes there was more than one person from Defence there. I recall, as I say, the information being brought into the meeting or introduced into the meeting by the Defence representative but did not particularly remember that it was Group Captain Walker.

I also commented to Ms Bryant when she asked me about my recollections that I recalled Ms Halton getting a phone call, and my recollection was that—although, as you point out, it was not on speaker phone so we cannot know what was at the other end of the conversation—it appeared to be about children overboard and she said, ‘Yes, we have already been told that.’ That was my recollection at the time.

Senator FAULKNER—So was it a similar situation when Mr Farmer received his phone call? I assume it was earlier than Mr Farmer's phone call from Minister Ruddock.

Ms Godwin—That is as I recall, yes.

Senator FAULKNER—Again, did all of the business of the task force stop while you listened to one end of this particular phone call that Ms Halton received from Defence?

Ms Godwin—Generally speaking, people would move away from the table when they got mobile phone calls. It was quite common for the phones to go off, of course, because of the evolving situation. Because Ms Halton was the chair of the meeting, she generally took the calls at the table and, generally speaking, people would cease conversation so that she could actually conduct the phone call. I cannot speak for whether everyone else was listening, but I certainly recall hearing that element of the phone call.

Senator ROBERT RAY—But you cannot actually picture in your own mind Group Captain Walker, who was the only Defence rep at this committee; Air Vice Marshal Titheridge had another engagement at the ponies, so Group Captain Walker was it, I think—giving you an update of this? You just think it came from Defence?

Ms Godwin—I recall it coming from the Defence representative. What I said was I did not particularly remember who the Defence representative was on that occasion. But, if the evidence is that it was Group Captain Walker, that is perfectly consistent with the way the meetings would have gone. From time to time he was the representative. Other times Air Vice Marshal Titheridge was there. Sometimes there was more than one. Sometimes there were a number.

Senator ROBERT RAY—We have a problem here—not a conspiracy, just a problem. Mr Farmer cannot fully remember. You say you think. Ms Halton says she cannot quite remember. Group Captain Walker has a total memory of it and denies having the information and was surprised when it appeared. What we are trying to do is just track down from the *Adelaide* how it got to Minister Ruddock. It is very important we know, because if there were errors made on the way through they have to be exposed, obviously.

Mr Farmer—Senator, I can tell you exactly how it got to Mr Ruddock, and I have already done that. He rang me and I told him.

Senator ROBERT RAY—Yes, but we now want to know on what basis you told Mr Ruddock—the veracity of the information that was given to you. We have got no doubt that you relayed what you knew without exaggeration to Mr Ruddock. That is not in question. because the others around the table were listening. That was a good move. We really want to know who put the information before the committee, and we need to know that.

Mr Farmer—I think that my conclusion unequivocally would be that it came from Defence.

Senator ROBERT RAY—I am sorry. If it comes from Ms Halton it does not come from Defence; it comes to the committee from Ms Halton via Defence. It is slightly different.

Mr Farmer—No, it came from Defence to the committee via Ms Halton.

Senator ROBERT RAY—Yes.

Mr Farmer—But it was information from Defence, conveyed to the committee either from Ms Halton or from the Defence representative at the meeting or both. I do not recollect the circumstances, but I do recollect very clearly that I gave the information to Mr Ruddock as coming from Defence.

Senator ROBERT RAY—I do not think that is in dispute. It is how it got to the committee. You do not know. Ms Godwin suspects, I think—I am not trying to verbal her here—it came from the Defence rep but cannot say who it is. Mr McMahan, were you paying any attention?

Mr McMahan—Variously. It was interrupted constantly by mobile phones, I have to say. My belief is that it was provided by Ms Halton. I come to that conclusion for two reasons. When you talk about your mind's eye, Group Captain Walker almost invariably sat to my right at the table. I recall when I heard that information I was looking to the left and Jane Halton almost always chaired to the left, up the top. The second reason I believe that to be the case is that in the night meeting the secretary made a comment that Group Captain Walker supplied the information in the morning meeting and Group Captain Walker was slightly indignant in denying that he did.

Senator ROBERT RAY—When was he indignant about that—in the evening?

Mr McMahan—That was the evening meeting. What I am prepared to say conclusively is that it came from Defence. I have absolutely no doubt in my mind that it came from Defence.

Senator ROBERT RAY—Because if it did not we are really up against it. I would hate to be someone whose immigration case was relying on evidence that we gather here and try to cross-reference it because it is so vague.

Mr Farmer—Senator, immigration cases are decided on applications and determined in accordance with law on the basis of interviews. It is a different situation. It is totally different. And we of course are talking about incidents that occurred months and months ago on matters which were not directly the province of the department of immigration and its decision making.

Senator ROBERT RAY—No, but, as a result of your briefing of Mr Ruddock, his briefing of the Prime Minister was on the front page of every newspaper for two days. So let us not underestimate the job you did.

Mr Farmer—I was referring to a comment you made about immigration decision making, Senator.

Senator ROBERT RAY—I was making a comment on how hard and properly you pursue people as to providing accurate evidence, and quite rightly, but we have to do the same.

Senator FAULKNER—You do bear, it seems to me, Mr Farmer—I would like your view on this—a very heavy responsibility for the initial categorical claims that were made by Mr Ruddock. Is that a reasonable statement to make?

Mr Farmer—I have already said that I told Mr Ruddock what I told him on the morning and I did it on the basis of advice from Defence and he used that information. So, yes, Senator, Mr Ruddock based what he said on what I told him.

Senator ROBERT RAY—Just to follow that chain, do you now understand in hindsight that that advice was oral from the captain to a brigadier at NORCOM to Maritime Command to Strategic Command to Air Vice Marshal Titheridge to either Group Captain Walker or Ms Jane Halton and then to you? Do you understand there are that many different links in the chain of an oral message?

Mr Farmer—At the time that we are talking about, what I was acting on was information from Defence.

Senator ROBERT RAY—So you did not know it was not in writing? You did not see it in writing but you did not know at that stage that it was not in writing somewhere?

Mr Farmer—It was oral from whatever source, coming into the committee.

Senator ROBERT RAY—But do you at least now understand that it was oral advice that went through several iterations before it got to you?

Mr Farmer—I have not followed the ins and outs of all of the debate that has gone on about what has happened in Defence. I have found that extremely hard to follow, so I do not know the—

Senator ROBERT RAY—So has Defence.

CHAIR—I was here, Mr Farmer. I agree with you.

Senator ROBERT RAY—You have not followed it enough to know that even now, is what you are saying?

Mr Farmer—My view on this is really the view of the man in the street at the moment, frankly. I do not have a—

Senator FAULKNER—You are not the man in the street.

Senator ROBERT RAY—You are the department secretary. We would ask you in future when that sort of oral advice comes through just to check it a little bit.

Senator FAULKNER—Not only are you a department head, Mr Farmer, and not the man in the street; you are the person on whom Mr Ruddock relies. You accept that. It is the same information Mr Reith relies on for public statements. It is the same information the Prime Minister relies on with something that turns out to be a colossal deceit.

Senator Ellison—Can I just say something here. It has been made very clear how Mr Farmer made his statement to Mr Ruddock. It was an oral representation at that meeting. At that time he had no way of knowing whether there was beyond that advice written advice from Defence or how it got there, but all he knows is it was Defence advice. That is the sum total of Mr Farmer's evidence. That can be taken no further, because he cannot say what is in the minds of other people.

Senator FAULKNER—But what Mr Farmer can say—

CHAIR—Senator Faulkner, would you please let the minister just conclude.

Senator Ellison—So that is one issue. The other issue is: since then has Mr Farmer followed Defence and the trail of information? He has answered that and said he finds it very difficult to follow.

Senator ROBERT RAY—And says he is a man in the street. That is what Senator Faulkner is saying is not quite right.

Senator FAULKNER—I am saying he is not. He is the secretary to the department and he is here in that capacity.

CHAIR—Senators, if you just allow the minister to complete, I will return to you.

Senator Ellison—I think he used that in a way of trying to demonstrate his understanding of what the Defence account has been. I do not think Mr Farmer is saying that his role is one of a man in the street. I think Mr Farmer knows only too well that he is the secretary to the department of immigration.

Mr Farmer—That is true, Senator. I would like to say that, as Secretary of the Department of Immigration and Multicultural and Indigenous Affairs, it is not my responsibility now to form a view on the chain of events that is now coming out in the parliament.

Senator ROBERT RAY—Secretary, if you made a mistake based on that, it is your duty to learn about it. It is your duty to learn from past mistakes so that you do not repeat them. That is the point we are making. Maybe you have no doubts in your mind that all of this is still true, in which case I can desist, but if you have doubts in your own mind as to the veracity of the information you gave in good faith to Mr Ruddock you have a responsibility, as a head of a department, to go back and try to make sure it never happens again. And you have a duty to analyse what happened—not sit as a man in the street and say, ‘It’s too complex for me to follow.’

Mr Farmer—Senator, I do not need lectures on my responsibilities as the head of—

Senator ROBERT RAY—You have just got one.

Mr Farmer—Thank you. I do not need them as the head of a government department. We live in our department, day in and day out, with administering, as you know, Senator, from your own experience as a former minister, highly complex legislation and doing it in controversial and difficult circumstances. If the department makes mistakes, one of my jobs—and one that I take extremely seriously—is both saying that we have made mistakes and taking steps to rectify them. That is part of my responsibility. You will just have to forgive me if I say I do not need a lecture on that. That is part of what I do. I carry the can if things go wrong, and I am very happy to do that. In this case there is no doubt whatsoever in my mind that I conveyed information to Mr Ruddock. I do not resile from that one bit.

CHAIR—Senator Ray, do you have any further questions?

Senator ROBERT RAY—Yes, I have. We are having a dialogue rather than questions, I accept that, but I will try to get it back to questions. I acknowledge the difficulty of the job of the secretary of Immigration. I have done that on the public record many times—during the *Tampa* crisis and otherwise. I am not always praised by my colleagues for doing so, but we will get to this later. On the question of your passing on information that may prove to be untrue, it is your responsibility to chase that up, surely.

Mr Farmer—Yes, if I know about it, certainly. If I suspect it, certainly.

Senator FAULKNER—Mr Farmer, who represented your department at the second meeting of the task force of 7 October?

Mr Farmer—I was there.

Senator FAULKNER—Any other officers?

Mr Farmer—I believe so. I do not have an exact recollection, but you can ask.

Senator FAULKNER—We know that Mr McMahon was there because he gave evidence of it. Were you there, Ms Godwin?

Ms Godwin—Yes, Senator, I was there.

Senator FAULKNER—Do either you or Mr McMahon recall if anyone else was there from the department of immigration?

Ms Godwin—I do not recall anyone else being there.

Senator FAULKNER—Mr Farmer, you gave evidence about where this information emanated from in the morning meeting. We hear from Mr McMahon that Group Captain Walker is indignant about any such suggestion in the evening meeting of the task force. Can you corroborate that evidence that Mr McMahon has given about the indignance of Group Captain Walker?

Mr Farmer—No, I cannot. I do not recall that.

Mr McMahon—I think I said ‘slightly indignant’.

Senator FAULKNER—Oh, slightly indignant.

Mr Farmer—‘I do not even recall any slight indignation on anyone’s part.

Senator FAULKNER—What about you, Ms Godwin?

Ms Godwin—No, I do not recall that.

Senator ROBERT RAY—Was any mention made at that meeting that there had been no evidence provided in writing of children being thrown overboard?

Mr Farmer—My colleagues can make their own comments. I of course have seen the reference in Major General Powell’s report to Group Captain Walker’s comment that he had no evidence, I think was the phrase he used. I do not recall his saying that.

Senator FAULKNER—But one assumes he is slightly indignant, to use Mr McMahon’s terminology, because he is concerned at the suggestion that he has passed on inaccurate information. Isn’t that the reason for his slight indignance, Mr McMahon?

Mr McMahon—No, I do not believe it was. I think it was just a simple fact that he was not the person who passed on the information.

Senator FAULKNER—In other words, at this stage there is not a suggestion perhaps that such information might not be accurate. Is that the case? At the evening meeting were there any concerns expressed about the possible inaccuracy of the information that was passed on?

Mr Farmer—As far as I am aware, the high level group was never told of any doubts about the accuracy of the information.

Senator FAULKNER—One would tend, in that situation, to give even greater reliance on the Group Captain’s slight indignance, I would think.

Mr Farmer—I think we also had Air Vice Marshal Titheridge at the meeting.

Senator ROBERT RAY—They swapped over, I think. Isn’t that right?

Mr Farmer—I do not recall—

Mr McMahon—They both came.

Senator FAULKNER—Both attended?

Senator ROBERT RAY—There is some evidence, though, that Group Captain Walker left early, didn’t he?

Mr Farmer—I would have to check the report.

Senator ROBERT RAY—You do not know.

Mr Farmer—No. The report says that one or either was not there for the whole meeting, I think.

Senator ROBERT RAY—I just want to return to a question. We went off on a more philosophical debate. You said that you did not keep notes.

Mr Farmer—Yes.

Senator ROBERT RAY—We were extending that across to Ms Godwin and her colleague as to whether they kept notes, but we drifted off. Can we go back to that for the moment and ask them whether they kept notes of the meeting.

Ms Godwin—I have no notes of the meeting, Senator.

Senator ROBERT RAY—Mr McMahon?

Mr McMahon—No, I did not keep notes from that meeting.

Senator FAULKNER—At the morning meeting of the task force, did anyone question the information, or did the whole task force accept its accuracy at the time?

Mr Farmer—As I recall, it was put into the meeting and just taken note of.

Senator FAULKNER—So none of the witnesses at the table recall any doubts being expressed about it?

Mr Farmer—I am quite certain about that.

Ms Godwin—I recall nothing of that sort, Senator.

Mr McMahon—The information up to that time had been quite accurate. I do not think anyone even thought that it was inaccurate at that stage.

Senator ROBERT RAY—I think what Senator Faulkner is getting at is that the information was given. Did anyone ask any questions about that, not doubting its accuracy? How many children? Did anyone ask that? You were told children had been thrown deliberately overboard. That is a fair comment, isn't it?

Mr Farmer—It is.

Senator FAULKNER—Did anyone ask if they drowned, for example?

Mr Farmer—Not that I recall.

Senator ROBERT RAY—They must have, because no kids were picked up by the Navy. This is our dilemma. If kids were thrown overboard, they are still overboard right now today.

Mr Farmer—Yes, but of course you are talking about two different things—what was in the committee and what you are now establishing about the—

Senator ROBERT RAY—I think what Senator Faulkner and I are trying to establish is this: the information was given. Nobody doubted it. We accept that you thought it was true. But did anyone question as to details, such as how many kids? What order?

Mr Farmer—Senator, these updates were coming into the committee orally from a number of directions, and that was happening really quite a lot during Navy actions in relation to not only this boat but other boats. That was from Defence. We from Immigration were making our own inputs on the number of issues, as were representatives from other departments.

Senator FAULKNER—In your phone call to Minister Ruddock, did you talk about the appropriateness or otherwise of this information—or misinformation—that was available to the task force being made public to the media?

Mr Farmer—No, I did not.

Senator ROBERT RAY—What you did was convey information. You did not convey any suggestions as to what should be highlighted or otherwise, did you?

Mr Farmer—That is correct.

Senator FAULKNER—Did you indicate to the minister what you thought was the source of the advice?

Mr Farmer—Yes, I did. I told him that I was speaking on the basis of advice from Defence as conveyed to that high level group.

Senator FAULKNER—Just out of interest, you must have become aware that there were doubts about this. I assume you did at some point. Would that be fair? At some point after 7 October 2001 I assume that you had doubts about the original advice.

Mr Farmer—Yes, I can answer that. On 7 November I saw a press item in the *Australian*. That was drawn to my attention by Mr Ruddock's press adviser who rang asking if I had seen that press account—

Senator ROBERT RAY—Pretty early in the morning, was it?

Mr Farmer—No, it was not actually. I think it was mid or late morning on the 7th. In addition to being Secretary to the Department of Immigration and Multicultural Affairs last year I was the Secretary to the Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs. At that time, I was in my office in the other department looking through the draft record of the incoming brief for a possible Labor government on—

Senator ROBERT RAY—You obviously were not reading the opinion polls at that stage.

Mr Farmer—I was discharging the heavy responsibilities that fall to a secretary, Senator.

Senator ROBERT RAY—Yes.

Mr Farmer—In fact, I had not read through the press clippings on immigration because I had my other hat on at the time. But Mr Ingram, Mr Ruddock's press adviser, essentially said, 'Do you recall where the original advice came to Mr Ruddock from when Mr Ruddock first spoke to the press on this?' I said, 'Yes, I recall very clearly it came from me, and the basis on which I gave him the advice was'—as I have said here this morning—'information that came to the high level group from Defence.' I also said two things to Mr Ingram at the time when I looked at the article in the *Australian*. Firstly, I said, 'I've heard nothing since then that has led me to think anything other than that—no official advice whatsoever.' Secondly, in the article in the *Australian*—if I remember correctly—there was a quotation or a reference to Mr Reith's office commenting on the reports from Christmas Island and saying that the minister confirmed that the original reports were true—words to that effect.

Senator FAULKNER—So when did you become aware that there was no documentary evidence to support these claims, which is a different thing? You became aware that there might be concerns about this as a result of a newspaper article on 7 November. When did you become aware that there was no documentary evidence to support the claims?

Mr Farmer—This year. I have read Ms Bryant's report and the points it makes there. In terms of anything that came to me in the course of October and November, I never saw any suggestion—never heard a suggestion—that the original story was wrong. I would like to go on if I can. Senator Ray asked about doubts. I think it is important that I put my views here. That was what happened on 7 November. There was a question referred to me by Mr Ruddock's office. I confirmed to the office that it was I who had originally briefed Mr Ruddock and that I had heard nothing to suggest other than what I had told him. I noted that Mr Reith's office—I think it was Mr Reith's office, not Mr Reith—was confirming that story. On 8 October Mr Ruddock—

Senator FAULKNER—Do you mean October or November?

Mr Farmer—I beg your pardon, on 8 November Mr Ruddock rang me—and I think that was in the early afternoon or thereabouts—saying that he had heard on Sydney radio comments attributed to Vice Admiral Shackleton. Mr Ruddock said, in effect, Admiral Shackleton seems to be giving different advice from what I—Farmer—had given Mr Ruddock. Mr Ruddock asked me whether I had had any information from Vice Admiral Shackleton or Defence to that effect. I said no. I also told him that I would pursue that matter.

I then rang the Secretary to the Department of Defence but I was unable to make contact with him. He was in meetings. I therefore rang Mr Moore-Wilton, the Secretary to the Department of the Prime Minister and Cabinet, to say that Mr Ruddock had heard this matter on the radio. I had not heard it but I gave Mr Moore-Wilton the gist of what Mr Ruddock had understood from the radio report. I said that this was clearly a matter of concern because it was an indication from the Navy of a different account to the one that we had been given. I told Mr Moore-Wilton that I had tried to contact Dr Hawke, that I had not succeeded and I said that I believed it was very important that this matter be pursued quickly to establish the facts of the matter.

Senator ROBERT RAY—So from 7 October to 7 November no-one has drawn to you any doubts as to the children overboard claim?

Mr Farmer—That is correct.

Senator ROBERT RAY—What about the actual asylum seekers? They do not try to communicate to departmental officials, saying that they are pretty upset with this claim because it not only reflects badly on them but was used to reflect very badly on them? This does not come up in this period?

Mr Farmer—I believe that is correct. We had had a number of communications from the people on Manus, that is the people who had been transferred from the SIEV4. In that period to 7 November my recollection is certainly of hearing nothing. I have asked for a list of the bits of letters we had.

Senator ROBERT RAY—Can we be very precise here? You used the words ‘I had heard nothing’, so I accept that. But others in the department may have heard and not regarded it as necessarily vital to send it up the chain. This is what I am trying to establish.

Mr Farmer—The others can talk for themselves, but certainly I can say that nothing was brought up the chain to me. I cannot talk about communication channels in other organisations. In my department we have very well established lines of communication among the senior executive. We meet every morning; we talk to each other a lot. I would certainly expect to be told if there were doubts on a major thing affecting the portfolio. If someone at any time thought it was not a major thing for us, they might not have done things—I have no idea. I am telling you as a matter of fact that I would expect to be told, and I was not.

Senator ROBERT RAY—Can I use 11 October, because this is when this issue goes off the boil a bit. There may have been contact between you and the minister’s office in that time—we will come back to that. Let us use 11 October as a cut-off date, because I think that is fair. Through to 7 November no-one from Mr Ruddock’s staff contacts you about this issue to further tease it out?

Mr Farmer—I have just had a look at the press stuff. Mr Ruddock wrote a letter to one of the papers sometime, I believe, in October, which referred to children thrown overboard. That may well have been drafted by the department. So there would have been some—

Senator ROBERT RAY—Not in caretaker mode you would not be drafting that sort of political letter, surely.

Mr Farmer—I just do not recall. They may have asked for—

Senator ROBERT RAY—For briefing notes on it?

Mr Farmer—Yes.

Senator ROBERT RAY—That is different, I hope.

Mr Farmer—Anyway, there may have been some involvement by the department with the minister.

Senator ROBERT RAY—But they do not raise doubts; this is the whole point. No-one from Mr Ruddock's office, no-one from the Department of Defence or Mr Reith's office contacts the department in this 11 October to 7 November period?

Mr Farmer—Not that I am aware of.

Senator ROBERT RAY—And no-one from the Prime Minister's staff or the Prime Minister's Department?

Mr Farmer—That is right. Of course, the high level group was meeting during that period. That would have been an opportunity for matters like that to be aired if they were to be aired.

Senator ROBERT RAY—Was that group meeting around 7, 8 or 9 November?

Mr Metcalfe—I was normally the senior representative from the department at the high level group. In fact, I was on leave on the weekend of 7 October and the following day and then overseas for a few days. So around that time I am not able to assist you with the issue. But certainly I would have attended most, if not all, of the task force meetings through the period before that and the period subsequent to middle October. I have no recollection whatsoever of anything being said either at those meetings or in any other communication I may have had on the issue that gave me any cause to think that there was an issue associated with the veracity of the particular issue that was in the public domain.

Senator ROBERT RAY—Thanks for answering the next question I was about to ask. Now let's go back to the one I did ask. Was the committee meeting around 7, 8 or 9 November?

Mr Metcalfe—I think the answer to that is probably in a document tabled by the Prime Minister's department. According to that there was a meeting on 1, 5, 8 and 9 November. So there was not one on the 7th, but there was one on the 8th.

Senator ROBERT RAY—The reason I asked whether there was one on the 8th or 9th is that the issue was then current whether it was rediscussed at the committee or you had other agenda items that were more pressing or urgent.

Mr Metcalfe—I do not recall it having been discussed at the meeting. I cannot be categorical on whether or not in some conversation, given the report in the *Australian* on the day before, people may have said, 'There is an issue there.' By that stage I think it was clear that this was an issue in the providence of Defence as to what happened or did not happen. I am aware of the issue then becoming a live issue the following day following the phone call that Mr Farmer received about Admiral Shackleton's comments. I think I was with—

Senator ROBERT RAY—You got that on the 8th?

Mr Metcalfe—That is right.

Senator ROBERT RAY—And you were meeting on the 8th?

Mr Metcalfe—That is right.

Senator ROBERT RAY—So your meeting is preceding Mr Farmer's phone call; is that right?

Mr Metcalfe—The meetings were normally held at 3.15 in the afternoon. They could go for an indefinite period. They could go for a short or a very long period.

Senator ROBERT RAY—Let us just establish that. Which came first?

Mr Metcalfe—As I said, I believe that Mr Ruddock's call was early in the afternoon.

Senator ROBERT RAY—So we may just never know.

Mr Metcalfe—I have a recollection that I may have been with Mr Farmer when he was attempting to ring or rang Mr Moore-Wilton, or alternatively it may have been that by the time I left the meeting he was attempting to make that contact and when I got back from the meeting he had spoken to Mr Moore-Wilton.

Senator ROBERT RAY—But to cut a long story short, what I am trying to get to is whether the meeting on the 8th, in any of your recollection, discussed some of these claims or if any of your other officers who were there could assist.

Mr Metcalfe—We can ask others who may have been there, but I have no recollection of the issue being discussed on 8 November.

Senator FAULKNER—Who attended the task force on the Monday and Tuesday, 9 and 10 October, representing your department?

Mr Farmer—I think I may have, because we have two deputy secretaries. Mr Metcalfe had just come back from Indonesia and was on leave on Monday, and I asked him to go to Papua New Guinea on Tuesday. Mr Killesteyn was in Nauru, I think, on that day. I believe that I would have been at those meetings on the 8th and 9th.

Senator FAULKNER—You no doubt have read Ms Bryant's report. It is clear from what you have been saying to us. The report says:

Ms Halton also remembers that there was some media speculation about the alleged incident by Monday—

That is Monday, 8 October; I think Ms Bryant put the wrong dates in the report, and she pointed that out to us. The report continues:

and recalls that she told the Defence representative at the Monday or Tuesday meeting (meetings were held on 9 and 10 October)—

the Monday and Tuesday meeting were on the 8th and 9th—

that they had better be certain about the veracity of the initial reports and they should do some checking.

Did that not ring any alarm bells with you, Mr Farmer?

Mr Farmer—No. I do not recall further discussion of that issue at the high level group. I am not saying it did not happen, but I do not recall that; others may. But to answer your question in a different way, whatever happened I had no basis for forming doubt. I certainly did not ask myself the question: on the basis of anything I heard is there doubt about this?

Senator FAULKNER—I am surprised to hear that, given what Ms Godwin and Mr McMahon have told us about what occurs if the chair of the task force takes a telephone call. But if the chair is saying that she tells the Defence representative on Monday or Tuesday that they had better be certain about the veracity of the initial reports, I am surprised that that does not ring a few bells with you.

Mr Farmer—She may have told the Defence representative at the meeting. Whether this happened in the meeting, in the margins of the meeting, or whether it happened at a time when I was there or not there, those are all matters on which I really cannot help. I think we have already given you some indication of the nature of the meetings. They were handling a great range of issues. We were dealing not only with the SIEV4; we had major immigration related issues: for example, the potential of offshore processing facilities, Mr Metcalfe's visit to Papua New Guinea, what was happening on Nauru, work that we were doing to either think

about or develop facilities on Christmas and Cocos islands, and how we could ferry people around. The impression I am trying to give you, Senator, is that this department exists always in a challenge-rich environment, and we were rolling in riches at that time.

Senator FAULKNER—What date did the SIEV4 asylum seekers get to Manus Island?

Mr Killesteyn—The transfer of the SIEV4 asylum seekers took place over the period of 21 and 22 October, I believe.

Senator FAULKNER—Are there any reports from the asylum seekers? You have officers of your own department there. Are there any reports actually emanating from the asylum seekers about the inaccuracy of these claims that might come back in a departmental briefing?

Mr Farmer—Senator, I started answering a question from Senator Ray on that, and we moved sideways or onwards.

Senator FAULKNER—That is the nature of these things.

Mr Farmer—That is right; a bit like one of those high level meetings.

CHAIR—Mr Farmer, you wanted to add to your previous answer to Senator Ray?

Mr Farmer—The information I have—and my colleagues might want to supplement this—is that on our files we have a number of documents emanating from the people on Manus. One is on 26 October, a handwritten letter from Iraqis living on Manus talking about the situation on Manus. I believe there is nothing about children in that letter. On 26 October there is a handwritten letter from an Iraqi asylum seeker who acted as an interpreter for that group—again nothing about the children. On 29 October there is a letter from Iraqis living on Manus talking about conditions at the facility and the treatment from Australia. I believe there is nothing about children in that document.

On 6 November there is a fax from the Mandeian Association of Australia talking about the Manus facility. I believe there is nothing about children there. There is a press report on 9 November that we have. The one I have is from the *Canberra Times*. Whether it was in other papers I do not know. It talks about a document from the Mandeian Association of Australia which is quoting Iraqis on Manus saying a number of things, including references to children. The story is a bit confused, because it starts off by saying that the group of asylum seekers has admitted they tried to throw their children overboard from the vessel but only out of fear for their lives. It then says below that the words ‘attempted to throw’ had originally been translated as ‘threw’ but a Mandeian Association spokesman said a later translation showed ‘attempted’ to be correct. So on the 9th there was a press report of a fax. I believe that Mr Ruddock’s office was contacted by the media about that letter from the Mandeian Association on the basis of my inquiry.

We do not seem to have a copy of that letter in the department. As I said, that was on 9 November. Immigration officers travelled to Manus Island on Saturday the 10th, or the Sunday, and they began interviewing people there early in that following week. That formed the basis of an immigration intelligence bulletin later in November. I think it was the 23rd, if I recall.

Senator ROBERT RAY—You will follow that up after the break.

CHAIR—We will have one quick question from Senator Cooney and then we will break.

Senator COONEY—Is there any problem with making all of the material you have from the asylum seekers on the various islands available to the public? I wonder if we could do that. I am talking about not only the material relating to whether or not people were thrown

overboard and not only in respect of SIEV4 but all material that has been obtained from the people on the island. Do you have any problems with that, Minister?

Mr Farmer—I would need to check a number of issues relating to the naming of individuals. There would be privacy issues but also some sur place considerations relating to the consideration of claims by individuals for protection or refugee status, whether releasing that sort of detail would create an issue. I will take that on notice.

Senator COONEY—There is no need for me to tell you why I would want them. What I was trying to get is some picture of what sort of people these are, what their thoughts are and what we are dealing with here—not only with reference to their voyage but generally. There would be no problem with that?

Mr Farmer—I will take it on notice. I will just look at those issues.

Senator Ellison—It also may be that they do not want it made public. That would be another thing that needs to be checked, too.

CHAIR—The committee will resume in 15 minutes.

Proceedings suspended from 10.32 a.m. to 10.49 a.m.

CHAIR—The committee will reconvene. The minister has just sought some advice on progress through the portfolio—‘progress’ being a word I use advisedly. I think I can indicate to those members of the department who are here in relation to additional estimates concerning indigenous affairs that you would be safe to return to your offices until the scheduled afternoon tea break, which is at 3.30 this afternoon. That is of course not a guarantee that indigenous affairs will occur after the afternoon tea break, but it is at least an indication to you of how the day may progress.

Senator Ellison—I am obliged, Madam Chair.

CHAIR—Thank you, Minister.

Mr Farmer—I wonder if I can just carry on with part 3 of an answer to the question about the people on Manus, because we have not got to the end of the list of the things I have.

CHAIR—Thank you, Mr Farmer.

Mr Farmer—I referred to departmental officers travelling to Manus shortly after 10 or 11 November and producing a report. We also have a handwritten letter dated 25 November from Iraqis living on Manus which was passed to Mr Killesteyn, the deputy secretary. There is a reference in that letter to their claim that children were not thrown overboard. There is a handwritten letter dated 21 January from Iraqis living on Manus. That was about the conditions of their stay in Papua New Guinea. I believe there was no reference to children. The only other reference we have seen is something dated 15 January, which we believe to be a handwritten letter from Iraqis on Manus to the Leader of the Opposition. That is the full list of things I have.

Senator FAULKNER—Separate to that, Mr Farmer, do any of your immigration officers who visit Manus Island also send back departmental briefs and the like? I do not know how many, if any, officers you have permanently at Manus, but you certainly have a flow of officers through there, haven’t you?

Mr Farmer—Yes.

Mr Killesteyn—We have. It varies between one and two officers there on a permanent basis. Essentially, they are involved in logistical issues around the operation of the centre. You would be aware that the centre is managed by the International Organisation for Migration,

but we have a permanent presence there that assists the IOM in management of the centre. We are in almost daily contact with our staff there. We have what is called a logistics group meeting almost daily, and certainly over the period of October it was a daily meeting as we were working to get the centre ready. I certainly cannot recall this issue being raised by my people at any time over the October period. The first indication, at least from the asylum seekers involved, was the letter that Mr Farmer referred to that they gave to me personally.

Senator FAULKNER—This is what I am doing, Mr Killesteyn: I am trying to draw a distinction between the possibility of something being drawn to your attention by the asylum seekers—and Mr Farmer has assisted the committee by outlining that to us. I am just interested in this other question of whether your own officers might send back a status report or the like and whether any attention may have been drawn to this matter via your own officers as opposed to the asylum seekers—in other words, indirectly from the asylum seekers but directly to DIMA from your own officials.

Mr Killesteyn—I think the answer to that is broadly no. This was not an issue publicly until early November when the media started to take this issue on. I do not think the asylum seekers would have been aware that there was an issue until that time, in any event. So it was only during the period when we were there during November that the asylum seekers would have become aware that there was an issue. As a consequence of that media attention—bear in mind that the asylum seekers do have access to TV and so forth—they took the opportunity obviously with my visit as a senior official travelling to Manus to talk to them to present me with that letter that Mr Farmer referred to.

Senator ROBERT RAY—Can I be clear on which officers went there on 10 and 11 November approximately.

Mr Metcalfe—I have advice that a number of officers—I do not have precise details of how many—from our intelligence analysis section were on Manus over the period from 12 to 16 November. They produced the report that is referred to in Ms Bryant's report, *DIMA intelligence bulletin No. 52 2001*, which was published and distributed to a number of addresses on 23 November.

Senator ROBERT RAY—To a number of addressees?

Mr Metcalfe—Yes, to a number of addressees on 23 November. The intention of that visit was to basically interview the passengers to obtain information about how they came to be smuggled to Australia—the people smugglers involved, the routes used and so on and so forth. It is quite a detailed report, which is classified, which goes to those issues.

Senator ROBERT RAY—Accepting that the report is classified, was the 'children overboard' issue pursued by those officers? Was it contained in the report?

Mr Metcalfe—There is a comment in the report on page 6 that states:

Of the passengers interviewed, the majority expressed a concern that they were accused of throwing children overboard to force the Navy to pick them up. Passengers claim that children were simply held up to make the Navy aware that there were children on board and to stop the Navy firing warning shots or rounding the vessel.

The report continues:

IAS comment: This seems to be a consistent statement probably discussed by the group prior to being interviewed.

The report goes on and makes a number of other conclusions but indicates, amongst other things, that a committee of six passengers greatly influenced the other passengers allegedly prior to the meetings or communications with either IOM or DIMA. They dictated what

should and should not be said. I think that that relates largely to which people smugglers were used and the methods of transport.

Senator ROBERT RAY—And that is the only reference in that report?

Mr Metcalfe—That is the only reference in that report.

Senator ROBERT RAY—I will not ask for the report because it has some classified stuff in it and you have told us all the relevant aspects of it.

Mr Metcalfe—Yes, and that is the report that is referred to by Ms Bryant.

Senator COONEY—Did you say ‘relevant’?

Senator ROBERT RAY—In the context only of discussing children overboard. It may be relevant to other inquiries and—

CHAIR—We can come back to it, Senator Cooney. Can we just let Senator Ray complete this series of questions.

Senator COONEY—I just wanted to correct the impression that we did not want that document.

Senator ROBERT RAY—Can I withdraw that impression and say that I would have thought—and I cannot speak on behalf of the select committee—that that is the relevant information for it in the first part of its inquiry. I qualify that. Have you got immigration officers permanently on Christmas Island?

Mr Metcalfe—Not permanently on Christmas Island, no. Certainly at the time of the period around the arrival of the *Tampa* and subsequently we have had immigration officers there, quite often seconded for particular periods of time. Whether we have had a continuous presence throughout that period, I am not sure, but in the ordinary course of events we have not had immigration officers there.

Senator ROBERT RAY—Could you take on notice whether you had any immigration officers on Christmas Island between 7 October and 7 November.

Mr Metcalfe—I will take that on notice.

Senator ROBERT RAY—I do not want to ambush you here. Even a minister has referred to Navy scuttlebutt on Christmas Island in one of the press releases. There was scuttlebutt all over Christmas Island on these claims and therefore we would like to know if any of your officers can verify any of it if they were on the island at the time. We understand that they did not draw it to your attention, Mr Farmer; otherwise you would have said so. We understand that.

Mr Metcalfe—We will take that on notice, Senator.

Senator FAULKNER—Can I wind the clock back a month to the events just immediately after 7 October. We know about the two meetings at the task force, we know about your initial discussions with Minister Ruddock and we know what flows from it. I might just interpolate here, Madam Chair. Not only are you very powerful, I have to say, Mr Farmer, in relation to what Mr Ruddock, Mr Reith and the Prime Minister say, but your comments actually also lead to classified briefings from the Office of National Assessments because, as you know, they were based on ministerial statements as well. So we congratulate you for that. Can you take us through the 8th, 9th and 10th in terms of further advice to the minister on this particular issue, if there was any, and what the nature of that may have been?

Mr Farmer—Yes. Throughout the period of the engagement there would have been a variety of contacts between Mr Ruddock’s office and the high level group. This was a bit of a

phenomenon because of the way in which things were being coordinated centrally in the high level group on a number of matters. I know that Mr Ingram, Mr Ruddock's press secretary, was being briefed by Ms Halton directly. She was the central point for a lot of information from Defence and other agencies. So when the high level group was not meeting, of course things were happening. I cannot tell you what advice Ms Halton may have been—

Senator FAULKNER—I understand that. I accept that completely, but you ought to be able to say to me what advice, if any, the department provides.

Mr Farmer—Yes, I know I ought to be. But the nature of things is that those contacts would have been by telephone to the extent we were able to answer, given the information. I do not recall specific contacts myself with Mr Ingram during that period. I do not know whether any of my colleagues had such contacts. I certainly recall no contact whatsoever between me and Mr Ruddock's office or Mr Ruddock on this issue of children between my call on the morning—

Senator FAULKNER—The first call?

Mr Farmer—The first call on 7 October and the phone call that Mr Ingram made to me on 7 November that I have referred to.

Senator FAULKNER—Thank you. What I am trying to understand here is whether the minister or his office sought confirmation of your original advice in the few days after that advice was proffered. So I am seeking a response to this question: did the minister or the minister's office seek confirmation of the advice that you gave him from you or anyone else in the department in the period after the original phone call through to the 10th?

Mr Farmer—I understand the question. The answer is so far as I am aware they did not seek that between 7 October and 7 November. You will recall that there was a written brief from the high level group meeting on the evening of 7 October. I understand that a copy of that was given to Mr Ruddock and I do not know the channel for giving it to him. That referred to the incident. To my knowledge that is between 7 October and 7 November. On 7 November I had a phone call from Mr Ingram, and I have talked about that. On 8 November I had a phone call from Mr Ruddock, and I told you what I did in response to that.

Senator FAULKNER—Thanks for that. I am asking you a question here that goes to action initiated by either the minister or his office. Let me now turn my question around and ask you whether the department confirms to the minister or the minister's office—in other words, whether the department takes the initiative in terms of similar advice confirming what he had said?

Mr Farmer—I do not believe there was any advice from the department on this particular issue after 7 October until the two contacts I have spoken to you about in November.

Senator FAULKNER—On Wednesday, 10 October at 12.26 p.m. the ABC's radio program *World Today* stated, 'Immigration minister, Philip Ruddock, has not seen the pictures but says he has confirmed what he has been informed and he does not doubt its authenticity or credibility'. Then the minister said, 'I would not be misleading people with information that I receive if I thought that there were numbers of people who could contradict the account that I give. I mean, it is just not credible.' And so it goes on. That is why I asked the question. I am trying to establish what confirmation, if any, is provided by your department, be it on request of the minister or provided as a result of your own departmental initiative?

Mr Farmer—Mr Ruddock, of course, spoke to the press originally on the morning of 7 October on the basis of the oral advice from me. After that, as I believe, he saw the written advice from the high level group in effect confirming the oral advice. It may have been that

that he was referring to, but that, in my understanding, is the only material that went to Mr Ruddock between the morning of 7 October and the interview that you are talking about. I stress 'to my knowledge'. Mr Ruddock—

Senator FAULKNER—But here, Mr Farmer, you are not a man on the street. Here you have to speak for the whole department.

Mr Farmer—Yes, but the point I am making is that, as far as I can say to you, there was no further departmental advice to Mr Ruddock apart from the high level group report. But that is not to say that there was not contact between Mr Ruddock's office and other sources. I just do not know, but that is a possibility. I do not know that.

Senator FAULKNER—But we at least know he did not seek confirmation from the Department of Immigration.

Mr Farmer—That is right. For me the issue was not live, as it were, because we had had advice; it had been, in effect, confirmed in written advice to ministers. Our focus in the next three days that you are talking about was on that list of immigration related matters that I have spoken about and there was no doubt raised, in any context that I was present, about the stories. So it was just not an issue.

Senator ROBERT RAY—Minister, can you take on notice and approach Mr Ruddock—and we are not going to do this very often—to ask him where he got his confirmation on what he had been informed? We know that he did not get any further confirmation from the department.

Mr Farmer—I have already said that there is at least one bit of confirmation, and that is—

Senator ROBERT RAY—No, he may have been relying on that.

Mr Farmer—Yes, that is my point.

Senator ROBERT RAY—And he may have had others, but you cannot answer for him; only the minister can answer on this occasion.

Senator Ellison—Can I take it on notice.

Senator ROBERT RAY—We do not normally want to put down whole questions on notice as to the minister's intention, but this would take something off the table.

Senator Ellison—I will take that on notice.

Senator FAULKNER—Let's be clear here. This is the advice you are talking about. The written task force report—and we have seen most of that because Mr Howard has tabled selective parts, and that is appropriate; apparently there is some material contained in that in relation to Australia's relationship with Indonesia that has been deleted; it is not germane, I do not think, to the issue at hand—appended to Ms Halton's quite extraordinary letter were both tabled in the House of Representatives. I want to be clear that it is that task force that you are referring to.

Mr Farmer—Yes.

Senator FAULKNER—That is not further advice?

Mr Farmer—The report from the evening of 7 October.

Senator FAULKNER—That is just your advice in written form, surely.

Mr Farmer—It is not my advice; it is the advice from the—

Senator FAULKNER—It is the advice that you give orally in written form.

Senator ROBERT RAY—Can we put it this way: is there anything in that that differs from your briefing of Mr Ruddock?

Mr Farmer—No.

Senator ROBERT RAY—So, in effect, it is in written form your oral advice, albeit signed off by others?

Senator FAULKNER—The point I am making is that I do not think the task force report here can be relevant at all.

Mr Farmer—I think that, in normal parlance, you might say that you get oral advice and then that is confirmed in writing. I do not know whether we need a thesaurus here or a dictionary. I am just making the point.

Senator FAULKNER—It is the same advice, is the point you are making?

Mr Farmer—It is advice to the same effect. So it is confirmation. I do not know what was in Mr Ruddock's mind, obviously. He may also by the 10th have seen the ONA report.

Senator ROBERT RAY—We do not know whether any minister or the Prime Minister read the ONA report until 7 November. It has been a great unknown because none of them will say.

Mr Farmer—As I say, he may; I just do not know.

Senator FAULKNER—But the minister might be able to help us with that. Anyway, the ONA report is based on media statements which all emanate from you. You could have written that ONA report yourself. That is what I am saying. We can actually chop ONA out of the loop. You could take over as director of ONA as well on this basis.

Mr Farmer—It could have been a much more eloquent document if I had written it. Just to make it clear, the information did not originate with me. I was the means of its passage to Mr Ruddock. The information originated in Defence.

Senator ROBERT RAY—It gets to ONA seventh hand, in effect.

Mr Farmer—I am not—

Senator FAULKNER—Australia's leading security and strategic analysis organisation depends on media reports which come about as a result of your briefing to Mr Ruddock?

Mr Farmer—That is a question for them.

Senator FAULKNER—That is true, isn't it, Mr Farmer?

Mr Farmer—That is really a question for ONA.

Senator ROBERT RAY—I normally would not ask you this question, but seeing as the Prime Minister has quoted from the ONA report, which I found absolutely extraordinary—but I will stop editorialising that—did you read the ONA report around about 9, 10 or 11 November?

Mr Farmer—I do have a memory of reading it, yes.

Senator ROBERT RAY—Does it sound familiar? You do not have to answer that.

CHAIR—Are there any further questions in this area?

Senator ROBERT RAY—We have not raised this much. It may have absolutely nothing to do with your department. Was your department ever sent the photos?

Mr Farmer—No.

Senator ROBERT RAY—No-one made any contact with you about the photos? We are talking about 10 or 11 October through to about 7 or 8 November. No-one has raised this with you?

Mr Farmer—Obviously my colleagues can speak for themselves on this, and I invite them to do that. To my knowledge, the photos did not come to the high level group. They certainly did not come to me. I still have not seen anything purporting to be photos, apart from things in the media.

Senator ROBERT RAY—You may not want to answer this, but when you saw the photos, which you would have seen in newspapers, did you regard that as confirmation of the story or reinforcement of it?

Mr Farmer—No, that was really an issue that was being pursued by Defence.

Senator ROBERT RAY—The reason I ask that is that you have probably heard the absolute road to Damascus effect it had on PM&C: they saw the photos and ‘It is all true’, even though they had had doubts the previous day or two. For you it just sort of flowed through?

Mr Farmer—I had no basis for having doubts.

Senator ROBERT RAY—I accept that you had no doubts.

Mr Farmer—That is a statement of fact.

Senator ROBERT RAY—In terms of contact with your department—and we have been through them; we are not going to go through them again—potential contact with Mr Ruddock’s staff, Mr Reith’s staff, Mr Howard’s staff and the departments, we have heard evidence in estimates previously as to their methodology of backing up and retaining emails. Does your department have that capacity? Maybe I will get the answer to that and then the rest of the parts of the question might disappear.

Mr Killesteyn—Yes, we do have a capacity, much like most of the other answers that you have had on this question. Daily backups of emails are kept for one month, weekly backups for three months and monthly backups for 12 months.

Senator ROBERT RAY—So, in terms of this period 7 November to 10 November, would you have many of those emails retained?

Mr Killesteyn—The only qualification I would put is the same that has been given—and most organisations operate this way—that if an individual receives and deletes the email on the same day then that would have disappeared. Apart from that qualification we should be able to—

Senator ROBERT RAY—No. the question is: is it worth while for your department, given the controversy and given the upcoming select committee, to devote some minor resources just to checking that there was not contact between the minister’s staff on this subject? I do not know the magnitude of the task.

Mr Killesteyn—It is a large task. I would hesitate to guess how many emails we would receive on a daily basis.

Senator ROBERT RAY—Can I narrow the field for you. Is it an impossible use of resources to do it for 7, 8, 9, 10 and 11 October and 8 and 9 November?

Mr Killesteyn—I would prefer to take that on notice and come back to you. We would need to investigate. It will be a cost for us. It is managed by CSC, our outsourcer. It is obviously doable, but it is just how large the task is.

Senator ROBERT RAY—A lot of things are doable. We always take costs into account. It just may be that the select committee may want to do this, more particularly I would think in departments other than yours, but then it may look odd if your department has not done it.

Mr Killesteyn—If you give me the parameters, we will go away—

Senator ROBERT RAY—I think the logical parameters at this stage to make it, if you like, the cheapest option are 7 to 11 October and 7, 8 and 9 November. They are the critical days. If you miss something on the trawl through in the rest of that time, you miss it. But it may just help. You do not tape any of your phones, do you, unlike Defence?

Mr Farmer—I certainly do not.

CHAIR—Not that you are aware of, Mr Farmer.

Senator ROBERT RAY—But this is by no means illegal. Everyone knows that Maritime Command calls in and out are taped, the same as some police and emergency services are. There is nothing sinister about it.

Mr Killesteyn—We only record the source and the destination of the call, not the actual conversation that happens.

Senator FAULKNER—Did you, Mr Farmer, or anyone in your department clear the task force report that went to ministers that put in writing the same oral advice that you provided to the minister?

Mr Farmer—Just by way of background, sometimes the task force produced, in effect, draft reports which the Prime Minister's department obviously then put to the Prime Minister or others as it wished. Sometimes there were no reports from the task force, at least none that the task force members were aware of, but the Prime Minister's department may have done its own briefings. There was a report on the night of 7 October. In relation to the final product, we would never have seen those. It is a matter of quite regular practice in the Department of the Prime Minister and Cabinet that the final versions of its advices to the Prime Minister are a matter between the department and the Prime Minister. That is by way of introduction. But, generally speaking, when there were quite complex matters, as there were on 7 October, the practice would have been for the Prime Minister's department to produce in effect a draft report to the Prime Minister which would then be worked through by the task force.

Senator FAULKNER—And is that what happened on this occasion?

Mr Farmer—That is my recollection of what happened on this occasion.

Senator FAULKNER—And Ms Godwin and Mr McMahan can confirm that?

Ms Godwin—I certainly recall seeing a note that we looked at the text of in the evening of the Sunday.

Mr McMahan—Yes, I believe there were a couple of drafts to that note as the day progressed. The only comment I would make is that the term 'signed off' is figurative. No-one ever signed anything.

Senator FAULKNER—I used the terminology 'clear', but on this particular occasion there was department of immigration input and capacity to make any suggested changes.

Mr Farmer—That is right. A number of the elements dealt with in that report, the one that was tabled earlier in the week, relate to our operational issues and some policy issues like, for example, the question of doing things on Christmas Island and on Cocos Island—the question of potential alternative means of transporting the unauthorised arrivals by boat or possible alternatives to naval transport and discussion of possible alternative offshore processing sites.

So there were a number of matters there where we certainly were offering advice and, in effect, some of the phrases in the final report were inserted by Immigration.

Senator FAULKNER—Yes, but it was like a work in progress on 7 October, I assume. Is that right?

Mr Farmer—Yes, although the work in progress would have been very largely completed by the end of that day, as was normal practice.

Senator FAULKNER—But no-one thought by the end of that day to really nail down the accuracy of the original report, and as yet no-one can yet agree on who gave it to the task force.

Mr Farmer—I do not think there was any questioning of the inclusion of that reference in the document.

Senator FAULKNER—But that reference comes from the original contact to the task force. That is correct, isn't it, Mr Farmer?

Mr Farmer—I do not know the factual answer to that, but my surmise is that PM&C, in drafting a bit of paper which it would put to the Prime Minister, would have been taking into account advice received during the day. That advice certainly came to the high level group from Defence. Whether there was anyone—

Senator FAULKNER—You are not aware of any member of the task force checking the advice, are you?

Mr Farmer—It had come from the Department of Defence.

Senator FAULKNER—We assume it came from the Department of Defence. I think it is a reasonable assumption.

Mr Farmer—Yes.

Senator FAULKNER—We assume the Department of Defence was on the phone to Ms Halton, if it came via Ms Halton.

Mr Farmer—And the Department of Defence was present at both meetings, the morning and the afternoon meetings.

Senator FAULKNER—We know about the slight indignation of the group captain who was representing it at the second meeting.

Mr Farmer—Yes, I have already commented on my view of that. I do not recall that.

Senator FAULKNER—Anyway, the point is that the written advice does not contain any other or better information than the original flawed oral advice that you gave to Minister Ruddock a little earlier in the day.

Mr Farmer—I do not like my advice being referred to as flawed, because I took steps on that day at the very time, as I have already outlined, to make sure that the advice I was giving was in accordance with—

Senator ROBERT RAY—Can we say 'flawed in good faith'?

Mr Farmer—Yes. I am very happy to say I passed on in good faith advice—

Senator FAULKNER—Flawed advice.

Mr Farmer—Advice about matters that are now obviously very much in the debate that has been taking place here this week.

Senator FAULKNER—There has been a lot of public debate about this, as you are well aware, Mr Farmer. A lot of words have been spoken in this building and outside about this matter. Do you now accept that the information that was passed to Mr Ruddock by you on the morning of 7 October was wrong?

Mr Farmer—I have heard a lot of statements this week about what was and what was not the correct advice. I am not forming a commission of inquiry. I have not been asked to look into these matters. As the secretary to the department, no, I cannot give you an answer to that. What I can do is what I have done: give you the basis of the advice that I passed to Mr Ruddock and the circumstances in which I did that. I have been quite open with you. That is what I can talk about. I just do not think it is my role to utter on the matter you just asked.

Senator ROBERT RAY—That was a tough question, I think; I agree with you. Just to sum up this part, from 7 October, from the two meetings—and knock me down if I am wrong—you did not actually receive any further evidence that children were thrown overboard from any source?

Mr Farmer—I see the ONA report.

Senator ROBERT RAY—I am sorry, I had that in mind. So you saw the ONA report that may suggest—

Mr Farmer—And, secondly, I am obviously aware from the media, because it is a hot issue in the media for a while—it comes and goes—of the reference to advice, photographs et cetera and the sorts of things that the former Minister for Defence was saying. But none of that was coming to me in any official capacity.

Senator ROBERT RAY—I am just trying to establish this. We accept ONA, but I think we understand that. We can put that to one side for the moment. But nothing else comes to you as evidence that children are thrown overboard? I am not suggesting anything came in to suggest otherwise, but nothing comes in?

Mr Farmer—Nothing that I can recall nor, indeed, on the other side of the coin, nothing—and I have talked about the Admiral Shackleton matter—that led me to think, ‘Was that advice correct or not?’

Mr Metcalfe—Can I just make a response in relation to that issue. Following the establishment of the inquiry, which was occasioned by the letter from the Prime Minister to Mr Moore-Wilton, Mr Moore-Wilton wrote to the secretary asking for documentary and other evidence that the department may hold in relation to SIEV4. Mr Farmer asked me to investigate that matter and I replied to Ms Bryant—I do not have the letter immediately at hand—subsequently advising her what written material we had. After checking the obvious areas in the department, the only material that I could find were some communications that had come to us, I understand not directly but via Coastwatch, of some of the transmissions between HMAS *Adelaide* and the addressees in the Department of Defence and including Coastwatch, I think. That material was not made available when it was received to the secretary or to any other senior officer. It was held within the intelligence analysis section of the department.

The reason that it was requested, so I am told, is that in discussions that we were having with UNHCR about the handling of SIEV4 there were issues as to precisely where did the incident occur. So we were attempting to get the best information we could—was it in the contiguous zone, was it in the territorial sea, those sorts of issues. It was for that reason that the head of our Refugee and Humanitarian Division, Ms Bedlington, asked the intelligence section whether they could get that information. So we did hold in the department some of the communications from the HMAS *Adelaide* to addressees back in Australia which did go to

the issue that has been canvassed in earlier hearings of the committee as to what was happening at that time. To ensure that the committee has a complete record of what we had and what we did not have, there was a holding of some of the Defence material, and it was held at a relatively junior level in the department. The issue of children overboard was not the live issue there. It was the issue of where were the events taking place in terms of international obligations and protection of refugees.

Senator ROBERT RAY—This information was given to you by Coastwatch, not Defence?

Mr Metcalfe—My understanding is that it was informally provided to us by Coastwatch. An officer rang up someone they knew in Coastwatch and said, ‘We’re trying to find this out. Have you got any information?’ and these things were provided to us. I made that clear in my letter to Ms Bryant, which presumably is part of her records of her inquiry.

Senator ROBERT RAY—What do you think Mr Hawke’s reaction is going to be to have Coastwatch passing on Defence messages?

Mr Metcalfe—There are routine exchanges of information between the intelligence analysis areas of Immigration, Coastwatch and elsewhere in relation to pertinent issues.

Senator ROBERT RAY—Hold on, I am not saying that what was done was wrong; I am wondering what the third party thinks about having their communications passed on by the second party to you.

Mr Metcalfe—You would have to ask them.

Senator ROBERT RAY—I am sure it is monitored right now. I think it would be going down the chain of command as we speak.

Senator FAULKNER—You hope!

Senator ROBERT RAY—I would hate to tell you what an F111 can do from 22,000 feet.

CHAIR—Thank you for sharing, Senator Ray.

Mr Metcalfe—These were operational reports that went to incidents, and those incidents and those reports are all well in the public domain now.

Senator ROBERT RAY—But any committee chasing this material would be better going to Defence and Coastwatch rather than to you for it.

Mr Metcalfe—I included it in my response to Ms Bryant to make absolutely sure that she had possession of the material that we had and, I suppose, to ensure that she had possession of that communication—full stop.

Senator ROBERT RAY—You are commended for your diligence. The report, as you may have seen, failed to go into a number of areas, quite strangely. During the whole of this operation from 7 through to 10 November did you seek any advice from PM&C as to the boundaries as to where you could go and the decisions you could make in terms of the caretaker convention?

Mr Farmer—Just in relation to this issue, do you mean, or more generally?

Senator ROBERT RAY—The committee is meeting and making decisions and recommendations. The caretaker convention, by the way, does not say that nothing happens while there is an election on et cetera. However, given the scope of the committee, I am just wondering whether you sought advice as to where the boundaries were.

Mr Farmer—In a general sense the Department of the Prime Minister and Cabinet makes the caretaker conventions known to departments and agencies as soon as the election is called.

So in a general sense everyone at the meetings would have been well aware of the caretaker conventions. That is general background. In relation to your specific point about actions during the caretaker period, I do not specifically recall that issue being addressed, but I would be rather surprised if it had not been just in the nature of things because some of the matters—for example, the offshore processing matters—were new. Some of those, for example, would have been initiated before the election was called. So there could well have been a question of the sort: is this a continuation of policy or a new policy? I am actually not obfuscating; I am trying to be helpful. I think that that sort of question might well have been asked. I do not recall right at this minute in relation to any particular question whether it was.

Senator ROBERT RAY—The only difficulty is that the IDC, as far as I can understand it, is drawn from people from PM&C, who would not normally be in the area to give advice on caretaker conventions. They seem to be social policy people rather than the machinery government side of PM&C. I am just wondering if any approach was made to them. As often happens, departments do ring that section and say, ‘Can we do this?’ et cetera.

Mr Farmer—I would be surprised if it had not happened.

Mr Metcalfe—Senator, I recall at least one situation where it certainly did occur, and that was in relation to the establishment of the memorandum of understanding with Papua New Guinea. Essentially, as I indicated earlier, I had been on leave on Sunday, the 7th and Monday, the 8th, and indeed was intending to be on leave following that, but on the Monday night Mr Farmer rang me and asked me to go to New Guinea the following morning to conclude discussions with the government of PNG in relation to that MOU. The immediate question I had was ‘caretaker period’. I understand that the actual agreement had been reached earlier that morning before the caretaker provisions came into effect at noon on Monday, the 8th.

In relation to the issue of the ultimate MOU, which I think was signed on the Friday of that week by High Commissioner Warner and the PNG foreign minister, I do recall that in discussions back from Port Moresby with the Department of the Prime Minister and Cabinet we again sought confidence on that issue and we were provided with confidence. It is all third hand, but my recollection was that there may have been a view taken that there needed to be consultation and that consultation did occur with the opposition.

Senator ROBERT RAY—Yes, that is the usual practice. Could you tell us when you are next on leave so we can prepare for a crisis?

Mr Metcalfe—I was planning to be on leave today, Senator.

Mr Farmer—The answer is never.

Senator FAULKNER—Coming back to a question that was asked some time ago, could we be assured in relation to the task force’s deliberations between 8 October and 10 November that media lines were not being prepared at the task force?

Mr Farmer—I cannot give you that assurance. We have already said that on 7 October I was talking to Mr Ruddock quite openly in the context of my knowledge that he was talking to the media. As I have outlined, I was talking in the high level group, making steps to ensure that what I was saying to Mr Ruddock was accurate.

Senator FAULKNER—But I am talking specifically here about the preparation of media lines for the minister, because this is an issue of significance in relation to the caretaker conventions. You would agree with that, wouldn’t you, Mr Farmer?

Mr Farmer—Yes.

Senator FAULKNER—You would agree that if media lines were being prepared by the department or by a government task force for a government minister that would be a blatant breach of the caretaker convention?

Mr Farmer—That is during the caretaker convention period.

Senator FAULKNER—Yes.

Mr Farmer—But not before.

Senator FAULKNER—Of course not before. Even I would not suggest that, Mr Farmer.

Senator ROBERT RAY—We would all be doing time if it were.

Mr Farmer—I would like Mr Metcalfe to talk. I would just like to make the second point that provision of factual information about things that are of relevance to the minister's portfolio is I think quite appropriate.

Mr Metcalfe—I was just going to make essentially the same point. During that period, from 7 October through to the end of the caretaker period, of course a lot was happening. We had a number of other boats arrive. There was a whole range of operational issues occurring. It certainly was my practice, and I am sure the practice of others, to inform the minister's office of operational developments and, where necessary, to seek agreement to particular activities. We are well aware of the caretaker convention and we were not preparing media lines or talking points. We would provide factual information. What was then done with it was an issue for the minister's office and the minister.

Senator FAULKNER—Thank you, Mr Metcalfe, because that answer does give the issue some clarity. That is really what I was seeking from you, Mr Farmer, just an assurance that such activity was not taking place, but I have received that from Mr Metcalfe and I am satisfied with it. There was a report in the *Australian* of 11 October that said:

... government officials were meeting the UNHCR in Canberra yesterday afternoon after it asked for an explanation of the Coalition's claim that children had been thrown overboard.

This may not be a matter that your department was involved in—it would seem more likely that DFAT would be the lead agency, at least—but I was just going to ask you whether there was any DIMA involvement in that meeting.

Mr Farmer—Mr Metcalfe is just checking. I would think so, but can we perhaps come back to that when he has had a chance to check?

Senator FAULKNER—Yes, by all means.

Senator ROBERT RAY—Did anyone from DIMA get a Public Service Medal for meritorious behaviour during these series of incidents?

Mr Farmer—Mr Peter Vardos was awarded the Public Service Medal in the Australia Day honours list, but not for action connected with this.

Senator ROBERT RAY—I knew he had, but I did not think it was connected to this.

Mr Metcalfe—In response to the earlier question about the meeting with the UNHCR, I cannot immediately give an answer. We will take it formally on notice. I was not here, but it certainly would have been my expectation that if there was a meeting with the UNHCR then the department would have been involved in that. Most likely it would be a senior representative of the Refugee and Humanitarian Division. It is quite possible that DFAT was also involved in such a meeting.

Senator ROBERT RAY—Because there are follow-up questions, could I ask you to reconsider taking that on notice and try to seek out an answer over the lunch break or have

someone else follow it up? Then it may be possible for Senator Faulkner or someone else to pursue it after the lunch break, because there are consequential questions. The question was not seeking just one piece of information. If you could do that, we would be grateful.

Mr Metcalfe—We will do our best.

Senator FAULKNER—I would be interested to hear—you could perhaps flag—the response that was provided to UNHCR and the basis for it. That would be, I think, of interest to the committee. Could I fast-forward you now to 8 November, Mr Farmer. We had begun to look at the contact you had on this issue after it, if you like, comes back into view. You were mentioning that you had had a discussion with Mr Moore-Wilton. I wonder if you could share with the committee the context of that and the outcome of it.

Mr Farmer—I think I referred earlier on to the general point I made to Mr Moore-Wilton, namely, that I had heard from Mr Ruddock of radio accounts of comments by Vice Admiral Shackleton that obviously for Mr Ruddock and for me were of concern, because at least the radio accounts were suggesting that certain advice had not gone from the Navy. I told Mr Moore-Wilton that, on hearing this from Mr Ruddock, I had contacted the Secretary to the Department of Defence, Dr Hawke, who was unavailable—he was in meetings—and that I was therefore ringing Mr Moore-Wilton because, firstly, I wanted to make sure that he had heard of this. I told him that my minister had contacted me and that I believed it was very important that steps be taken to establish whatever the facts of this were. It had only been a radio account that Mr Ruddock had heard and it seemed, as I said, to differ from the advice that I was aware of from that meeting on 7 October.

Senator FAULKNER—You unsuccessfully attempt to contact Dr Hawke and, because of his unavailability, you go to the Secretary to the Department of the Prime Minister and Cabinet.

Mr Farmer—Yes.

Senator FAULKNER—So what is the nature of that discussion with Mr Moore-Wilton—just drawing it to his attention only?

Mr Farmer—No. I said that I thought that steps should be taken quickly to establish just what the facts of the matter were because of the radio account of comments by Vice Admiral Shackleton.

Senator FAULKNER—Does he agree with that?

Mr Farmer—Yes. Mr Moore-Wilton said he had just recently been telephoned by Mr Ruddock's chief of staff, making exactly the same point to him, and he said that he would follow the matter up.

Senator FAULKNER—And do you take any further action, given that you said I think earlier today that it should be pursued quickly and you have just told us steps should be taken quickly?

Mr Farmer—Yes.

Senator FAULKNER—So you do identify the urgency of this?

Mr Farmer—And indeed Mr Ruddock had, too. I took steps very quickly. As I said, it was during the afternoon of the 8th. I am sorry, I just do not recall the time. After my conversation with Mr Moore-Wilton I made contact with Mr Ruddock. I do not recall now whether I rang him directly or spoke to a staff member, but certainly I provided advice which in one way or other would have gone to Mr Ruddock to say that I had contacted Mr Moore-Wilton, who was following the matter up. And I said that I would get back to Mr Ruddock when I heard the

outcome. Then later that afternoon I had a phone call from the Department of the Prime Minister and Cabinet—it was not from Mr Moore-Wilton; it was from someone else—advising me that that matter had been raised with the Department of Defence and that a departmental press release had gone out from the Department of Defence. I obtained a copy of that and immediately rang Mr Ruddock about it and gave him the text. Again, whether I rang Mr Ruddock direct or one of his staff members, I am not sure, but I made sure that the text of the Defence media release was conveyed to Mr Ruddock.

Senator FAULKNER—You do not remember which officer of PM&C contacted you?

Mr Farmer—I believe it was Ms Halton, but I am not 100 per cent sure of that.

Senator FAULKNER—So Ms Halton contacts you?

Mr Farmer—Well—

Senator FAULKNER—Well, you think it is Ms Halton?

Mr Farmer—I believe so, but—

Senator FAULKNER—I would jump to that conclusion myself, I suppose. I do not like jumping to conclusions, like you. So you think it was her, but you are not willing to say definitively that it was her?

Mr Farmer—Will does not enter into it. I am just being straight with you. I think it was—

Senator FAULKNER—I expect you to be, and I appreciate that you are. This, I can tell you, from a couple of senators sitting on this side of the table, is pretty important. I think you can appreciate what is going on in a broader political context. It may not be a matter that you would lose sleep over, but you can appreciate the significance of it, given the period of the election campaign that we are speaking about. This is two days before an election. This issue is in the process of exploding in the last couple of days of an election campaign. You are aware of that, too. You may not care about it, but you would have been aware of it.

Mr Farmer—Yes, indeed. I am sorry, I just really do not understand the force of the point you are making.

Senator FAULKNER—I am merely saying to you that I am very interested in which officer contacts you, and I thought you may have a firm recollection, given the nature of the public debate at what I see as a very sensitive time. It may not be sensitive to you as an officer of the Australian Public Service, but it was a pretty sensitive time a couple of days out from an election.

Mr Farmer—Yes, but on the other hand, Senator, this was information being conveyed to me about a press release which had gone out.

Senator FAULKNER—What was the press release?

Mr Farmer—This was the Department of Defence media release of 8 November—

Senator FAULKNER—It is not Vice Admiral Shackleton's?

Mr Farmer—It is Vice Admiral Shackleton's media release. And you have got a copy of that, I assume.

Senator FAULKNER—I do not carry it around with me. I have seen it.

Mr Farmer—I have got a copy here if you want a copy. It is departmental press release 454/01 from the Department of Defence.

Senator FAULKNER—So that is provided to you by an officer of the Department of the Prime Minister and Cabinet.

Mr Farmer—They told me about—

Senator FAULKNER—You did not get a copy of it; they told you about it?

Mr Farmer—That is right.

Senator FAULKNER—So when do you get a copy of it? You have got it now, but when did you actually get it on the day?

Mr Farmer—I think that, if I recall correctly, the officer from Prime Minister and Cabinet read out to me the text of the press release. It is only three sentences.

Senator FAULKNER—You cannot remember this officer's name?

Mr Farmer—I am saying to you that I think it was Ms Halton, but I am not 100 per cent confident in that.

Senator ROBERT RAY—Are calls logged in and out to you? Do you have a logging system that lists who rings in and who rings out? Your PA might have recorded that.

Mr Farmer—I have a very small office, Senator, and quite often I answer the phone myself.

Senator ROBERT RAY—Can you remember whether you took the call on your mobile or the office phone?

Mr Farmer—I think I was at the office.

Mr Metcalfe—My impression, Senator, was that—

Senator ROBERT RAY—It is just that not many people forget a call from Ms Halton.

Mr Farmer—I get lots of calls from lots of people. I am not easily impressionable.

Senator ROBERT RAY—Or intimidated, I would say.

Mr Farmer—That is right.

Mr Metcalfe—My impression—I was back at the department at that stage, having been at a meeting at the Prime Minister's department earlier that afternoon—is that it was late afternoon. As I said earlier, I do not recall the issue being discussed in that meeting, but I think I may have been with Mr Farmer when the call came in from whomever that Vice Admiral Shackleton had issued a clarifying statement, and I think Mr Farmer then rang the minister's office to advise him of that statement. For us I think that was the end of the issue. The statement had been made that appeared to clear up the issue that had been running.

Senator ROBERT RAY—If there is any way you could find out who rang you, by checking a record—I understand you may have answered the phone yourself—

Mr Farmer—Yes.

Senator ROBERT RAY—We need to track down not so much what is happening in the department of immigration but what is happening in the Department of the Prime Minister and Cabinet, because there is a lot of claim and counterclaim. We are just trying to track through who questioned it when.

Mr Farmer—The only other thing I would say is: I do not have a system for logging calls. I am not sure that I can actually help you further on that, beyond what I have said.

Mr Metcalfe—The practice of Mr Farmer and the other officers in the executive area is that they, like many people, use those little sticky things and if a call comes in then usually a message is taken and when the call is returned or the message passed on the bit of paper is thrown away. I do not think it is the practice in the executive area for our assistants to log

every call that comes in. On the issue of who rang Mr Farmer and the issue of telephone records, we can check our PABX to see whether it records the originating phone number.

Senator ROBERT RAY—That is what I was asking.

Mr Metcalfe—Ms Halton's number is well known—6271 5204.

CHAIR—It certainly is now, Mr Metcalfe!

Senator FAULKNER—I think you will find it has changed. You have given the pre Australian Public Service Medal number

Mr Metcalfe—It is now Mr Whalan's phone number. You could well ask the Department of the Prime Minister and Cabinet as to their outgoing call records.

Senator COONEY—As far as this call goes, you are not going to give us an absolute assurance, but your impression seems to be that it was Ms Halton. Is that right?

Mr Farmer—That is correct.

Senator COONEY—Just bear with me here. Is that a general impression or a fairly firm impression or a strong impression? Could I just ask you to quantify the weight you would give to that impression.

Mr Farmer—My wife is an Anglican priest and she, as the theologian, is used to making these fine, discriminating judgments along the spectrum. I am 'Farmer'. I am agricultural. I am pretty simple in these matters. I am saying to you—and I do not say it lightly—that my recollection is that it was Ms Halton, but it is a recollection. It is not a firm—

Senator COONEY—You made an observation there about theologians and things like that, and I understand that, but if it is as important as this committee thinks it is then there is some significance in the sort of weight that you would give to your memory about this. If you say to the committee, 'I've got a general impression but I would not expect you as a committee to rely on it,' that is one thing. If on the other hand you say, 'This is my strong impression,' then this committee can make use of it. When you make a sort of a joke about the matter, it seems to me that you are making a joke about a matter which has some significance insofar as the weight you are prepared to give that. If you think, 'Oh, well, I'm just saying I've got this impression, you can work out whatever you want,' that is it, but court cases have been decided on the weight given to an impression. That is all I am asking.

Mr Farmer—And I would be careful in a court, as I am careful in this committee, to respond to questions to the best of my ability. When I know absolutely I will say absolutely. When I do not know I will say that I do not know. If I do not recollect, then I will say that. And, if I do recollect, I will try to be helpful.

Senator COONEY—But do you see that in those three alternatives you give you exclude lots of other alternatives?

Mr Farmer—Of course.

Senator COONEY—I could say, 'I had a phone call from the family. I think it was my son, but I'm not too sure.' I could say, 'If it wasn't my son I would be most surprised. I am not swearing that view beyond a reasonable doubt, but on the probabilities I am.' You have heard of those concepts. I thought it was a reasonable sort of question, but if you would prefer to reject it and say it is not a worthy question, then do so. But I would have thought the concepts I am dealing with are quite common and should be common to somebody who is the secretary of a department. I am simply asking: what weight would you give to your recollection?

Mr Farmer—I give a lot of weight to my recollections. All I am saying to you is I have a recollection that it was Ms Halton, but I am not certain of that. I just invite you to think of my position on that afternoon. I was essentially being telephoned by someone, certainly from the Prime Minister's department, who was conveying to me the text of something that was already in the public domain. This is not one of those life-defining moments. It was something that was in the public domain and I was being informed.

Senator FAULKNER—It might have been life and death for a few members of parliament, actually, Mr Farmer. It is easy for you to say—

Mr Farmer—Senator, I am not making a comment on the importance of the material. I am making a comment on the nature of the material, namely, that it was in the public domain and someone was advising me of something that was in the public domain.

Senator COONEY—Can I put it this way. When Senator Faulkner and others come to write their report after the inquiry, they will be writing away and may say, 'We have got to this issue of who this phone call was from. This is a very important issue. We now rely on the evidence of Mr Farmer, which was that he thinks it was Ms Halton but he is not sure.' Would you then come out and say, 'Look, I said that, but you have given that statement too much weight'? Would you do that, if they wrote a report in which they said, 'Mr Farmer said this'? Would you be inclined to come out and say, 'Of course I said that, but I did not give a great deal of weight and I think that you, as people reporting on this, have given that more weight than I would'?

Mr Farmer—I am just trying to be as helpful as I can.

Senator FAULKNER—Does the statement that was read to you include the words from Vice Admiral Shackleton, 'I confirm the minister was advised that Defence believed that children had been thrown overboard'?

Mr Farmer—Yes, that is the one.

Senator FAULKNER—Is that the release we are speaking of?

Mr Farmer—That is right.

Senator FAULKNER—Can you explain to me, then, how this release satisfies your concerns or clarifies any doubts you might have?

Mr Farmer—Those words *ipsissima verba* that you have read out in effect contain a confirmation rather than contradiction.

Senator ROBERT RAY—Earlier he says no children were thrown overboard. Later he says he just confirms that Defence advice had been to that effect. It does not actually contradict his previous statement.

Senator FAULKNER—How does this clarify the doubts? That is what my question is to you.

Mr Farmer—Speaking today is rather different from speaking on 8 November.

Senator ROBERT RAY—True.

Mr Farmer—Can I just invite you to what I said earlier. Mr Ruddock had heard a radio account of comments by Admiral Shackleton. He had rung me. I had rung Dr Hawke and then Mr Moore-Wilton, saying, 'The radio reports are of concern because they seem to be suggesting that different advice was offered or that some advice was not offered by the Navy.' Later that afternoon Vice Admiral Shackleton put out a release quoting an AAP report and saying that that was inaccurate. He said his comments in no way contradicted the minister and

he confirmed that the minister was advised that Defence believed children had been thrown overboard.

Senator ROBERT RAY—He did not retract his own views as to no children being thrown overboard.

Mr Farmer—As far as I am aware, neither Mr Ruddock nor I had been spoken to by Vice Admiral Shackleton or heard anything other than a radio report.

Senator ROBERT RAY—We understand you were not one of the groups that counselled Vice Admiral Shackleton over his first comment. We at least accept that.

Mr Farmer—Sorry, I do not understand that comment, Senator.

Senator ROBERT RAY—There is clear evidence he was counselled after his first comment. Pretty much induced, he put out a qualifying one. There is no question of that.

Mr Farmer—Not in my ken.

Senator ROBERT RAY—Absolutely not. I agree.

Senator FAULKNER—This statement says:

I confirm the minister was advised that Defence believed that children had been thrown overboard.

I cannot understand—and I would like you to explain to me—how on earth that clarifies your doubts. What about the doubts about the original claims and the doubts about the photos? How does that solve the issue for you?

Mr Farmer—Senator, this was not a matter for the department of immigration; it was essentially a Defence matter. The suggestion earlier in that day, and more particularly a suggestion purporting to be something said by Vice Admiral Shackleton, was of concern to Mr Ruddock and to me because it suggested that the advice on 7 October was not accurate.

Senator FAULKNER—Well—

Mr Farmer—I am just explaining how I treated this. Here is Admiral Shackleton, in a Department of Defence media release—it is not something that is done orally; it is in writing—saying:

I confirm the minister was advised that Defence believed that children had been thrown overboard—
full stop.

Senator ROBERT RAY—And that refers basically to the advice given on 7 October. What you are indicating to us is you cannot decode the qualifying statement, which is quite possible.

Mr Farmer—And what I am saying to you is that I read that and thought, ‘Well, there it is, Defence is saying that it has advised the minister it believed that children had been thrown overboard.’

Senator ROBERT RAY—It is the case of the dog that did not bark, though. He does not in that statement retract his earlier statement that no children were thrown overboard.

Mr Farmer—But he—

Senator ROBERT RAY—He does not, actually. That is the point. What he does is say, ‘At some previous time Defence gave the minister advice that they believed children had been thrown overboard.’

Senator FAULKNER—If we are going to be really fair to the Vice Admiral here, what happens is he says at a door stop on HMAS *Adelaide* about our advice being that Defence

advice was there were people being threatened to be thrown in the water et cetera. That is what he said. Then he receives a phone call from the Minister for Defence's office, and you say he puts out a clarifying statement. Anyway, we have heard from the Vice Admiral on this.

Mr Farmer—Do you have a copy—

Senator FAULKNER—It is imprinted on my mind, I can assure you, Mr Farmer.

Mr Farmer—But it is not just me saying that he put it out.

Senator FAULKNER—Are you aware, like I am, of what the Vice Admiral says earlier on the day at HMAS *Adelaide*? That is also imprinted on my mind, I can tell you. So I do not need the statement—

Senator ROBERT RAY—But you have got that from Mr Ruddock, haven't you?

Mr Farmer—Mr Ruddock heard the radio—

Senator ROBERT RAY—And told you?

Mr Farmer—Yes.

Senator ROBERT RAY—So you have not actually read it or seen it?

Mr Farmer—I have not seen it at all. The point I am making essentially is: Mr Ruddock heard it. He immediately rang me. Mr Ruddock spoke to me. I immediately took steps to say, in effect, 'What is this about?' It is not an immigration related matter—

Senator ROBERT RAY—Except if the minister for immigration has misled the public on advice from your department. It then remains very much an immigration matter, that part of it.

Mr Farmer—Yes. I do not duck the responsibilities I do have at all. Advice to my minister is at the core of my professional responsibilities. If at any stage I had given advice to the minister which I subsequently learned to be wrong, then on this or any other matter, regardless of the consequences, I would tell him. I have already told you what I did on 7 November. I told his press secretary I had told him things on 7 October and I had no contradictory advice. I had no reason to change that. On 8 November this was something that for me I believed I must follow up quickly, and I did. In terms of my responsibilities to the minister, I accept that absolutely.

Senator ROBERT RAY—I am just trying to understand. Having followed it up as far as you did, having then read—drawn to your attention by Ms Halton or someone else—Admiral Shackleton's counselled reissued statement, that was enough to settle in your own mind that you did not have to pursue the matter further at that stage. Is that a fair summary?

Mr Farmer—Of course the reference to 'counselled' and 'reissued statement', I do not—

Senator ROBERT RAY—You have been around long enough. You are such an experienced officer I thought you might have just understood what may have happened to Admiral Shackleton that day.

Senator Ellison—Madam Chair, this is beyond this official's knowledge.

CHAIR—I do not know that this officer is in a position to respond to that question. In fact, Senator Ray and Senator Faulkner, I was going to seek some guidance about how the committee might proceed. There are obviously other members who have questions in this area and other areas under 'general'. Is it possible for either of you to give me some indication of how much longer you think you might be?

Senator FAULKNER—I know it is pressing, Madam Chair, and I am sensitive to that. I am also aware that there are other forums. So at this stage, to stop the black looks coming from my—

CHAIR—Not from me, Senator.

Senator FAULKNER—No, from my own colleagues.

CHAIR—I cannot do anything about that.

Senator FAULKNER—No, and they do not really mean it.

Senator ROBERT RAY—We are about to declare the innings closed, in other words.

Senator FAULKNER—I would like to come back at some point, preferably quickly, to the UNHCR. But my colleagues perhaps can progress that.

Mr Metcalfe—Senator, we are checking to the best of our ability. The officer who I think may have been at that meeting is actually in Port Hedland today.

Senator FAULKNER—I think in that circumstance, Mr Metcalfe, could you take on notice my question—I think there were about three elements of it—in that form? I did not quite put it in a precise question on notice form, but I am sure you will be able to decipher that, and that gives my colleagues free rein.

Mr Metcalfe—I will read the transcript, Senator. If we have any doubts at all, we will contact you directly to make sure that we are on course.

Senator FAULKNER—I appreciate that.

Senator COONEY—You were in the islands talking to the people who had been located there, off the ships. When was that? You told us before.

Mr Killesteyn—I have been to Manus Island and spoken to the residents on three occasions. The first was at the end of October. In fact, I can give you the dates—30 October to 1 November. The second time I was on Manus was from 25 to 27 November. I have just come back about two or three weeks ago from another visit to Manus.

Senator COONEY—And you say there was television on the island and the people who are held there knew of the accusations made against them about throwing children in the water?

Mr Killesteyn—At the time of the first visit, no.

Senator COONEY—So on the first occasion you went there, from 30 October to 1 November, the people on Manus Island did not know of the accusations made against them?

Mr Killesteyn—There was no mention to me at all of their concern about that issue.

Senator COONEY—That is not what I am asking you. Are you able to say whether they knew or otherwise of the accusations made against them?

Mr Killesteyn—I cannot tell you what they actually did or did not know, Senator.

Senator COONEY—So we do not know whether on 30 October to 1 November they knew about that. When was the first complaint made about the way they were treated?

Mr Killesteyn—About the way they were treated in relation to—

Senator COONEY—The way the media had treated them.

Mr Killesteyn—Can I defer to my secretary?

Mr Farmer—The list of documents I read out earlier contained a reference to 26 October from Iraqis living on Manus. I cannot say offhand whether there was anything before that in any other form.

Senator COONEY—Anyhow, on 26 October there was a reference in a document from Manus that they were querying the issue of whether or not they had been thrown overboard?

Mr Killesteyn—No. The first reference to that issue by the asylum seekers in any written material to the government was contained in their letter of 25 November, which they gave to me personally.

Senator COONEY—Was there any oral reference prior to that that you know of?

Mr Metcalfe—Yes, there was—the interviews that took place with some of our officers between 12 and 16 November.

Mr Farmer—And just before that, Senator—you will recall in the list of documents I mentioned earlier that the first reference of which I am aware is in the press report of 9 November, which quotes a fax being sent by Iraqis on Manus to the Mandaean Association of Australia. That refers to the question of throwing or threatening to throw children overboard. If it would be helpful, I have the press report. I do not necessarily attach importance to every press report but—

CHAIR—What a very good policy to adopt, Mr Farmer.

Senator COONEY—But, in any event, by 25 November there was written material saying that they had been falsely accused.

Mr Killesteyn—I am not sure it was in those terms of ‘falsely accused’, but they had heard of the reports and they referred to those reports in the letter and, in a sense, refuted the reports.

Senator COONEY—On 12 and 16 November there was an oral reference.

Mr Metcalfe—There are indications in debriefings of the passengers by our officers—and I must stress that not all 219 passengers were interviewed, but around 36 passengers were interviewed—that oral comments were made expressing a concern that they had been accused of throwing children overboard and they had attempted to provide some explanation in their view as to why they had held up children. That oral material was translated into a written intelligence report published on 23 November.

Mr Killesteyn—Senator, the timing is consistent, because it would have been about that time that the issue would have been running in the media. At that time, the asylum seekers would have become aware of it through their access to television and so forth.

Senator COONEY—At any stage did any of them ever admit that they were throwing their children overboard in the circumstances in which that was put to the public on 7 and 8 October?

Mr Killesteyn—In the two areas that we have just referred to, both the interviews of the intelligence officers and in the letter that they gave to me, they had not indicated that they did throw. They were refuting the allegations.

Senator COONEY—Yes, so they were at all times refuting the allegations?

Mr Killesteyn—They were at all times consistent in that regard.

Mr Farmer—If I can add, in relation to the press report on the 9th, you will see that there is some confusion there about what is referred to as a mistranslation of the facts. The first translation evidently said that they said that they had thrown children, but that seems to have

been corrected in a later translation to say ‘attempted to throw’. I cannot comment on this issue because we were not involved in this. Certainly in that report you will see some conflicting matters.

Senator COONEY—I want to ask about that, because I was getting to the non-involvement. I go back to the report by Jennifer Bryant. On page iii it states:

Following receipt of advice by the Taskforce in a morning meeting, the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs passed the information by telephone to Mr Ruddock. Mr Ruddock made the information public shortly afterwards. In total, only around four hours elapsed between the commencement of boarding and reports being made public in the media.

That is a very rapid time. You might want to deny this, but did the making of them public have the consequence of bringing opprobrium on the asylum seekers, or do you not know?

Mr Farmer—Senator, that is really a matter for others rather than me. I do not make judgments on that sort of issue.

Senator COONEY—It is not a matter for you, as you are saying, as secretary of this department that the public would draw adverse inferences against a group of people identified variously as Afghanistans and Iraqis.

Mr Farmer—Senator, you are really asking me to make a comment on a matter that was an electoral issue, and I do not believe that is appropriate.

Senator COONEY—I want to follow this up. I know what you are going to say, Senator Ellison, but hear me through. So you say that this is not a matter for Immigration?

Mr Farmer—I do not believe it is a matter for public servants to comment on.

Senator COONEY—No, but you—

Senator Ellison—Immigration policy or the immigration department?

Senator COONEY—For the immigration department. No, not the immigration department but Mr Farmer’s department. It is not a matter of consequence for his department that a group of Iraqis and/or Afghanistan people should be brought into opprobrium. That is not a matter for his department. If you are willing to say that, I am happy to accept it.

Mr Farmer—You are really speaking in terms of a political discussion.

Senator COONEY—No, I am not. I am asking about your department, and I will tell you why. I am very interested you should say that that is a political discussion, because it did become a political discussion. Your department is not just the immigration department; it is the department, as I read it, for the immigration and multicultural and indigenous affairs portfolio. You are saying that it is a political matter if a group of nationals from Afghanistan and Iraq are vilified and where a message is sent out to the public that these sorts of people are people to be condemned and that that has a reflection on the community, which it did have. But you as a multicultural department say that is irrelevant, political and of no significance to your department. That is what you are saying here. If that is what you are saying, I am willing to accept it. Let it be on the record.

Mr Farmer—That is not what I am saying, Senator.

Senator COONEY—What are you saying?

Mr Farmer—I will try to say it again. You characterised remarks made by Mr Ruddock as in some way placing opprobrium—

Senator COONEY—I did not mention Mr Ruddock.

Senator Ellison—What were the comments that Senator Cooney made?

Senator COONEY—I am saying that there were public comments—not Mr Ruddock’s comments. This is the attitude that people in the public took. The public—by and large, most of them—took the approach that the people from Afghanistan and Iraq are the sort of people who would throw people in the water and they are not the sort of people we want in Australia. I suggest to you that that was the view throughout the community at this time. It was expressed, if you like, by the Prime Minister, not by Mr Ruddock.

Mr Farmer—These were remarks being made by members of parliament during an election campaign which obviously went beyond discussion of matters of facts or views. You have characterised them in some way. I just do not believe it is up to me to tell you, firstly, whether the characterisation was correct or, secondly, whether I have a view on the characterisation. I think that matters discussed between politicians during an election campaign which go to matters of view are not appropriate for public servants to comment on, and I will not comment.

Senator COONEY—Mr Farmer, no wonder we are starting at cross-purposes. I did not mention politicians. I mentioned the public and what was abroad in the public. When you look at the *Hansard* transcript of this, what you have said—and that is why I am trying to give you the opportunity of correcting it—is that if there is in the public a picture of two nationalities, Iraqis and Afghanistans, which shows that they are less than worthy human beings and that that was being attributed, at least partly, to their nationality, you are saying that as the head of a multicultural department that has no relevance to you.

Mr Farmer—No, I would not say that, Senator. I can expand on my comments if you like. In relation to things that happen during an election campaign, I stand by what I said. I will not go beyond that. I should not and I will not. In relation to the general question of multiculturalism in Australia, this department of course has a very clear responsibility for pursuing programs that the government asks us to pursue to create the sort of Australia that we want. I think that in other times we have really had a heated agreement on this, that Australia should be a country that celebrates diversity but in the context of respect for certain shared values.

Senator COONEY—Can I just get this clear? I gather what you are saying now—I am sorry for not putting it a bit better right from the start, but I will try to do it now. You are saying that when people from particular nationalities are vilified during an election campaign the effect of vilifying those nationalities has an impact on the people in Australia and we, the public in Australia, by a very substantial majority take an adverse view. You are saying that because it is an election campaign your department should not in any way try to correct that impression?

Mr Farmer—It refers to the same dilemma that I face.

Senator COONEY—That is all right. Because you are in a dilemma you thought it appropriate for the department not to try to correct any false impressions that might have been held against people—

CHAIR—Senator Cooney, that is not what Mr Farmer said.

Mr Farmer—Senator, you are talking about false impressions, vilification, opprobrium. If you do not mind my saying, those are political comments made about a political situation. I think it is quite inappropriate for me to say anything which could then be used in a political context. I just do not think that is appropriate and I do not agree with the way you characterise things.

Senator COONEY—I will try again to explain what I am trying to get at. Minister, I think you would probably be able to help me here. I am not trying to trick the department. I am

trying to say that there were what I would call some very nasty forces abroad in the public about this time. People would disagree with what I say—the realistic approach. I was and still am concerned that during this period—and I do not see how it can be all that political because both major political parties went along with the legislation and what have you—there was this force in the community which was not a nice force and which I think should have been corrected at the time by people coming out and saying, ‘Throwing children overboard has to be seen in a proper context. It is this and this.’ Yet there was no correction of that. I would have hoped that the department would have tried to put some truth into the system, tried to help in some way. If it is felt that it would have been too political to try to stem the tide of what I would call prejudice—and I do not want you or Mr Farmer to call it that, but that is what I am trying to say—I would have thought there would have been some attempt to correct that. I am not sure why that is political. Could you help me through that?

Senator Ellison—In the annual report at page 5 it talks about multicultural affairs, which you have touched on, and it talks about the Living in Harmony initiative. Mr Farmer has mentioned that the department implements government programs. That is one of the government programs. That report said:

The department worked with many communities to encourage consultation and build strong relationships and, where necessary, help in resolving issues which might affect community relationships.

That is perhaps what you are driving at. What does the department do in relation to those sorts of cases? Mr Farmer said that we implement government programs. We do not go beyond that and into the political arena, where people have different and conflicting views. But if we see the Living in Harmony program, which is in the report, which says it is there to strengthen community relationships, then it acts in accordance with that program. But it does not self-initiate any new program or policy in relation to how to deal with matters. I guess your question is: in view of all the programs you have in place could you use any of those programs to rectify this disharmony?

Senator COONEY—Let’s not go into the department. You and I are just having a little bit of a discussion to clarify.

CHAIR—I am not—

Senator COONEY—It is an important point, and I will tell you why.

CHAIR—I do not doubt that it is an important point. What I was trying to do in progressing matters with Senator Faulkner and Senator Ray was to make sure that as many members of the Senate who wish to participate in this period of questioning can do so. I think an extended discussion with the minister would not assist that process. If it is a question, then please go ahead.

Senator COONEY—As distinct from the department I just want to—

CHAIR—You said it was a question.

Senator Ellison—Can I just say that there is definitely a very different situation between an election period and non-election period. You have heard Senators Ray and Faulkner talk about this caretaker mode where, quite naturally, departments have a hands-off approach. One could well query the appropriateness of any department carrying out government programs in the course of an election period. Certainly the administration of government, but the administration of programs is another question. I do think an election period as opposed to a non-election period is relevant, with due respect.

Senator COONEY—Can I just put this to you?

CHAIR—Senator Cooney, a question?

Senator COONEY—I ask you this, Minister. First of all, the two major parties went into this election with very similar policies on this. In the course of that campaign some very difficult situations were created not only from the ‘children overboard’ incident but from the 11 September incident. Difficult situations were created for a group of people of a nationality of which there are many in Australia now. There is no doubt that people suffered a lot and it was not only the people coming here but also the people of that nationality in Australia. I think it is a very serious matter that people in Australia should be affected. I think it is a very serious matter that people and children were affected that way. It seems to me that we as a nation, if you like, just stepped back from that and said it is just too bad. The department, through which you might have expected something to be done, simply said, ‘We are in caretaker mode; therefore we will do nothing.’ I can understand that, but what about the people who suffer? That is what I am asking you about.

Senator Ellison—Madam Chair, I would remind Senator Cooney that there were—and I have Mr Beazley and Mr Howard in mind when I say this—photos of them at mosques urging Australians not to take a racist stand or to vilify any sector of the community because of events that had happened. I seem to remember both of those political leaders making that message very loud and clear. Correct me if I wrong, but I even remember photos of both of those leaders at a Muslim mosque in one case and a Muslim school in the other. To be fair to both of them, they went out of their way to try to remind the Australian community not to vilify that sector of the community.

As to what should be done and how you handle it, it is up to the political leaders of the day to do that. You refer to things—obviously talkback radio is one of the things you have in mind. That is where political leaders can take a stand. But I do not think it is appropriate for a Commonwealth department to have the responsibility to go out and try to counter that during an election period. I think the political leaders are where you can lay any of the accusations you make. That is only fair. They take the responsibility and they cop it.

Senator COONEY—I accept that. I will come back to this issue later on.

CHAIR—Are there any more questions in this area at the moment?

Senator JACINTA COLLINS—I have just one question that I want to clarify from some other evidence. What was the time in the course of the morning meeting on 7 October when the phone call was made between Mr Farmer and the minister?

Mr Farmer—I do not have an exact recollection, but Mr Storer might have a better recollection because he was at the other end of the line with Mr Ruddock.

Senator JACINTA COLLINS—It is not actually the precise time that I am interested in; it is at what stage during the meeting did it occur. I am more interested in people who were in the meeting. I understood they were party to this phone conversation, as was discussed earlier. Was it early in the meeting; was it late in the meeting; was it towards the middle of the meeting? At what stage during the meeting did this phone conversation occur?

Mr Farmer—Would you mind if Mr Storer answered the factual questions because that might help me as well?

Senator JACINTA COLLINS—Yes.

Mr Storer—I do not know if you were here earlier when the same question was asked.

Senator JACINTA COLLINS—Yes, I was.

Mr Storer—It was about 9.51 when the actual phone call went through.

Senator JACINTA COLLINS—You have checked your log now, have you?

Mr Storer—No, I do not have a log. It is a very complicated story. The fore-arranged meeting was in the Novotel. When it was being made I was very conscious that we had invited the meeting to start. There were lots of community groups and so on as well as this influx of press coming into the meeting and it was near a breakfast area of the Novotel. So it was getting very crowded. I was very conscious of the time. There was a big clock above my head and the media were there. So that is why I can be reasonably precise about it.

Senator JACINTA COLLINS—I am asking the question for another reason, which is understanding the dynamics of what occurred in the IDC meeting on the morning of the 7th. I do not think it is on the record yet precisely what time that meeting started. So I cannot deduce, Mr Storer, from your evidence the answer I am after.

Mr Farmer—You have summed up my dilemma perfectly. I do not recall. Quite often on these things we were meeting late into the night or starting early in the morning. I do not know whether either of my colleagues remembers on this factual point what time the meeting started.

Senator JACINTA COLLINS—Not the time. My question is around what stage of the meeting did this joint phone conversation with you at the table occur? Was it towards the start, the middle or the end?

Mr Farmer—Certainly it was some way into the meeting because the meetings would normally start with an update of information, generally speaking, from Defence on the facts of the situation. I do not know whether my colleagues—

Mr McMahan—It was a 9 o'clock start, from my recollection.

Ms Godwin—My recollection is that the meeting started at about 9 and we probably went to about 10.30.

Senator JACINTA COLLINS—And the phone conversation?

Ms Godwin—I accept what Mr Storer was saying. My recollection was that it was certainly a way into the meeting, and that would be consistent with the sort of time that he has mentioned.

Mr McMahan—Same again.

Senator COONEY—The report from Jennifer Bryant—and I asked you about this before—states:

... the Secretary of the Department of Immigration and Multicultural Affairs passed the information by telephone to Mr Ruddock. Mr Ruddock made the information public shortly afterwards.

That was in respect of the advice that children had been thrown overboard, according to Ms Bryant.

Mr Farmer—Amongst other things. It was life jackets, people jumping, children thrown overboard.

Senator COONEY—Did you think it strange at that point that people should throw children overboard? Why didn't you check on that information more than you did? It was a most unusual thing for people on a boat to throw children overboard.

Mr Farmer—There were a number of elements that were reported that were new. The life jackets issue, I believe, was new. They were significant because they were indications that the smugglers were taking new steps to make it more difficult for the Royal Australian Navy to turn back ships. It was quite clear that there were a number of steps that could and would be

taken—for example, people jumping off boats and sabotaging boats—to stop the Navy from being able to turn them around. So these were, if I recall, new elements which suggested new tactics by the smugglers responding to some earlier attempts by the Navy to turn boats back.

In relation to the second part of your question about attempts to verify the information, I answered that earlier in relation to that question from one of the other senators. This was a high level group convened by the Department of the Prime Minister and Cabinet. I was the Secretary to the department of immigration. That gives you an idea of the importance that was attached to the meetings of the high level group. There were other senior representatives from the departments. I would not give advice lightly to anyone. I certainly would not give advice lightly to a high level group. As a member of a high level group, I would have had, and still have, an expectation that anything said in that group was well based.

Senator COONEY—I can follow that. You say smugglers threw children overboard. I can understand people saying, ‘Look, that’s likely to happen,’ but if somebody said to me, ‘A parent has thrown his or her child into the sea,’ even though I am amongst the high level group I would want to check on that. That is my impression of what I would do.

Mr Farmer—I do not think there was that level of specificity in the report.

Senator COONEY—They did not say it was children. It was not parents throwing children overboard; it was that children were being thrown overboard by whomever?

Mr Farmer—All I recall is the reference to children being thrown overboard. As to who did it, I do not know. The implication in one way would have been somewhat similar—namely, that a means was being pursued to make it difficult for the RAN to leave a ship. So that would have been a similar conclusion—namely, a method being used to make it more difficult for the RAN. I accept your point that, of course, in human terms it is a quite different proposition. But in terms of the tactics that were being pursued, there would be some similarities.

Senator COONEY—Yes, I can follow that. It is just a matter of how it impacts on people.

Mr Farmer—Yes.

Senator COONEY—I am just trying to think how it would impact on me. If somebody said, ‘Look, the people next door have thrown their children into a pool unprotected,’ you would want some very strong verification of that. I think I would like to check on that. That, with respect, does not seem to have happened here.

Mr Farmer—We had the advice from Defence. I am just trying to refresh my memory. I do not think the report from the high level group on the evening of 7 October that was tabled earlier this week is specific as to who did what. That report states, ‘This had been met with attempts to disable the vessel. Passengers jumping into the sea and passengers throwing their children into the sea.’ Sorry, my recollection was not—

Senator COONEY—You probably think I am trying to have a go at you, but I am not. I am just trying to clarify all this. You have a very high level meeting taking place. You get some news that children have been thrown overboard and that hits the public within four hours. To my simple mind that indicates, amongst other things, that one of the reasons that that might have been passed on to the public—and I know you did not do this—was to bring into bad light the people on the boat. I am just wondering whether the rapidity of all this indicates a lack of willingness to check the facts before they were made public because people thought, as we all might do if you have an attitude to people, ‘Look, this is the sort of thing these people will do. We will not check this; we will just whip it into the public.’ I am not

saying that you would do that dishonestly or in bad faith; nevertheless, that is what has happened here.

Mr Farmer—In a nutshell we passed on information received in the high level group from Defence.

Senator COONEY—Without thinking about analysing it at all?

Mr Farmer—Senator—

Senator COONEY—Analysing it not beyond a certain point?

Mr Farmer—What we passed on was not analysis but information of a factual nature. That is really what the—

Senator COONEY—So from that I get that whatever information you get you just pass on; you never as a high level committee analyse information and give it weight?

Mr Farmer—No, not at all. I would not accept that. If you read the paper, the paper is full of analysis of the situation but not on this point. There are analyses of what should be done in relation to Christmas Island, Cocos Island, an off-shore processing centre and a variety of other things.

Senator COONEY—It is just that I am probably a bit more squeamish than you. It just worries me that allegations are made about people throwing children into the water.

Mr Farmer—I think it is an immensely concerning matter. I would not disagree with that.

Senator COONEY—And that is made public—not through your fault—within four hours of the statement being made, of the alleged event occurring.

Mr Farmer—Indeed other pieces of information relating to other boats were made public quickly because there was a very understandable media interest in knowing what the factual situation was in relation to the arrival of boats and what was being done in relation to those matters. So, yes, facts were being passed quickly on a number of occasions to ministers.

Senator COONEY—Mr Killesteyn, was it you who got the written material on the people on Manus Island to the effect that they were denying that they had thrown the children into the water?

Mr Killesteyn—That is correct, their letter dated 25 November.

Senator COONEY—Did you pass that material straight down the line?

Mr Killesteyn—I returned to Canberra on 28 November, I think it was, and I passed that on to Ms Halton as chair of the high level group.

Senator COONEY—Would it be fair of me to say that the material that I have been talking about with Mr Farmer, which took four hours to get from the event to the public is in contrast to the written material you got, which was picked up on 25 November, brought back three days later, given to Ms Halton and then lost in the system somewhere?

Mr Killesteyn—I do not know whether it was lost in the system. The asylum seekers asked me to personally deliver this letter to the Prime Minister. I said to them that I could not guarantee that I would personally deliver it to the Prime Minister but I would deliver it to his department, which I did. Certainly I made both the minister's office and the high level group aware of the existence of the letter prior to my return.

Senator COONEY—You might want to comment on this last point. When there is material which is used not by the department but generally, when there is material which arises which is ultimately and very quickly used to the disadvantage of these people, that

takes four hours to get from the alleged event occurring to the public. When these people deny it for the first time by written material, it takes days. I am just wondering whether you have any system within the department that accounts for that?

Mr Killesteyn—I will not comment on the first issue about the original advice, but essentially the asylum seekers asked me to deliver this to the Prime Minister and they asked for a response from the Prime Minister. That was the context of the letter, and I gave the commitment that I would do that, and I delivered the letter.

Senator COONEY—I can understand that. All I am saying is why should one lot of news, listening to what Mr Farmer says, be of such importance but the denial of that be so tardy in reaching the ultimate destination?

Mr Farmer—The departmental intelligence bulletin was dated 23 November, and that was given a very broad distribution within government.

Senator COONEY—But the written material, as I understand it, was 25 November.

Mr Farmer—Yes, but I am saying that the departmental intelligence bulletin which contained the reference, which Mr Metcalfe read out earlier, to the comments by some of the asylum seekers on Manus that they had not thrown children overboard was included in that intelligence report dated 23 November and distributed very broadly. That was obviously before 25 November when the letter, if I recall correctly, was given to Mr Killesteyn.

Senator COONEY—If it is the 23rd, I understood before that the evidence was that the oral reference to the denial was 12 to 16 November.

Mr Metcalfe—If I can clarify, the interviews with a number of passengers took place between the 12th and the 16th. Thirty-six passengers were interviewed. That material then came back to the department and was prepared and published in a report that was made available to senior officers and to other agencies in a report published on 23 November.

Senator COONEY—That is my point. So there was an oral statement by people on Manus Island that what had been alleged against them was false.

Mr Metcalfe—That is correct.

Senator COONEY—That allegation was made. That material which was gathered on the 12th and 16th—oral material—had to await the situation where it was put into written form before it was sent down, whereas the oral communication of 7 October took four hours. The oral communication of the 12th and 16th took much longer.

Mr Metcalfe—There are probably two comments I can make. Firstly, the interviews with the people were not to go to the issue of whether they had thrown their children overboard or not. The issues in the interviews were to try to establish to the best of our understanding at that early stage who they were, where they had come from, what people smugglers they had used, what routes they had used and whatever to build up a pattern of information we had in relation to this issue. As part of that, a number of the passengers, from what our intelligence analysts say appeared to be a consistent and rehearsed comment, said that they were upset that these allegations that they had thrown their children had been made and they were seeking to make that point. They made the similar point in the letter that Mr Killesteyn has referred to.

The other thing that is important is, of course, that on 13 November the Prime Minister wrote to Mr Moore-Wilton. It was known within the department that there was an inquiry into what had, in fact, occurred. I have indicated that this material and other material was provided by the department to that inquiry. So at that stage it was a live issue as to exactly what had

happened and we obviously made that material available to the inquiry as part of the events that have led to where we are today.

Senator COONEY—But, Mr Metcalfe, no matter what spin you or I want to put on it, the fact of the matter is that it had been alleged against these people that they had thrown the children into the water. There were some terrible comments made—and you heard Senator Ellison and I talking about it and how he put that into proper context. So this was very much a live issue. Some people—not you, and I am not saying you should—would have thought that that denial would have been made public as soon as possible. As Mr Farmer said, it was important on the 7th to get this information to the public because it was so important. I would have thought—just me—that it would have been important to get the denial into the public arena as soon as possible.

Mr Metcalfe—The issue of the denial was of course already in the public domain in the press report that was tabled earlier. On Friday, 9 November, there is the article in the *Canberra Times* which indicates that there was a communication between the people on Manus Island and the Mandaean Association of Australia. So it was well and truly an issue in the public domain that the people were denying the allegations and there was some confusion about it. The subsequent material that became available to us was made available to the inquiry.

Senator COONEY—But, Mr Metcalfe, the earlier material was not material gathered by the department.

Mr Metcalfe—That is correct.

Senator COONEY—This is material gathered by the department by responsible officers on 12 November, yet there was the passing of a substantial period of time before the department made it public. That is the point I am making. That is correct, isn't it?

Mr Metcalfe—I think the facts stand for themselves.

Senator JACINTA COLLINS—I am sorry to go back to the meeting on 7 October, but there is one further issue, Mr Farmer, from a comment you made a moment ago that I want to explore a bit further with you. Mr Farmer, is it correct to say that one indication you took as to the quality of the information you conveyed to the minister was that it was information presented to this high level meeting? Do I understand your remarks earlier as indicating that?

Mr Farmer—Yes. However, at each and every moment during the high level meeting I was not thinking that this is terribly important because it is at the high level meeting. But, in answer to the question as to why I, the secretary of immigration, did not check some Defence facts, the answer to that is that it did not occur to me and would not have occurred to me because we had senior representatives from the Department of Defence. They had every right to regard anything I said from an immigration aspect as being authoritative. I have the same right.

Senator JACINTA COLLINS—Yes, although as we understand it, at that morning meeting it may well be the case, according to part of the story presented to us so far, that it was not such a senior representative from Defence who conveyed the information to the meeting but Ms Halton who did so.

Mr Farmer—Obviously there are some views about that, but what is not in question is the fact that it came from Defence. I have not heard any suggestion that that was not the case. I believe the question is whether the advice came from Air Vice Marshal Titheridge via Ms Halton or from the Defence representative who was physically at the meeting. In either event, the comment that I made stands.

Senator JACINTA COLLINS—Apart from assuming that it was high quality information from Defence at this meeting, which may be quite a reasonable assumption, did you seek in any other way to establish the quality of that information?

Mr Farmer—In relation to 8 November, I have already made comments about what I did when there was a matter which suggested to me that that information may be being contradicted by someone from the defence department.

Senator JACINTA COLLINS—Refresh my memory there. This was covered earlier.

Mr Farmer—It was covered earlier on. There was a radio report of Vice Admiral Shackleton.

Senator JACINTA COLLINS—We are in November. That is fine. I understand that. We are a month away. Had the minister—I am being hypothetical with you, but please bear with me for a moment because of how complex this is—asked you as to how reliable this information was, how would you respond?

Mr Farmer—I would have said that it has been provided, as the other bits of information—that is, when the Navy engaged the ship, its current location and so on—through the high level group from the Department of Defence.

Senator JACINTA COLLINS—And you had no further information about the nature of that information at that point in time? You did not know that it was a phone conversation from the captain?

Mr Farmer—That is right.

Senator JACINTA COLLINS—You did not?

Mr Farmer—I did not know.

CHAIR—It being two minutes past one, the committee will adjourn.

Proceedings suspended from 1.02 p.m. to 2.03 p.m.

CHAIR—We are still in the general questions section of the consideration of the additional estimates. We have further questions in this area from both Senator Scullion and Senator Bartlett. I was not sure whether or not Senator Cooney had concluded before lunch.

Senator COONEY—The documents that you got on the island, Mr Killesteyn, I think you were going to give those to the committee, having checked on them to ensure fairness so that we—and the community for that matter—can see what the asylum seekers say about things. So when you are working out whether or not to give them to us, that is the purpose I would put them to.

CHAIR—Senator Cooney, was that a question?

Senator COONEY—It was just a statement about what I wanted. The question was that we were going to get those documents—I should address this to everybody—on the basis that we will look at them and see if they can be brought forward so that they are fair to the people who wrote them.

Mr Killesteyn—That is right. We were going to look at whether there were privacy or sur place issues and then examine the documents.

Senator COONEY—I trust you, Mr Farmer, to do it fairly and apply things properly.

CHAIR—I am sure that you can do that, Mr Farmer.

Senator SCULLION—I would like to put a couple of questions to you, Mr Farmer. No doubt you were very pleased with the lunch break because you gave such a huge body of

evidence this morning. You may or may not know that I am the very newest member of the committee, and sometimes I think that I perhaps do not have as much to contribute as others because I am new at this. But perhaps on this occasion it is a little different in that it was only a few months ago effectively that I was just a fisherman. So in terms of the bloke on the street, I think I will have to take that position off you.

Mr Farmer—A lot of fishing goes on here, Senator.

Senator SCULLION—As an Australian, and from the people I have spoken to and just for myself, this has been a very convoluted issue: who emailed whom, what meeting did you talk to, what actually happened, what was the chain of events and did somebody throw them in the water or didn't they? As an average Australian I think this issue is far simpler. The issue that I and most Australians are concerned with is basically: did the Prime Minister, Mr Ruddock or other members of the government mislead the Australian people? That is really what it is all about. That is all we want to know. As an Australian that is all I really want to know. I think those concerns are being shared with other members of the committee. You might be able to help me. You obviously have a great deal of knowledge on these issues. I thought you might lead me through some of the things that I have got from the press.

Quite honestly, most of the aspects of these issues I have simply understood through the press, as most of us have. As Senator Ray so succinctly put it, this issue started off as a threat to a child, and suddenly there were children in the water. And when you read the paper, suddenly we have photos similar to the photo on the front of Monday's *Australian*. You would have seen children in the water. It is a very emotive issue. Senator Cooney alluded to the fact that this sends a number of signals. This is basically saying that it is an assertion that, as a consequence of some deliberate and mischievous act, these people actually ended up in the water. As Senator Cooney said, that would draw an adverse inference about these people.

Another inference that is more serious is that these people actually put their families and their children at risk. They levered the Australian government in order to ensure that they landed on the mainland of Australia. That has been a pretty clear inference. As a bloke who reads the papers, that is a pretty clear inference. What appears at the moment is that what we are going through is a huge body of evidence to try to find out whether we have some mechanism of demonstrating whether or not, as a consequence of some mischievous, malicious and deliberate act, the photo that I am looking at was a consequence of an act of an asylum seeker. There are a couple of areas I want to raise. I have heard that there are some 300 photographs. Are you aware of those photographs, Mr Farmer?

Mr Farmer—I am only aware of them at second-hand, that is, from the media reports that we heard earlier this week.

Senator SCULLION—Has anybody else actually seen the photographs?

Mr Farmer—I do not believe anyone in this department has seen those.

Senator SCULLION—I thought there may have been evidence in those photographs to confirm or otherwise—to try to get to the bottom of it. There is none of that?

Mr Farmer—I just do not know. I have not seen them.

Senator SCULLION—Are you aware of any evidence from a videotape that the people in the water were there pretty much as a consequence of some sort of malicious and deliberate act? Are there any videotape interviews with naval personnel? Do you have any evidence at all in that area?

Mr Farmer—Clearly I have been looking at some of the estimates discussions and some of the parliamentary discussions this week. I recall seeing a media presentation of the video

on, I guess it was, 8 November on the evening news. I have never seen the video up close, and I do not know whether it was a complete version. I have no idea. I have not seen the video except on the media.

Senator SCULLION—Are you aware of evidence that was given on Tuesday, 19 February from Commissioner Keelty?

Mr Farmer—Yes, I saw some of Commissioner Keelty's evidence. I was doing other things on Tuesday and I was sort of watching it out of one eye, as it were, and certainly not the lot, although I did see some of the media reporting of that. I have not read the *Hansard* of the commissioner's reports.

Senator SCULLION—You are obviously clearly a very busy man, Mr Farmer. I accept that. Senator McKiernan, could you read this? It is directed to you. It alludes to those issues. It is a letter from Commissioner Keelty clarifying some of those issues associated with that day. Could you read that out?

CHAIR—I am not sure if I am meant to read it out. It is a document which has been sent to the Legal and Constitutional Legislation Committee clarifying the interpretation of Mr Keelty's evidence by a media report on the day of 20 February, and it has been given good coverage itself.

Senator SCULLION—Basically, in response to my question—part of which I will quote—I said, 'It would appear now that, in any event, those children ended up in the water because of a deliberate act by an asylum seeker. Your evidence clearly indicates that.' And the commissioner answered, 'That is correct.' I quizzed the commissioner about how he came about that evidence, and it is on the *Hansard* that it was actually an inquiry. They investigated it and they found quite clearly that that evidence demonstrated that an asylum seeker or seekers had sabotaged the vessel. It seems to me that that is evidence that must have been around for a while. Do you talk to the Commissioner of the Australian Federal Police? As a department do you liaise?

Mr Farmer—Yes, we do. The AFP was represented on the high level group that we are talking about. I do not know whether it attended all the meetings, but I think it was one of the core members.

Senator SCULLION—It concerns me that if we have evidence that clearly demonstrates that this photo that tore at the heartstrings of Australians was the consequence of a deliberate and malicious act of an asylum seeker, then the Prime Minister and Mr Ruddock have not misled anybody; that is absolutely there. And if we have known about that since that time—I have never read about it. In any of the press that I pick up it does not say anything of the sort. Is it your responsibility to ensure that the minister is completely briefed on these issues? I am just wondering why this is not so evident. I can see this is the case now, but I am just wondering why there has not been some press statement about it or more media about it. Clearly, in view of the current discussion and the very widespread debate, this would be evidence that would be absolutely central to what I consider the resolution of that issue.

Mr Farmer—Yes, Senator. I will preface my remarks with a caveat and that is that I have been watching this out of the corner of an eye. I had understood the commissioner's comments to refer to matters on the next day, that is, the 8th, not the 7th. That is my understanding and that may be wrong, as I have not been focusing on that issue. If that is the case, then it did not seem to relate directly to the events that Mr Ruddock was talking about at his press conference on the morning of 7 October, although I understand the point that you are making about the general nature of the actions and some conclusions that you are drawing from that.

Senator SCULLION—This follows from some of the comments that Senator Cooney made. Are we really vilifying these people by saying on the front page of the paper, ‘Look at what happened on the 7th and the 8th’. It is the same sort of issue. That sent a very clear signal that these people actually put the lives of their children and their families at risk. As Australians, we all want to know: is that the correct signal that you actually sent? Was that the truth or have you misled us in some way and they did not do that? Now we have evidence that clearly shows that that was the case. An asylum seeker sabotaged the boat and as a consequence of the sabotage and the sinking of that vessel these people ended up in the water.

As a ship’s captain from a safety aspect if I had the choice of getting propelled from the side of a vessel with a life jacket on or trying to get off a sinking vessel with many people with life jackets on, I can tell you right now that I would much rather be propelled off the vessel. I would like to understand where you fit in. You seem to be informing the minister—you have informed a great deal of people—on this matter. Perhaps it was a communication breakdown—and we have had a few, I understand—between the Commissioner of the Australian Federal Police and you. If you can just help me: is it your responsibility to impart all of this knowledge? Did you have a grasp of this evidence prior to these hearings? Did you have any idea that this was actually the case, because I understand that the commissioner had investigated this quite some time ago. Are you able to tell me whether you had this information or not?

Mr Farmer—I can say to you that I did not, but we have, obviously, in the department many dealings with the AFP so I cannot say that that was not available to the department. But what I can say is that I have no recollection of any AFP investigation results being made available to the high level group in relation to this specific matter. I just do not know that that happened, because it would have taken place some time after the event, almost by definition.

Senator SCULLION—I just think that it is the most important piece of evidence—that the assertions and the statements made by the government, the Prime Minister or Minister Ruddock are now seen to be completely founded on evidence and so any idea that they have somehow misled the public is incorrect. I am just staggered that you pick the paper up today and it does not reflect that. In any event, that is clearly not your responsibility.

Mr Farmer—That is right.

Senator McKIERNAN—Minister Reith lied; that is why.

Senator Ellison—I ask that Senator McKiernan’s remark be withdrawn.

Senator McKIERNAN—He is not a member of parliament. I do not have to.

Senator Ellison—You said minister Reith lied.

Senator McKIERNAN—He is not a minister now.

Senator Ellison—But he was then.

Senator McKIERNAN—Yes, and he lied then. He is not a minister now and I do not have to withdraw. He is not a member of parliament and under standing orders I am not reflecting against a member of this parliament or any other legislature and I do not have to withdraw.

Senator Ellison—I think that it was taken in the context that at the time he was a minister he lied. I would ask that you adjudicate on that.

CHAIR—I think that it is certainly a reflection on the person concerned as a member of parliament, Senator McKiernan. You could and perhaps should consider withdrawing that remark.

Senator McKIERNAN—The senator was referring to media comments.

CHAIR—I am not talking about what Senator Scullion was referring to; I am talking about what you were referring to.

Senator McKIERNAN—On the third media clipping that I picked up—and Senator Scullion was referring to media comments—is the headline ‘Reith says he knew but did not tell MP’. So it goes on. There are other headlines—‘I knew reports were wrong: Reith’ from the *Australian*. Clearly—

Senator Ellison—That does not mean to say that he is a liar. It may well mean a number of things. He just did not say anything about it.

CHAIR—I am not disputing what you have read in the newspaper and what you have now put on the record; I am just asking you to withdraw that particular comment, which did reflect on Mr Reith as a member of parliament.

Senator McKIERNAN—But he is not a member of parliament now.

CHAIR—But your reflection was on him as a member of parliament.

Senator McKIERNAN—I seek guidance from Odgers on that. The standing orders, as I read them and recall them, state that you are not allowed to reflect on any member of the parliament or another legislature, and the gentleman in question is not a member.

CHAIR—I do not want to take the time of the committee. I will take some advice on this, Minister, and then we will return to it.

Senator Ellison—Thank you, Madam Chair.

CHAIR—I will ask the secretariat to assist me with seeking that advice. Senator Scullion, have you finished in this area?

Senator SCULLION—Yes, I think so.

CHAIR—Thank you. Senator Bartlett.

Senator BARTLETT—To some extent this possibly comes under one of the outputs that we need to get on to. I recognise that, given we have spent an amount of time this morning on a specific issue, I think it is appropriate to put it all under general questioning, which hopefully will not take too long. In relation to—and I am sure you would be aware of this and the minister would be aware of this because I raised it twice in question time last week—allegations that were made certainly by the then South Australian minister Dean Brown about allegations of children having their lips sewn together by adults at Woomera, the minister at the table indicated to me last week that an advice had been received by Minister Ruddock from I think it is the Department of Human Services and the division of Family and Youth Services—something like that—indicating that department officials at the state level had done investigations and had found no evidence to either confirm or deny whether this had occurred. It is an issue that I would like to explore it a bit further under some of the outputs about who has responsibility for children in a legal sense. In the Senate the minister representing Mr Ruddock outlined that there is a memorandum of understanding of arrangements between the federal department and this state department and, I presume, others, if there are others from other states. It would be useful to know that. Can you just outline the nature of that memorandum, whether it is public or able to be provided to the committee, on how that process works normally?

Ms Godwin—If I understand your question correctly, you want me first to talk about the generality of the relationship with the South Australian department concerned with children?

Senator BARTLETT—Yes. The minister's answer, which you may or may not be aware of, indicated that there is some formal memorandum or agreement between the department and the state Department of Human Services.

Ms Godwin—You are correct. There is now a formal memorandum of understanding between the Department of Immigration and Multicultural Affairs and the Department of Human Services in South Australia dealing with the issues relating to children in detention. That was signed last December. It formalised a set of arrangements and protocols that we had had in place for about a year and a half prior to that. So we have had a sort of practice of relationship and consultation and referral with that department and the authorities within that department. As I say, that was formalised into an MOU last December.

Senator BARTLETT—Is that document public or able to be provided to the committee?

Ms Godwin—I believe it could be. It is a statement of the way in which we work. So, yes, I believe it could be provided to the committee. I do not have a copy with me at the moment, but I could get one.

Senator BARTLETT—That would be helpful if you could. What is its formal title? Is it 'Memorandum of understanding'?

Ms Godwin—A memorandum of understanding.

Senator BARTLETT—Can you tell me if, in terms of the reporting requirements under the MOU, there were concerns raised about the welfare of children in Woomera in this case? Obviously, that is an issue of concern to a lot of people—and particularly the safety of children. What are the reporting lines if there is an incident? Does it have to be reported back to Minister Ruddock? Does it have to be reported back to the South Australian Minister for Human Services?

Ms Godwin—There are two layers, if I can look at both areas that you have touched on. Under the MOU and, indeed, under South Australian legislation, there are formal obligations on a certain range of individuals to report instances of or concerns about abuse of children. Of course, the number of people who work in the detention centre are covered by that formal legislative requirement to notify. We have agreed under the MOU that, apart from there being a statutory obligation on individual officers, as a matter of policy and practice officers within the detention centre will be required to report to FAYS instances or concerns about abuse of children.

By way of clarification, the relevant department in South Australia is the Department of Human Services. Within the Department of Human Services there is an agency called Family and Youth Services, which is specifically responsible for child protection issues. So if I seem to be sort of swapping between the two it is because they are sort of related in that way.

If there is an incident that officers in the centre believe constitutes or they have concerns might constitute child abuse, they are obliged to report that and we, under the memorandum and under our arrangements with the service provider, require them to meet those obligations.

As to the other layer where you asked whether things would be brought to the attention of the minister, we do not obviously have a formal statutory obligation to report those things to the minister, but we have a process of what is referred to as incident reporting in the detention centres. The services provider is required to bring to our attention a whole range of things. This is something we have talked about in this committee on past occasions. Of course, instances involving problems with children of all sorts are required to be advised to the department.

Senator BARTLETT—Your department?

Ms Godwin—Yes, to my area of the department. We would often report that to the minister, depending on the nature and circumstances, but we get literally dozens—sometimes hundreds—of reports over a month. We would not bring every individual incident necessarily to the attention of the minister. Certainly the significant and serious ones we would normally bring to the attention of the minister's office.

Senator BARTLETT—So, in terms of the process, just to make sure I have it right, ACM is obliged to raise concerns with South Australian family services if they have them?

Ms Godwin—Yes.

Senator BARTLETT—That then is reported to you or your section of Immigration. Do you know what the process is internally in the South Australian department from there? Do they also report that to the state minister?

Ms Godwin—I do not know whether they are required to report to the state minister, but there are issues to do with reporting. Can I make a couple of comments. As I said before, there is a whole range of people who are obligated under South Australian legislation to notify concerns. So in any given instance, while there might be a notification from the detention centre itself, it is possible that there would be also reports from other sources, other people in contact with that child or with that family. The South Australian department are not permitted, as I understand it, to actually divulge the source of a notification; just to say that there has been one and then they have to form a view—I think they have different levels of concern—about whether or not an incident or an instance that has been put to them requires investigation.

Senator BARTLETT—Just going to the specific incident—and I presume you are aware of the one I am referring to—

Ms Godwin—Yes.

Senator BARTLETT—when Minister Ruddock was in Adelaide and you held a joint press conference with Minister Dean Brown and these concerns or allegations were raised about the possibility of children forcibly having their lips sewn together—and that was obviously when all the disturbances at Woomera were at their peak—my understanding from the minister's answer in the Senate last week was that the state minister had received advice from his department that concerns had been raised. Whether it was by ACM people or other people probably does not really matter. Those concerns were communicated to the state minister who, alongside Mr Ruddock, voiced them in a reasonably forceful way. Is that correct up to that stage?

Ms Godwin—It is. We became aware on Friday, the 18th that there were a number of minors in the centre who had stitches in their lips. A hunger strike had commenced in the centre on the 16th. We were obviously very concerned about the fact that there were minors involved. A report was made to the Department of Human Services on the 19th. That department received that notification and, as I said before, there may well have been other notifications as well. Because of the seriousness of the incidents that they referred to and the level of their concern, they drew that, as I understand it, to the attention of their minister.

Senator BARTLETT—The state minister?

Ms Godwin—Yes, the state minister. We of course had also told our minister that there were instances of children involved in this way. Because of that, my understanding is that the state minister contacted our minister and simultaneously the head of that department wrote to our department.

Senator BARTLETT—Can you tell me when that contact was made between the two ministers?

Ms Godwin—I think it was on the 22nd. Certainly the letter was on the 22nd, which was the following Tuesday. On the 23rd the ministers met and announced that there would be an investigation and announced that part of what had stimulated their concern was that the reports that had been received specifically referred to the fact that there were concerns that parents had been involved in—

Senator BARTLETT—So the report they received raised concerns that parents may have been involved?

Ms Godwin—Yes.

Senator BARTLETT—And that was the announcement made at that joint press conference, that they would then investigate these concerns?

Ms Godwin—Yes.

Senator BARTLETT—In terms of the information that had been provided to date, would it be fair to assume that whatever was provided to Minister Brown was also provided to you—that you would both be fully aware of the nature and extent of the concerns that had been raised?

Ms Godwin—No, I do not think we can necessarily assume that. The Department of Human Services may well have other information. It certainly drew the notifications and the reason for the notifications to our attention, but it may well have other documentation that has not been made available to us.

Senator BARTLETT—Is the documentation that was provided to the federal department at that stage able to be provided to the committee?

Ms Godwin—If I may, that is something I would like to take on notice. It obviously has a lot of personal details in it to do with individual detainees.

Senator BARTLETT—You are quite right to have that deleted from it, yes.

Ms Godwin—The alternative I guess would be to offer the committee a private briefing where we could—

Senator BARTLETT—My reason for asking that is my wanting to get as clear a detail as possible of what was actually provided to the minister and what formed the basis of the comments that were made.

Ms Godwin—Sure.

Senator BARTLETT—Based on what you have said, the substance of what had been provided to them to date when they made that announcement was that the department had concerns that this may have happened.

Ms Godwin—There were specific references, too, yes.

Senator BARTLETT—So there was no evidence in that which you are aware of that indicated that this had happened, or statements that this had happened?

Ms Godwin—I am sorry, I am not quite sure of the point you are making.

Senator BARTLETT—It is the difference between being concerned that something may have happened and being told that this had happened.

Ms Godwin—The notification specifically referred to the fact that there was a belief which had given rise to part of the notification that parents had been involved.

Mr Metcalfe—It appears that there is no question that the children did have stitches in their lips. The issue of who actually placed them there is the issue.

Senator BARTLETT—I think the HREOC report mentions the number of children who were involved in various ways in hunger strikes or stitching. Can you tell me the ages of those children who had stitches in their lips?

Ms Godwin—If you can just bear with me, I have a table here. There were five minors who had their lips stitched. I am being told it was five on one day but there was an additional one another day, so a total of six individuals. I do not have the ages of each of the individuals, but I understand the youngest was 12 years old.

Senator BARTLETT—Just as an aside, there was an assertion made in the media at one stage that a baby had had its lips stitched. That was investigated and found to be incorrect. Is that right?

Ms Godwin—That was a claim made by a member of an NGO. We were not able to substantiate in any way that a baby or a child that young had had their lips stitched.

Senator BARTLETT—It would be pretty easy to tell, would it not?

Ms Godwin—It would.

Senator BARTLETT—And you did not find that?

Ms Godwin—No, and that was not a claim from the department or from the minister.

Senator BARTLETT—So there was the press conference on the 23rd and from that, as I understand it, the state minister, on the request of Minister Ruddock possibly, ordered officers of the state department to investigate the situation and report back?

Ms Godwin—Yes. Again, I guess there are two elements to it. On the 23rd, that same day, officers of Family and Youth Services attended the centre because of the general concern but also because of the specific notifications. The following day, the 24th, a team from Adelaide attended. They were then at the centre variously throughout the next period from the 23rd when FAYS first attended. The first team from Adelaide was at the centre from 24 to 27 January. From 28 January to 2 February there was another team in attendance. Throughout that period, there was a series of correspondence, the last of which was 8 February.

Senator BARTLETT—Correspondence between whom?

Ms Godwin—The Department of Human Services and the department of immigration, essentially giving us assessments of individuals and families and advice about various aspects of their management and so forth. The initial focus of course of those teams was on the immediate needs and management options for the individual children and families involved. You are probably aware that, as a result of some of those assessments, a number of children were relocated to an alternative place of detention in Adelaide. There was some concern in relation to one family about whether or not there was an actual issue of the children staying with the family, but the assessment in the first instance was that it was not necessary to separate the children at that point. But it was a family that they notified to us that they would want to keep under review, if I can put it that way.

Senator BARTLETT—So, basically, those two teams that were there were obviously investigating the whole situation of the safety of children rather than just going there specifically to look at the lip-sewing allegation on its own?

Ms Godwin—There was a range of issues. Obviously the lip-sewing was one of the most serious aspects, but there were other incidents. For example, there was a group of minors who, in the assessment of the medical staff at the centre, required medical treatment. When

the officers went to the compound to take the children to the medical centre at the detention centre, one of the parents intervened and prevented the officers from taking the child to the medical centre for medical treatment. That, of course, was a matter of serious concern, because the parent was in fact intervening to prevent what we regarded as necessary medical treatment. A lengthy period of negotiation took place and eventually the parent agreed and the child went to the clinic and got the treatment that was required.

So there was a range of issues. As I say, the lip-sewing was one of the most serious and obvious, but the overall involvement of children in a dispute of this sort, the potential for them to become dehydrated more quickly than adults—those sorts of things—was a matter of concern.

Senator BARTLETT—I might ask, but probably just on notice because I do not want to chew up too much time, if you could indicate not the names of people but what their roles or jobs were, whether they were social workers, doctors, psychologists or whatever.

Ms Godwin—Sure.

Senator BARTLETT—And perhaps, to an extent anyway, who they spoke with as part of their investigations. But the bottom line is that there was a qualified team who went in there for an extended period of time and conducted extensive investigations into a range of things to do with children's safety. So after that, as I understand from the minister's answer to the Senate last week, there was an advice produced by that team or there was a report of some sort produced by that team back to the state department and an advice prepared for the immigration department?

Ms Godwin—By 6 February, as you probably are aware, the people at the centre had voluntarily agreed to cease the hunger strike action. The lip-sewing action had stopped some days prior to the end of the hunger strike. We were going through a process of following up all of the issues that had arisen as a result of that particular incident or series of incidents. We approached the Department of Human Services at that time to ask them what the status of the investigation was. They advised us at that time that they believed that there was no further investigation that they could make and that at that time they had concluded that they did not have evidence to either confirm or deny the involvement of adults or parents in relation to the lip-sewing of the children.

Senator BARTLETT—Was that just a telephone call or was it provided in writing?

Ms Godwin—That was oral advice at that stage. I am not sure whether subsequently we had written confirmation of that—something that we need to conclude with them.

Senator BARTLETT—So, on 6 February, the South Australian state department—the family and youth section of it—had concluded their investigations and had determined that there was no evidence either way in relation to the lip-sewing allegation.

Ms Godwin—That is what they advised us at that time, yes.

Senator BARTLETT—And have they subsequently provided anything in writing—this is purely still just a verbal advice?

Ms Godwin—As I just said, I just need to check whether we subsequently had that in writing. We obviously need to conclude the series of correspondence. As I say, I mentioned that there had been extensive correspondence between us about a whole range of issues during that period.

Senator BARTLETT—Is it possible for the committee to be provided with a copy of any written advice—obviously you cannot provide a copy of verbal advice—or any

documentation provided by the state department in relation to those allegations or in relation to their investigation?

Ms Godwin—With your agreement, Senator, I would like to take that on notice, just in terms of the privacy issues and also whether there are any aspects of that correspondence that raise concerns in terms of the child notification, the child protection legislation and so forth.

Senator BARTLETT—I did ask the minister two days in a row last week in the Senate whether copies could be provided. Has that not been communicated to you in the meantime?

Senator Ellison—That was being pursued, I understand, and I have not had word back. But I can undertake to try to get some word to you today on that question. I have got someone from my office here now. We will see where we are at with that.

Senator BARTLETT—That would be good. It was Wednesday and Thursday of last week. We have been asked to get a prompt response, and I guess that links to what I have asked as well as to whether, given that it is hard to know what sort of form it is in, there is written advice or a range of letters. I presume that when you have these sorts of phone conversations you take down file notes?

Ms Godwin—In relation to that specific one, it was undertaken by my colleague Ms Sykes here, and I believe that she has a file note of the conversation.

Senator BARTLETT—Right. Perhaps that could be provided to us. I am not wanting to identify names or anything like that.

Mr Farmer—I appreciate your understanding on this matter, but I just reiterate the earlier comment that Ms Godwin made that the minister has said that he would be perfectly happy to make available copies of the documentation to the committee in confidence, if that helps. There are a couple of options.

Senator BARTLETT—That certainly helps, although I think where possible it is handy to have the public record.

CHAIR—In relation to this hearing, though, this is a public hearing of the estimates. This committee has previously had experience with an undertaking to provide material confidentially, which has then not been able to be the case and has had to be withdrawn, I think. I will refer to the deputy chair for his view on that.

Senator McKIERNAN—Yes, I think that is the case. We do not have the ability, as a committee, to receive confidential information.

CHAIR—So we cannot take it privately.

Senator McKIERNAN—Anything that we do receive goes into the public arena.

CHAIR—So that will differ from the material that was undertaken to be provided to Senator Bartlett in the parliament last week, possibly. But in this case we cannot undertake to receive material confidentially.

Senator McKIERNAN—Might I suggest a different course of action, if I could. If an offer was for a private briefing of those individual members of the committee who would be interested in a private briefing, I would certainly be interested, as an individual, in receiving that.

CHAIR—That may assist in addressing the problem that we have.

Mr Farmer—Thank you. We can take those various options on board. I think that what we are expressing and what the minister has indicated his general agreement to is a process which will satisfy your concerns without trespassing on privacy or other issues.

Senator McKIERNAN—As an individual, I understand that there would be many sensitivities attached to the information that the committee might get to see in the nature of this, and there is much of it that the public would not benefit by seeing and certainly the individuals might be greatly disadvantaged. One always has to be protective of the individuals, particularly those in detention.

Senator BARTLETT—Thanks for all of that. Again, if possible, I think the public provision of it is handy with some of this material, particularly when it sounds pretty straightforward. You have got an advice from the state department. We have had an investigation here as to what we found or did not find, and it is hard to see how that would be problematic to be kept confidential as long as names are removed, if they are in there.

Mr Farmer—We will pursue that. I think that the department has a very good record of following up matters of concern.

Senator BARTLETT—I appreciate that. If the minister could get back to me some time today, that would also be appreciated. Just winding up, so at least by 6 February at the latest the state department had concluded all of their investigations and determined there was no evidence either way in relation to the allegations of children having forcibly had their lips sewn together?

Ms Godwin—I would not like to say that they had concluded it, because I think you might recall that I said a little while ago—

Senator BARTLETT—There was no further investigation required at this time.

Ms Godwin—Yes, that is certainly what they said to us on the 6th, but whether that constituted the absolute end of the matter for them we were still getting correspondence from them until 8 February. So, as I say, what we will need to do—if we have not already got written confirmation now from them—is just close that loop, if I can put it that way.

Senator BARTLETT—I imagine that they keep a watching brief pretty much all the time anyway of children in detention.

Ms Godwin—They do, and we are in pretty constant contact with them about child management issues in the centres.

Senator BARTLETT—But the specific thing that you have stated is that you were advised, or your colleague was advised, on 6 February that there was no further investigation required at this time and that what were fairly extensive investigations found no evidence either way in relation to the lip-sewing allegation.

Ms Godwin—I hope I am not appearing to be semantic about this, but you used the words ‘no further investigation required’. Again, I am not sure that that is an accurate statement. There are certainly, as I mentioned, a couple of situations that they want to keep under review. I think what I said was that they had concluded that they had no evidence at that time one way or the other and that there was no ongoing investigation. I think that was the way they put it. Whether there would be something subsequently that they would feel the need to pursue, I would have to check with them.

Senator BARTLETT—In terms of this particular investigation that was announced by the minister back on 23 January, is that a normal process under your MOU? So the investigation is conducted, the advice determined and then provided to you and also obviously to the state department, seeing as that is where it is in. So that would be the case as well? The state minister Brown obviously made the allegations very public. At that press conference he was part of he indicated that the allegations were going to be investigated. That would have been provided back to him as well, wouldn't it?

Ms Godwin—I cannot speak for what advice has been provided back to the South Australian minister.

Senator BARTLETT—Given that he ordered the investigation, it would be reasonable to assume that he would have been informed of its outcome.

Ms Godwin—That is certainly a reasonable assumption, but I really cannot speculate on what has actually happened.

CHAIR—I am not sure that you can ask Ms Godwin to speculate on the processes of the South Australian government, Senator Bartlett, particularly currently.

Senator BARTLETT—It is not a specific part of your MOU for the minister to actually be kept informed?

Ms Godwin—No. Essentially the MOU creates an expectation between us and the relevant South Australian state authorities that we will meet formal statutory obligations under their legislation, that we will provide them with access, all assistance if they need to undertake investigations. How they undertake those investigations is a matter for them. Essentially we have taken the view that they are the legitimate authorities in relation to child protection and child welfare issues more generally, and our obligation is to work with them as cooperatively as possible to ensure that they can discharge their responsibilities and, equally, that we discharge ours as having formal reporting obligations. But, as I say, the actual nature of the investigations, the way in which they undertake the investigations and what internal reporting arrangements they have in place are matters for them.

Senator BARTLETT—Given that the federal department was advised of this on 6 February and obviously the state department—given that they were the ones who provided the advice—were aware of it at that time if not earlier, why was that not announced at all publicly? A very serious allegation was made: detainees were being accused of being child mutilators. Once an investigation had been conducted and no evidence was found, why wasn't that made public?

Ms Godwin—I cannot speak for the South Australian minister but in our case, as I mentioned, we were continuing to receive correspondence from them up until 8 February. Minister Ellison, on behalf of Minister Ruddock, in the Senate did make it clear that that was the outcome of the investigation.

Senator BARTLETT—After I asked him a question, yes. I appreciate that he actually answered it, which is not all that common in question time.

CHAIR—Congratulations, Minister.

Senator BARTLETT—You will get into trouble now for answering the question.

Senator Ellison—I will.

Senator BARTLETT—Looking at the parallel with the 'children overboard' incident—where subsequent investigations determined that the initial accusations were dubious—to be polite this was another incident where very serious allegations were made and further investigations found there was no evidence. Why wasn't the record corrected, particularly given that such strong language was used in relation to detainees?

Mr Farmer—I think it is a bit hypothetical because—

CHAIR—I am sorry, Mr Farmer, and I apologise to Senator Bartlett, but I did not hear the question.

Senator BARTLETT—In the same way as the ‘children overboard’ example, the initial claims were, upon investigation, found to be dubious in substance, to be polite, yet the record was not corrected. This seems to be another pattern where another very serious allegation was made: detainees were accused of being child mutilators. It is the same sort of thing, ‘We don’t want people like that in our country.’ When investigations were done and there was no evidence to back that up, there was no subsequent statement made by either federal or state governments saying, ‘This actually is not the case.’ Wouldn’t it be better to have a practice of actually correcting the record in these circumstances?

Mr Ellison—I think that was answered actually. I am just trying to find the *Hansard* and the question you put to me in the Senate last week.

Senator BARTLETT—I appreciate you detailed that particular aspect of the advice, although we still have not seen it in detail.

Mr Ellison—I am having a look at it for the moment.

Senator COONEY—I can understand what Senator—

CHAIR—Senator Cooney, I am not sure that we have finalised this response to Senator Bartlett.

Senator COONEY—I just want to follow up Senator Bartlett—

CHAIR—I would like to give the officers a chance to respond if they wish to, Senator Cooney.

Ms Godwin—I would like to reiterate a couple of the points. The advice we had from the state Department of Human Services was that they had no evidence to conclude one way or the other that the allegations were correct. That is the first point. They certainly experienced some difficulties in attempting to investigate the situation when they went to the centre at one point in the process of the incident that was going on. They would normally seek to interview the children separately from parents. That was not possible. The parents would not permit it. They would not come out of the main group of detainees where they were. So the officers, as I understand it, were required to conduct their interviews in ways that would not normally be the way they would proceed.

So, as I say, while they advised us that there was no evidence to conclude one way or the other, as I said to you before, I would not like to say that that meant that there was, therefore, no further need to investigate. I have already made this point, I know, a couple of times: they had made the point to us that in a couple of instances they believed the individuals concerned needed to be kept under review. I guess it raises the question of whether there was a concluded point to announce in any event. This is the final point I will make: Minister Ellison did make public in the Senate the stage at which the investigation had reached.

Senator BARTLETT—Surely you do not go accusing someone of being a child mutilator if you have no evidence one way or the other. If you have no evidence one way or the other that I am a car thief, you do not go around alleging that it is possible that I am.

Ms Godwin—We think the original concerns that were made public were based on reports, and there were specific references in those reports to the things that we have been talking about.

Senator BARTLETT—Firstly, I think it raises the question of whether it is wise and, again, we could draw the parallel with the ‘children overboard’ episode of going public in a very strong and strident way on allegations that are not tested or have not been investigated; they were just concerns that something may have happened. Secondly, when the

investigations are done and, as you have said, there is no evidence one way or the other, surely those sorts of very serious slurs should be corrected. If I understand it, this also was the week when the Human Rights Commissioner's report into their investigations at Woomera was also provided, which also contained a statement that they found no evidence regarding parents stitching children's lips together.

Mr Metcalfe—What is quite clear, I think, is that Senator Ellison, when asked by you about the issue in the Senate, was of course briefed. He was able to answer the question. So the department had provided ministers with briefing on the issue. I am not sure when Mr Ruddock was planning to make an announcement. He may well have been planning to make an announcement in the House of Representatives. I am just not sure about that. But certainly we were aware that Senator Ellison had responded to your question, and therefore the matter was on the public record.

Senator BARTLETT—Minister Ruddock seems quite happy to make announcements daily in question time about allegations of improper behaviour by detainees. It would be nice to see him make an announcement clearing them of allegations for a change. The human rights commission report was produced, I think, that week as well, before the 8th. Just to clarify: who was that formally presented to?

Ms Godwin—It was correspondence to the minister.

Senator BARTLETT—That was on the 1st?

Ms Godwin—The letter was dated the 1st, but the minister was out of the country from the 1st to the 4th, I think, so he would not have been aware of it until he came back.

Senator BARTLETT—And then there was a press release put out around the 5th or the 6th or something?

Ms Godwin—There was a press release the following Wednesday, which would have been the 6th.

Senator BARTLETT—Okay. That also reported that after a fairly comprehensive investigation, talking to a range of people, they found no evidence of parents sewing children's lips together?

Ms Godwin—That was the language they used, but I think they were in exactly the same position that we were in—they were not provided with any evidence one way or the other.

Mr Metcalfe—Just to supplement something Ms Godwin said earlier, my understanding is that the usual procedures that apply in terms of testing whether there was evidence of child abuse, which is to interview the children by themselves, were not able to occur because the detainees in question did not agree that the children be interviewed by themselves. So there is a question there as to whether standard procedures that go to the protection of children were able to be followed by the South Australian department because of the lack of cooperation by some of the detainees concerned.

Senator BARTLETT—Do you know if that was also the case with the human rights commission investigators? I should have asked them on Tuesday.

Mr Ellison—There is a press release dated 6 February, Senator Bartlett, from the Human Rights Commissioner in relation to this matter. So, as well as writing to the minister, they went on the record.

Senator BARTLETT—Yes, they went on the record, I know.

Mr Ellison—So you have seen that?

Senator BARTLETT—Yes.

Mr Ellison—I think that might help answer some of your questions.

Mr Metcalfe—In response to your specific question, Senator, I do not know. We can check to see whether the Human Rights and Equal Opportunity Commission investigators, or whatever they were, were able to gain unfettered access to the children. I do not know what qualifications they may have had in relation to these matters.

Senator BARTLETT—I think it is an important point in terms of the safety of the children and the ability for people to properly investigate that, separate from the other point which I am obviously trying to make. This standard of proof about no evidence one way or the other: is that about the level of proof that the minister requires when he is reporting other things in question time about supposed actions of detainees?

Mr Ellison—I am sorry, Senator Bartlett, I was just showing the secretary something.

Senator BARTLETT—The minister seems happy to make critical statements of detainees based on circumstances that find no evidence one way or the other about their actions having occurred. Is that the usual level of proof he applies to the various other allegations he makes, such as the many he made in question time this week, or does he actually have them investigated more seriously than that?

Mr Metcalfe—The reports that Mr Ruddock made in company of Minister Brown I think were in the light of advice that had been provided to the South Australian department, and they simply had said, 'There has been a report. It will be investigated.' The matter was investigated. It appears that there were not able to be the normal procedures associated with that investigation. Subsequently, the outcome of that—that there was no proof one way or the other—has been announced by Minister Ellison in his reply in the Senate.

In terms of the other matters that have been the subject of much discussion in the House of Representatives this week, I think many of the things that Mr Ruddock said in the House of Representatives were simply quoting from a transcript of the report from Major General Powell as to the summary of military advice as to what happened around SIEV4. So we go back to the earlier discussion we had as to the reliability of that information. That information is all publicly available now.

Senator BARTLETT—I might conclude with a cheerio to all the people watching on the Internet. It is nice to know that the public can access the proceedings of parliament in such a straightforward way. Do you know if they have got Internet access on Nauru or Manus Island?

Mr Killesteyn—Yes, they do, but that is not for the asylum seekers, unfortunately.

Senator BARTLETT—Okay. I cannot say a cheerio to the detainees in Nauru then.

CHAIR—I know Senator McKiernan has a question specifically on this area. I understood Senator Cooney to have one also

Senator COONEY—It has pretty well been covered by Senator Bartlett. Just to go as his junior, I think he covered it all, but I will have a question after Senator McKiernan.

Senator McKIERNAN—The minister, in the joint press statement with Minister Brown, indicated that they had asked the South Australian department if there were any matters that should be referred to the South Australian police to refer them to the police. Have any matters been referred to the South Australian Police Service?

Ms Godwin—I do not believe so.

Senator McKIERNAN—Have the police been involved in any way, shape or form with regard to these allegations of abuse of children, and that abuse being confined to the lip-sewing incidents?

Ms Godwin—I would have to check specifically with the Department of Human Services, because the issue of whether or not they involve the police in an investigation is a matter for them. I am not aware of the police having been involved, but I would have to ask them.

Senator COONEY—I have a question arising from what Senator Bartlett has asked, and from the SIEV4 incident. Mr Farmer, you have a department, and the reputation of that department is very important. With both the SIEV4 and the lip-sewing incident, the picture that seemed to come out, as Senator Bartlett said, was this: as soon as something arises that is adverse to asylum seekers or illegal entrants, or whatever you want to call them, that adverse comment hits the press very rapidly, whereas when something arises that explains that away it is very slow in making its way to the public. As I understand it, that is not the department's fault—or I presume it is not the department's fault; nevertheless, it does reflect, I think, in the public's perception, on the department. I was wondering whether there is anything you can do about it, or whether you are worried about that or not.

Mr Farmer—I would just make a general comment that, in relation to the detention issues and certainly in relation to the detention issues that we have been facing over this last month or so in Woomera, there is really an enormous degree of press interest in the matter. So usually for us it is a question of responding on a day-to-day basis to that sort of press interest. I suppose the point I am making is that there is no lack of follow-up interest by the media in these issues, so the general day-to-day operation that we face in terms of the public discussion of these issues is quite intense.

Senator COONEY—Put it this way: the issue that Senator Ellison corrected in the Senate was something that Senator Bartlett had to initiate. If somebody makes a mistake in this forum, for example, the next day they come down and say, 'Look, I am sorry, this is what I said and I correct it.' That same sort of thing does not seem to happen where people who are interned—to use a neutral word—are concerned. When it is found out a mistake has been made, correction does not seem to follow. I am just wondering why that is so. No doubt the expression 'no evidence either way' comes from the police or from some other body, but I have never quite worked out what that means. If there is no evidence, there is no evidence that it has happened, because, as you know, the person that alleges must support. You just seem to get this pattern—not that you would want to do it, of course—which tends to denigrate certain people. The pattern is that allegations are made, there is no evidence found and the corrections are very slow while the allegations are very quick.

Mr Farmer—Without getting back to our earlier exchange about matters during the election campaign, far from agreeing with the general proposition, the department prepares advice for our ministers and for others. Of course, we now have the separate Minister for Citizenship and Multicultural Affairs. Each of those ministers has asked for and has received and begun implementing suggested patterns of engagements which specifically touch on this question of multicultural Australia. Mr Ruddock, as we said earlier on, did a series of engagements after 11 September. The aim of those was to stress that the Muslim community was an integral part of the Australian community and that we should all act decently towards each other. I think that the program of engagements—and it is a very extensive program of engagements—that both Mr Ruddock and Mr Hardgrave undertake in this area proceed from that same impulse, as does the work that the ministers do in the area of Living in Harmony, the promotion of Harmony Day on 21 March, as Mr Hardgrave was doing this last week, and so on. The positive efforts that are made not only by our ministers, of course, but by many

ministers, people in the opposition and people in the community are something that we also should reflect on as a positive manifestation of people's will to make this inclusive society of ours work properly.

Senator COONEY—I think it would help the Australian community if we could get a profile of each of the individuals that we have incarcerated, detained or whatever word you want to use. Is it possible—and Senator Bartlett touched on this with children—for the department to make public, taking into account privacy considerations and what have you, as far as is possible a profile of each of the people in our various centres? Would that be much of a problem? I would have thought you would have a profile anyhow on your files. If the public could be given a look at who these people are, that may help them get an understanding as to what sort of quality we should attach to them. Would that be possible?

Mr Farmer—At any one time there might be a couple of thousand people that you are talking about. So there is certainly a resource issue at least there. I am actually trying to be helpful.

Senator COONEY—I understand.

Mr Farmer—Are you talking about profiles by age, race, nationality, sex—that sort of thing? There is a lot of that information.

Senator COONEY—If somebody is in jail, you know what offences they committed so that people can say, 'Look, this person is not there for long enough,' or, 'This person is there for too long.' The public then has some idea of what the person is all about. There does not seem to be that sort of information available on these people who are illegal entrants, asylum seekers, refugees or what have you.

Mr Farmer—In good faith, can I undertake to reflect on that?

Senator COONEY—Thanks very much. That is all I ask.

CHAIR—I think in general questions we have questions from Senator Scullion.

Senator SCULLION—There are a couple of questions, Ms Godwin, that you could perhaps help me with. Senator Cooney has brought us back to reality. To use his words, we do not wish to draw adverse inferences against asylum seekers or the parents, and that is very important. Whilst I know that these matters in this investigation may have been inconclusive, just to get a better understanding, the reason they were inconclusive was the nature of how you were able to interview these people. I understand that you said that you normally interview just the children aside from the parents. Was any attempt made to ask the family to come with the children to be interviewed separately?

Ms Godwin—Perhaps I could make a couple of points of clarification. It is not this department that undertakes the interviews; it is officers from the Department of Human Services or the Family and Youth Services agency within that department. My understanding is that their normal practice is to interview each person separately so that they can get a clear picture from that individual. I further understand that they were able to speak to some of the children with their parents, as you suggested, but of course that means they did not get that clear picture from each of the individuals. That is as I understand it. I do not know that that applies to every instance, but certainly that was an element in relation to some of the people involved.

Senator SCULLION—You said that they were interviewed sometimes in the compound?

Ms Godwin—Some of them were, as I understand it. When the incident was happening, people had congregated in one of the areas in the centre and essentially did not want to leave

that grouping. I have already described the incident where there were difficulties in taking one of the children to the clinic for medical treatment. I think the judgment in this instance was that, rather than provoke more tension by attempting to bring the family out of the group, they spoke to them there. That is as I understand it. If it is not correct, I will certainly check it.

Senator SCULLION—Let me get this right. So the people who are being interviewed were in close enough proximity for other people to hear the questions and potentially hear the answers?

Ms Godwin—That is as I understand it. But not everybody was interviewed that way. As I said, that was an issue in relation to some of the people to whom they wished to speak.

Senator SCULLION—I am going to ask some questions about something that may not have been directly related to the inquiry but I would have thought would have been evidence as a consequence of the inquiry, if you like. It is like tacit assent. If the parents are saying, ‘We had nothing to do with these children doing this,’ how was it that the materials came into the hands of these children and they actually managed to go through this? Was it a consensual act? Was there any information that the parents actually knew that this was happening? Did they all run off and hide and find some stuff and do this to themselves? Do you have any evidence about that aspect?

Ms Godwin—My understanding was that in some instances—and again I am trying to choose my words carefully because I certainly do not want to do what Senator Cooney is concerned about, which is blanket descriptions of things—parents certainly were aware that their children had their lips sewn and I think in some instances said that they could not prevent their children doing it. The next step of them being actively involved in it is the issue that has not been able to be resolved conclusively. But, as I say, certainly I think by their own comments, a number of parents were aware and believed that they could not stop them. I do not know whether you could say in that instance that they had encouraged them. I would not like to say that particularly, but certainly they were aware of it.

Senator SCULLION—So I take it from that that in some circumstances—I do not know how many—the parents consented to this mutilation.

Senator COONEY—I do not know where that came from. Senator, in the old days they would have objected to that question.

Senator Ellison—I think Senator Cooney had a fair bit of that sort of questioning. I think the question is this: did the parents consent?

Senator SCULLION—Pretty much. I am not sure how to go about trying to frame that question in the right manner.

Ms Godwin—No, I understand the question. I do not know that I can definitively give you an answer. As I say, it is clear that some parents knew. It is clear that some parents claimed that they could not prevent it. Whether they had encouraged it, consented to it or indeed participated in it is unclear.

Senator SCULLION—From those circumstances, it sounds like it is unlikely that this sort of issue is going to be resolved by attempting to further investigate. I take it there is no intention to further investigate the matter.

Ms Godwin—That goes to some of the comments I was making to Senator Bartlett. Certainly, in relation to at least a couple of instances, Department of Human Services officers have indicated that the situation should be kept under review. But that goes to the overall management of the family, not just this issue of lip sewing. Whether there will be any further instances of that, one would sincerely hope not.

Senator SCULLION—Senator Bartlett has just reminded me of something on this issue. I did not catch you completely, but I understand that Rear Admiral Shackleton made some remarks yesterday about a child being dropped in the water. Are you aware of those comments, Mr Farmer? I think it was during November at Ashmore Reef, although I am not exactly sure of the details. It might have been Christmas Island. I am not sure. Are you aware of that statement?

Mr Farmer—Only dimly, but so dimly I hesitate to utter on it.

Senator SCULLION—It just sounded important in the context of some of our previous discussions. It is very hard to find the dates, but I understood that a child was actually dropped in the water from a boat in November at Ashmore Reef, not Christmas Island. Do you know if that was the case?

Mr Farmer—Senator, can I undertake that we will see if there is anything there and let you know separately. But it would be obviously something we—

CHAIR—Given the extent of the debate in recent days, I think it would be much better to work from the *Hansard* and an accurate transcript in pursuing this particular issue, having sat through significant hours of it myself, not that everybody else has not as well.

Senator BARTLETT—I think you also undertook to get the ages of those six children on notice.

Ms Godwin—In fact, I think I have that. I can give it to you now. One child was 12, as I mentioned. In fact, it has got 11/12. That sounds contradictory I know, but we do not have an exact date of birth so we use the last day of the year. Therefore, it is not clear whether the child is exactly 11 or 12. But that was the youngest. Sorry, there were two who were in that 11/12 category. One was 13, one was 14 and one was 16.

Senator BARTLETT—That is five, isn't it?

Ms Godwin—Sorry. Two were 14, I beg your pardon. Two were 11 or 12, one was 13, two were 14 and one was 16.

Senator BARTLETT—Can you also provide to us on notice the guardian status of them—that is, whether they were accompanied, whether they had one parent, two parents, an uncle or whatever?

Ms Godwin—As to the one and two parents, I would have to take that part on notice. But I can tell you that two of them were unaccompanied minors and four of them were with parents.

Senator BARTLETT—Thank you. Finally—and you may not be able to establish this—I understand that a number of the people who were described as having their lips stitched together actually just had one stitch in the corner of their mouths or something like that. In relation to these six children, is it possible to ascertain the extent of the stitching—that is, whether it was one stitch or whether it was four or five?

Ms Godwin—I will take that one on notice. Obviously it will go to the question of the detail in the incident reports.

Senator LUDWIG—In answer to a question to Senator Scullion, you mentioned the lip-sewing incident. Following from that, what strategies have you put in place to avoid the occurrence of that, particularly because of the potential for infection at Woomera?

Ms Godwin—There are a range of things that we do in detention centres that were happening before this happened, and we will continue to add to them to the extent that we can. There is a lot of attention paid to the whole question of children and services provided to

them, the parenting aspects and all of those sorts of things. In the centres the Health Services workers run what they refer to as life skills classes where they talk about things like hygiene in the centre, requirements of Australian law, expectations in relation to children and women and those sorts of things. I know this is a different sort of example, but you are probably aware—I think we talked about it at an earlier estimates—that we have had other health issues in the centre. At one time we had a case of typhoid at Woomera and obviously there were a lot of public health issues around that. The health workers in the centre put a lot of time and effort into ensuring that people understood the public health issues and how to undertake proper hygiene in the circumstances and so forth.

One of the most difficult issues for us in the detention centre is the extent to which people believe that taking dramatic action of this sort will influence decisions about their cases. It is something that we struggle with all the time. We obviously want to do everything we possibly can to dissuade people from taking what you would regard as very dramatic action, which is not to say that we do not want people to protest or to draw their concerns about their circumstances to our attention but obviously preferably not in such a dramatic way. The normal course of processing has, in some instances, the unintentional effect of encouraging people to believe that if they take action there will be some impact on their case. We have certainly had incidents in the past where after the incident the person has then gone on as a result of the processing to get a visa. It is hard to dissuade them from the fact that that was a result of the action.

We try to tackle this whole question on a couple of fronts. One is, as I say, the public health front and the life skills front with the counselling that we do with detainees—the discussion groups and the information sessions that are provided and so forth. In terms of the specifics, and you asked about hygiene, that goes to those issues but more generally we try to make the point to detainees that there is not a causal effect between these sorts of actions and outcomes. But, as I say, that is sometimes a difficult point to make.

Senator LUDWIG—So it is fair for me to conclude that you have done nothing out of the ordinary in respect of that issue or the other issues associated with protesting that have been on television in recent times, such as the sewing of lips and the like, and issues that the Human Rights and Equal Opportunities Commission mentions in its report.

Mr Metcalfe—Senator, we have done—

Senator LUDWIG—I was waiting for an answer from Ms Godwin.

Mr Metcalfe—Perhaps I can assist Ms Godwin, Senator.

Senator LUDWIG—All right, and then we will come back to her.

Mr Metcalfe—There are some practical issues in order to prevent people having access to materials that may allow them to stitch their lips together, for example. You can imagine that we would have to prevent any sewing classes occurring, prevent people having access to any material whatsoever—safety pins. There is a practical aspect. But, of course, we do constantly review whether there are strategies that we can adopt. I think Ms Godwin talked in the broad term about the fact that this particular incident cannot be seen in isolation, that there are things that we have been doing and will continue to do. For example, during the fires at Woomera in December there were incidents of detention centre staff being essentially attacked by the use of aerosol cans of insect spray being lit and the use of small flamethrowers. As a result of that, we had to remove access to people freely obtaining insect aerosol cans and make other provision; either they would have to ask and someone would spray them or they would be given roll-ons or other materials.

We had other incidents, as you would recall, around this time of attempted self-harm by people swallowing detergent. There is a very difficult set of issues for us to manage because to reduce the potential for a person to do anything to hurt themselves or draw attention to their situation in this way you would virtually have to have them in a completely airtight situation. Immigration detention, as we have discussed many times before, is administrative detention. To the extent we possibly can we try to allow people to have a normal semblance of life, to participate in the provision of services to themselves and whatever, and there is a constant balance to be drawn between how you enable as normal a life as possible to occur and access to normal things and taking the duty of care to prevent people from actually doing things that could injure themselves.

So it is a constant issue for us, and a constant management issue for us, as to how we can get that balance correct. So to respond to your original question, I do not know whether we, for example, have stopped access to sewing courses and access to sewing needles and cotton and other things, because if we did there would be significant repercussions about normal recreation. It is a balance that we have to try to strike here.

Senator LUDWIG—Perhaps to be more specific then, in relation to counselling and life skills and those issues and the work of health workers in the detention centres since the incidents, could you outline whether or not there has been an increased service provision to detainees? I am happy for you to take that on notice.

Ms Godwin—I will take on notice the totality of your question, but I can make a couple of comments. One of the things that was at issue in that sort of incident ongoing was the question of whether people had either received sufficient information about their situation or had understood the information that they had received. We had had in the centre a fairly proactive process of talking to detainees and talking to detainee representative committees, but we have since supplemented that with individual scheduled interviews on a regular basis with each of the detainees—adults and unaccompanied minors—because that seemed to be one of the issues that came out of that particular incident. So there are specific things that we have done. But I would have to ask for a report from the health workers about whether they have done specific things beyond the usual range of counselling that is provided.

CHAIR—Senator McKiernan, do you promise you will not scold me for not going to the afternoon tea break if I enable you to ask a question now? I do want that on the record.

Senator McKIERNAN—I am duly reprimanded.

CHAIR—I wish.

Senator McKIERNAN—I assure you, Chair. I have been a chatterbox all day. With regard to a 12-year-old child running around in a detention centre with their lips sewn together, when are the department's duty of care responsibilities actioned and has any consideration been given from a legal point of view within the department to a possible accusation that the department was breaching their duty of care to that child who was in their care in the detention centre because the child had engaged in self-harm—or some other individual had done it—but the department allowed that self-harm to continue?

Ms Godwin—I hope I have understood all of the aspects of your question. If I have not, please prompt me. I guess the first thing to say is that we certainly have a duty of care to all of the detainees. But in relation to children, if they are in the company of their parents, their parents retain legal guardianship of the children. So we are not the children's legal guardians in the sense that the minister is if they are unaccompanied minors who come under the ambit of the Immigration (Guardianship of Children) Act, which I will refer to from now on as the IGO Act. So if a child is in the centre with parents, as I say, the parent remains the legal

guardian. And while we obviously would have a very serious concern about a child with its lips stitched, the question of whether we can provide medical treatment or any other action would be something that would have to be done in consultation with the parents.

My understanding is that a number of the children who had their lips stitched on Friday, as I mentioned, in fact were taken to the hospital on the Saturday. I think by about the Monday—and I would have to check this exactly against the chronology—all but one of the children had had the stitches removed. So in terms of our sort of general duty of care—I am sorry, I am chopping and changing here a bit and I do not mean to—if the minister is the guardian, we can provide the treatment direct. If the parent is the legal guardian, we would have to work with the parents to get them to agree to the treatment—in this instance having the stitches removed from the child's lips. Clearly in the situation that was happening at Woomera at the time, all of those decisions were being taken very, very carefully because we did not want to do anything that would cause further tensions in the centre or amongst other detainees. So just about everything was being done on a negotiated basis. As I say, I could check, but my recollection, from going through the chronology, is that all of the children but one had the stitches out by the Monday.

Mr Metcalfe—And of course, if there was a suggestion that there was child abuse, then the appropriate authorities were notified. Ms Godwin said if the guardian were the minister—in other words, if they were unaccompanied—then we had a direct, unambiguous duty of care. If the parents are present, then the treatment of the children and their welfare is clearly a matter for the parents as well as ourselves. But if there is an allegation or a suggestion that there is child abuse occurring—in other words that the parents may somehow have been involved in harming their children—then as we have said in discussions this afternoon, there is a mandatory reporting obligation to the relevant state child authorities.

Senator McKIERNAN—I was specific in my question on the duty of care rather than the guardianship point of view. Because I have been so harshly admonished by the Chair just now, I will not press this matter. But I do think there is a real issue on the duty of care aspect on children in detention and where the responsibilities start and stop. I understood the point that Mr Metcalfe was making in regard to the allegations that a parent was involved. But if it was all of the children together, which would include a 17-year-old who, for all intents and purposes in the discussion that we are having, is a child by definition, even though that person might have worldly knowledge having survived in very harsh environments, but if that person was involved in this decision then the department might look at it in a different light in the investigations. I wonder if you might on notice undertake to provide the committee with some more information on the trigger of the duty of care. I would conclude this discussion, but I really am concerned at where the time is going for the rest of the day and I have got a number of hours of questioning.

Mr Metcalfe—We could take that on notice and try to give the committee a fuller explanation as we understand it.

Senator McKIERNAN— I am sorry, Mr Metcalfe, but do not confine it just to this incident. There are other incidents in other detention facilities. I am not just looking for a post-mortem on this particular incident.

Mr Metcalfe—As I understand it, it is a broader exposition of our legal obligation, our duty of care in relation to persons in detention.

Senator McKIERNAN—Duty of care. I do understand the guardianship, because we have been through that on this committee before.

Mr Metcalfe—We will do that on notice.

CHAIR—Thank you.

Proceedings suspended from 3.40 p.m. to 3.59 p.m.

CHAIR—We will resume our consideration, still in the general area. I just want to mention two things: firstly, to confirm, Mr Farmer, the matter which we were discussing before about the possible provision of confidential information we decided was not appropriate and that would be a private briefing to the whole committee so that it is formed in the appropriate manner, and we will arrange that between the secretariat and the department. Also, I am able to provide for the record advice from the Clerk in relation to the point of order taken by the minister earlier, which indicates a previous ruling by President Sibraa in 1988 that the protection against offensive words contained in standing order 193 does not extend to former holders of the protected offices, even when the remarks are made about their conduct when they held the protected offices. So I note that for the record, Senator McKiernan.

Senator McKIERNAN—It confirms my belief. Thank you.

CHAIR—And to indicate also to officers in particular that in a brief moment the committee will probably take some time to consider progress and report back on the record once we have had an opportunity to do that. Not all the members we need to do that consultation are currently present, to give you some more idea of where we will go between now and 11 p.m.. Ms Godwin, I think you wished to clarify one matter.

Ms Godwin—I just want to correct one factual thing that I said in response, I think, to some questions from Senator Bartlett about the chronology of the lip sewing incident involving minors at Woomera. I think I said we first became aware that minors had their lips sewn on Friday, 18 January. That was actually incorrect; it was Saturday, the 19th. We have checked that during the break and it was Saturday, the 19th and that was the same day that the notification was made to Family and Youth Services.

CHAIR—Thank you for checking and clarifying that. Where were we with general questions? Senator Ludwig.

Senator LUDWIG—I take it that the question is directed to Ms Godwin. You may recall the ABC matter where a journalist was arrested by the Australian Protective Service. What was effectively DIMIA's role in that, if any? Did, for argument's sake, DIMIA direct the APS to direct people back from where they originally were—that is, the media contingent?

Ms Godwin—It is not my understanding that DIMIA directed it. My understanding is that, as the situation at the centre deteriorated, in our view, I think on that Saturday—particularly the issue of the young man jumping down and falling into the razor wire—an assessment was made of the situation, which was essentially led by the APS officer in charge there but, obviously, with advice from both DIMIA and ACM as to the overall situation in the centre. If I can just say by way of a couple of points of context, there certainly had been concerns earlier about the media contingent in the sense that there had been quite a cluster of people and it had been difficult for ambulances to move in and out of the centre, which had been required on occasions. The school bus also, I think, had some difficulty. So that was the general background. I have just been passed a note saying 'sub judice', and I would need to make the comment that I will obviously be circumspect in what I say.

Senator Ellison—Can I just say Mr Farmer started from the APS and I think he got to a certain point at which he said, 'That is as much as I can tell you without now going into the details of the case.'

Senator LUDWIG—I was not actually asking for the details of the case.

Senator Ellison—No.

Senator LUDWIG—I am cognisant of the sub judice rule. My question was far removed from that. It was in terms of who requested the direction of the barricades to be shifted back. That does not go to the subsequent arrest. The context of the question was, of course, to draw the attention to the area. But the shifting of the barricades was the question that I asked, and I have not actually got a clear answer for that yet, but I think Ms Godwin is getting to that. I do not think that is part of the sub judice rule. I am happy to take that on advice, though, if you say that it is.

Senator Ellison—No, we are not saying that. I am just foreshadowing to the committee at large that there is this aspect.

CHAIR—And the committee operated on that basis earlier in the week.

Senator Ellison—I am not saying that you have breached that.

CHAIR—Thank you.

Ms Godwin—Anyway, just to set the context, there had been those concerns, but my understanding is that what happened on the day was that there was a discussion about the situation in the centre, and it was the APS officer in charge who made the decision to move the barrier back. But, certainly, DIMIA and ACM officers were involved in a discussion of the situation, but it is not my understanding that DIMIA requested APS to do it.

Senator LUDWIG—Thank you. So it is fair to say that DIMIA made no request for the barrier to be moved.

Ms Godwin—Not a formal request. As I say, I certainly would not suggest that we were not involved in the decision making or the discussion, the risk assessment, around the events on that day.

Senator LUDWIG—Thank you.

[4.06 p.m.]

CHAIR—With the agreement of the committee, it may then now be appropriate to move to outcome 1, Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people, and even output 1.1, Non-humanitarian entry and stay.

Senator McKIERNAN—I want to ask some questions in regard to the matter of parents and the reunification of families—those who have siblings in this country and those siblings who are seeking to sponsor their parents to reside here. Can you inform the committee of what size the queue is in this particular category now and if there have been any initiatives to reduce the numbers who are in the queue? I am talking about the queue, rather than the media release of the minister of some new options that may be under some consideration. We will come to them later.

Mr Rizvi—The total pipeline, that is all persons, as at 14 January 2002 was 21,270, of whom on that date, or as at that date, 8,646 had been queued. Going to your further question about initiatives to get more people queued, the minister announced last year an initiative to transfer all of the cases, or all of the files that were held at our China posts, to Perth and they are now being processed in that centralised processing centre for parents in Perth. To date that initiative, we believe, has gone quite well. The feedback from the sponsors in Australia has been very positive to that initiative because, of course, it is easier to contact and talk to Perth than it is to talk to one of the officers in Beijing. As a result of that, cases are being queued more quickly than previously. Also, of course, it has relieved some of the pressure on our China posts who can focus on some of their other growing case loads.

Senator McKIERNAN—Thank you. They are still dramatic numbers, though—8,500 in the queue and over 21,000 applications that are still going to need consideration. I am aware that there is 1,000 coming in this year with a contingency for 4,000 for next year. That has been a public announcement by the minister.

Mr Rizvi—The minister announced a contingency reserve of an additional 1,000 places this year and an additional 4,000 ongoing, subject to the passage of legislation associated with the various options that he has put forward. I think it was last week or earlier this week we briefed Mr Ferguson regarding those options, and we hoped to be able to brief Senator Bartlett on those proposals as soon as we can arrange a time.

Senator McKIERNAN—Mr Ferguson?

Mr Rizvi—Laurie Ferguson.

Mr Metcalfe—The opposition spokesperson on multicultural affairs.

Senator COONEY—Do you know him at all?

Senator McKIERNAN—I just wondered why it was not the opposition immigration spokesperson.

Mr Rizvi—Originally that briefing was arranged with both Ms Gillard as well as Mr Ferguson, but I understand Ms Gillard was unable to attend because of other matters.

Senator McKIERNAN—I wonder what that might have been. What is the expectation for the passage of legislation?

Mr Rizvi—I could not proffer an opinion on that. That would be a matter for parliament.

Senator McKIERNAN—I asked that question because of the known event that there are now only 11 sitting days for the Senate for the rest of this session, which of course takes us to the end of the financial year and the new program which starts on 1 July. So we only have 11 sitting days of the Senate to go. Do you hear that, Senator Cooney, you only have 11 days to go. There is a serious issue and a lot of Australians who are seeking to be reunited with their parents by settlement in Australia have expectations; they have hopes. There has been a media release by the minister which gives them further hope that the chances of their objectives being achieved will be fulfilled. If that is going to happen through legislation, it is going to have to happen very quickly, I would suggest.

Senator Ellison—Can I just say something only in the context that Senator McKiernan said that Senator Cooney only had 11 days to go. I have counted 18 to the end of June.

CHAIR—There are, in fact, five sitting weeks and two estimates weeks for the Senate between now and 30 June.

Senator Ellison—We have seven days in the next fortnight, then we have three for the budget, which makes it 10. Then there is another fortnight after estimates.

CHAIR—After estimates there is a further sitting fortnight before 30 June. So that is 18 days.

Senator Ellison—Anyway, we are just looking at how much time there is for legislation.

Senator McKIERNAN—Yes, I had forgotten about March. Point taken, Minister. I apologise.

Senator Ellison—So it is 18 sitting days.

CHAIR—We were just concerned that you were cutting off Senator Cooney in his prime. It is a matter of great concern.

Senator COONEY—Thank you very much.

Senator McKIERNAN—Not only is there somebody up there looking out for you, there is somebody down here as well. I apologise for that. Nonetheless, there will be pressure on getting legislation into the parliament and getting it ready. The dialogue and discussion has already started on that and you are now talking with the Democrats. Thank you very much. Even with those contingent measures, if they are successful—and you do not consider them successful until you see the whites of the eyes of the officials who are giving the briefings on the detail that is contained in the bills, and other initiatives in the past have been subject to detailed consideration by the Senate in the past—it is still going to leave a large number of people who are not going to be successful. Will the department give an undertaking to make contact with all persons who are in the queue who also have applications filed to give either them or their sponsors some information?

Mr Rizvi—Absolutely. At the next appropriate juncture in this process we would seek to alert all applicants of any further developments.

Senator McKIERNAN—Thank you very much. That is all I have on 1.1.

CHAIR—Are there any further questions on 1.1, Non-humanitarian entry and stay? Senator Ludwig and then Senator Cooney.

Senator LUDWIG—Only in respect of budget estimates hearings on 29 and 30 May and question No. 7. Senator McKiernan asked a range of questions about the fees and charges over the past five years and there were a number of dot points. I am wondering if you could update that. I do not need the five years which were already provided, but if there are more updated figures perhaps they could be provided.

Mr Farmer—We will do that on notice. Is that what you are asking?

Senator LUDWIG—Yes. Then in respect of Senator Carr's question in relation to the 69, which is question No. 12, of former Austral students who have gone to new providers. He questioned how many had gone on to Bridge College. Perhaps you could take this on notice. Of those 69 who have obviously gone on to Bridge College, is there a change in those figures who have had their visas cancelled, reviewed or otherwise granted? In respect of Senator Carr's question No. 13 in which he asked, 'Are the directors of this college'—that is Austral—'in the country, and when did you last have contact with them?' The question arising out of that is whether or not any charges or follow up has been undertaken in relation to directors of Austral? I assume you still know if they are in the country.

Mr Farmer—We can get the chapter and verse for you on that.

Senator LUDWIG—You can take that on notice. Then in relation to question No. 19, Senator McKiernan asked, 'What is the average delay between the date of lodgment and the queue date allocated to applicants for aged parent migration?' I wonder if you could update that provision as to whether or not those figures have changed. I am happy for you to take that on notice—that is, the person's queued and the median processing time for queue date in weeks. It was 116 and persons queued was 1,291. Perhaps you could then provide the comparative data as to how that has gone. I am happy for you to take that on notice.

Mr Rizvi—We will provide that.

Senator LUDWIG—Then in relation to question No. 20 in 1.1, Senator McKiernan asked, 'How much consolidated revenue is the fund holding in terms of application fees related to the aged parent class?' I ask whether or not that figure can be updated as well.

Mr Rizvi—Yes.

Senator LUDWIG—Question No. 21 refers to the number of visas issued to workers in the building industry, not only the building industry. Do you break that down by occupation? How do you break down the number of visas that have been issued to workers?

Mr Rizvi—Are you referring to long-term temporary residents there?

Senator LUDWIG—It did not contain that in the question, but you managed to give an answer, so I assume it must.

Mr Rizvi—My recollection is that it would be in respect of long-term temporary residents. There is a particular subclass there which I think was the focus of the question. We can update that in terms of statistics by broad occupation category. The level of detail to which we can go down will depend on what we have on our systems, and we will update that to the level of detail that we can.

Senator LUDWIG—Providing it is not too onerous a task. I suspect that by occupation it would be only 20 or 30 groups that you might use. It may not be that difficult. Would that be correct? If it is more than that, perhaps you could see how long it would take you to gather that data. If it is too great, perhaps you could then let the committee know and we might narrow the classifications down.

Mr Rizvi—We will see if we can get you a breakdown down to about 20 or 30 broad occupations.

Senator LUDWIG—That would be helpful. Thank you. I have no further questions.

Senator COONEY—How we are going with the balance of brain gain and brain drain? I have anecdotal evidence that it is difficult for people to get their family in and what have you. Would you like to make some comments on that, Mr Farmer?

Mr Rizvi—In respect of the question about whether Australia is achieving a brain gain or a brain drain, we did get Monash University Professor Bob Birrell, Ian Dobson, Virginia Rapson and a gentleman by the name of Fred Smith to undertake a study looking in quite some detail at a large range of occupations to see the numbers of people in those occupations who were leaving the country and the numbers of people in each of those occupations who were coming into the country. They have produced a very extensive report which we can perhaps leave with you.

Senator COONEY—Thanks. There was another point I wanted to put to Mr Farmer about our experience. Lidia Argondizzo does the immigration cases in the office. I would like your comment on this, Mr Farmer. In cases recently, and even over the years, we have found that the department was in a lot of cases prompt, sensitive and effective. I just want your comment on that.

Mr Farmer—Senator, I am delighted that you are drawing these things to our attention. I thank you for that. As I said, perhaps on Tuesday, we try—I was going to use an Australian expression—very hard. When we are doing a lot of things we will make mistakes and we try to learn from that. We have embarked on a program designed to try to make our services more accessible and our times for processing case loads go down. We have embarked on a number of projects in the electronic area—that is, to make services available electronically, and there have been some significant advances in that area over this last year. For example, people can now apply electronically over the Internet for renewal of resident return visas and temporary tourist visas in Australia. There are a number of other electronic applications that we have introduced only recently.

We have also, as you know, established onshore processing centres in Adelaide and Perth. We are trialling these bit by bit because we want to make sure that we can in all of these areas

guarantee the integrity of the system and also handle I think very important customer service issues, things like how you correspond or telephone a client in Madras who is applying for a service. Is it easier from Adelaide or harder from Adelaide than doing it from New Delhi? So there are a number of those customer contact issues that we have dealt with, but we think that we have answered those questions to our satisfaction. It means that we are now looking to do whole case loads in Adelaide and in Perth. For example, all of our points-tested skilled migration work is now being done in Adelaide. That is where everyone in the world has to apply. So we are getting consistency of treatment in those case loads, and I think we are doing it actually with very good client service.

What it means overseas is that our posts are freed up from some of the work they have had and are therefore able to devote time to areas where we are not happy with our performance. Our performance, for example, in processing some spouse applications has not been what we would want, and we are hoping through these sorts of initiatives to give better service to our clients in those areas but also to free up our resources in other areas for us to provide better client service or better integrity. There is a mix of things we want. I would have to say we are quite excited by some of the changes we have made. If at any stage anyone was interested in talking about that we would be very happy to go into more detail.

Senator COONEY—Thanks for that.

CHAIR—I think we still have more questions in 1.1, firstly from Senator Ludwig and then from Senator McKiernan.

Senator LUDWIG—On page 35 of your annual report—I take it the heading ‘Students’ still keeps us in 1.1—the student visa grants included a record 146,577. I think that represents a 23.1 per cent increase on your figures. Then the third dot point is that extensive consultation with peak industry bodies and relevant government agencies led to implementation of vastly improved arrangements for managing overseas student programs. What are those improved arrangements? I am happy for you to take that on notice. In particular, was the point to limit, increase or manage the numbers? In other words, was it designed to manage the numbers from an administrative perspective or was it designed to increase or decrease the numbers of students?

Mr Rizvi—It really was not designed to target the issue of numbers so much but rather to try to make a better assessment, firstly, of the level of risk students from different markets were posing based on an objective assessment of that risk and to then apply different evidentiary requirements to student case loads from different sources based on that assessment of risk. What that meant was that the requirements for some countries and for some education sectors were reduced and for some countries and some sectors they were increased to try to match the assessed level of risk. We also sought to try to make the student criteria, firstly, much more objective than they were previously. The previous criteria gave a great deal of discretion to immigration decision makers, and that led to some inconsistencies in decision making. We wanted to move to a much more objective arrangement.

Secondly, we wanted to introduce arrangements which were much more transparent, that is, the applicant would have a good idea of what our criteria were, what our evidentiary requirements were and would therefore be able to lodge applications in the knowledge of what we required and, hopefully, that way we would get the evidentiary documentation we needed and process the applications more quickly. That new system has now been in place for something in the order of seven, seven and a half months. Generally we believe it is going well. We have continued to consult closely with industry on that new system. In fact, we meet with them almost on a monthly basis to discuss how it is going and what finetuning has been

needed to it, and we continue to make that. But on the whole we believe it is working quite well.

Mr Metcalfe—The machinery for that system was essentially legislation that was considered by the parliament probably about this time last year. It resulted in amendments to the Migration Act and, I think, the ESOS Act—the Education Services for Overseas Students Act—administered by the Department of Education, Science and Training as well as the migration regulation. So it was a package of legislation that would have come to your attention through the Senate about 12 months ago.

Senator LUDWIG—Yes, I thought it might have been the package, but I was interested in whether or not there were also included any administrative arrangements. It seems to have suggested it led to implementation of vastly improved arrangements. So I was trying to differentiate that between legislative arrangements and administrative arrangements which are not regulations; so there might have been the regulations or the legislation, but then whether or not there was administrative issues that had to be addressed as a consequence. The question that I then ask is: has the number of students who were granted visas and who breached their visas started to decrease, or do you have figures that demonstrate that the range or package of legislation and regulation which has been put in place is managing that program? And is that one of the indicia that you use?

Mr Rizvi—The extent of student visa breaches has continued to increase in the last six months. I think that relates more to the students that were already in the country. When the new arrangements were introduced, of course, we had something in the order of a stock of 150,000-odd students in Australia, so the bulk of students in Australia in fact entered Australia on the basis of the arrangements that existed before 1 July. To be able to make an assessment of whether the new arrangements will, long term, reduce the level of student visa noncompliance, I think we would have to wait probably another 12 to 18 months before we could really answer that question.

Senator LUDWIG—Thank you. I will be back.

Senator McKIERNAN—I am not sure if I am in the right area to ask this question on statutory self-regulation of migration agents. There is an extra \$735,000 in the additional estimates. Is it appropriate to ask a question as to what that funding is for and is it appropriate to do it now, Mr Waters?

Mr Waters—That can certainly be done. I will give a bit of background. The Migration Agent Registration Authority is in fact funded through the fees that migration agents pay for registration. In practice, those fees go into consolidated revenue, and the MARA is then funded from the budget in relation to the fees that come in. What has happened in the estimates process is that we have revised the estimate of the number of migration agents likely to be registered and, hence, an adjustment in the allocation of funds to MARA.

Senator McKIERNAN—So there will be a balancing off in the revenue to the same amount?

Mr Waters—Exactly.

Senator McKIERNAN—Thank you, Mr Waters.

CHAIR—Are there any further questions on output 1.1?

Senator LUDWIG—The only question is in relation to appendix 7, and the consultants Access Economics. Is that in 1.1 or is it in output 2, in internal arrangements? I can wait till then or ask it now.

Mr Metcalfe—What page, Senator?

Senator LUDWIG—Page 106. I have asked this before, but I cannot recall from the last time whether or not, when you have consultancies, the question is under internal products, which is output 2, or under—

Mr Rizvi—That particular consultancy relates to functions in output 1.1.

Senator LUDWIG—That is what I thought, but sometimes there is a question of whether you ask it now or in output 2.

Mr Waters—Ask away, Senator. We will see what we can do.

Senator LUDWIG—Is there a report that has been prepared by Access Economics that is available to the committee as a consequence of their research study into the impact of immigration on state and territory budgets and their studies regarding the fiscal impact of migrants to Australia?

Mr Rizvi—The study in respect of the Commonwealth is available, and we will make that available to the committee. The study in respect of the states is nearing completion, and we are about to enter into a process of consultation with the states on it to make sure that they are comfortable with the outcomes of that study before it is released publicly. We can certainly make that available to the committee as soon as it is released publicly.

Senator LUDWIG—That would be fine, or I can re-ask it in May. I do not want a tailed question waiting, so if it goes beyond the ordinary time that you would have to respond to questions, then perhaps you can wait till May and I will ask the question again. Thank you.

Mr Farmer—Or if it is available before, we will make it available.

Senator LUDWIG—Yes, if it is publicly available, perhaps you can send it to the committee or to me. Thank you.

CHAIR—As there are no further questions on output 1.1, I thank those officers and we will move to output 1.2, refugee and humanitarian entry and stay.

Mr Farmer—Madam Chair, might I just ask a question?

CHAIR—Of course.

Mr Farmer—It is in relation to the officers who have given their evidence in these various outputs. After they are finished, may we assume that they will not be required further? It is not a tricky question.

CHAIR—No, not in the least.

Mr Farmer—There is sometimes a bit of doubt about which can go.

Senator McKIERNAN—Could I take that on notice!

CHAIR—Return date is 2 April 2002, Senator McKiernan. Yes, Mr Farmer, that is the best thing to do at this stage.

Mr Farmer—Thank you very much.

Senator McKIERNAN—We are still waiting for Senator Bartlett to come and join us for a meeting so we can determine how we are going to handle the rest of today's proceedings. He may be monitoring this and might come to our call.

[4.33 p.m.]

CHAIR—We now move to output 1.2, Refugee and humanitarian entry and stay. I welcome the officers to the table.

Senator McKIERNAN—I thought I had an understanding of this area and, even from the annual report, thought that the target date for last year on the numbers entering Australia under the refugee and humanitarian program had been met and even marginally exceeded. I have seen some media comment to the contrary. I have done calculations here. Maybe I am getting something wrong. Has last year's target for the number of persons entering Australia under the refugee and humanitarian entry program been met?

Mr Giuca—Yes, the target was met last year.

Senator McKIERNAN—And marginally exceeded?

Mr Giuca—And marginally exceeded. The total number was in the order of 13,600. I can get the exact figure for you, Senator.

Mr Farmer—While Mr Giuca is doing that, could I just make the point, which I think is already known to the committee, that now, under flexibility arrangements agreed by the government, underusage or overusage of the program each year can be carried forward. So if, for example, there are management issues of one sort or another which meant that we did not issue a full 12,000 visas in a year, or someone was issued with a visa but did not use it or a temporary protection visa holder left Australia and therefore did not need protection anymore, and so the number of 12,000 were not reached, we have flexibility to take the unused numbers into the next year. I believe this happened a couple of years ago. It has been for us a very positive development in an administrative sense because it gives us greater flexibility than we had in the past. It means that all of the refugee and humanitarian places will be used, even if there is a shortfall in a particular period.

Senator McKIERNAN—Thank you. I have studied the annual report and done my own calculations, but I am also aware that there was media comment on this matter. I now note that some of the academic writers who write about this area are now quoting those media things that state that Australia did not meet its target of last year. Thank you for that clarification and for the additional information.

Mr Farmer—I made the point obviously because it means that even if we do not reach a target in a particular year those places are not lost; they are carried forward.

CHAIR—I might seek the cooperation of the committee to adjourn very briefly so that, Mr Farmer, we can give you and your officers some guidance on progress for this evening. Thank you.

Proceedings suspended from 4.37 p.m. to 4.44 p.m.

CHAIR—Mr Farmer, to assist you and your officers and the minister with process, the committee has, to try to be realistic, acknowledged that it is very doubtful that we would reach matters concerning the indigenous affairs part of the portfolio this evening. So those officers who are here for indigenous affairs—whose patience, we might say, we appreciate—will not be required this evening. The committee will endeavour to reconvene an estimates hearing in the next sitting fortnight. The minister has assisted us by indicating that that would be acceptable. We will continue now with questions. The committee is of the firm resolve—and if the committee is not, the chair certainly is—that we will cease by 11 p.m. this evening.

Senator Ellison—I do not think we can go over that, can we, Madam Chair?

CHAIR—As the Senate indicated. My colleagues have agreed to assist with that plan. As I announced earlier, the dinner break will be from 6.30 to 7.30. We are still in 1.2, continuing with questions at this stage from Senator McKiernan.

Senator McKIERNAN—I do not have a tremendous number of questions in this area. With regard to applications in this program from overseas posts, can you give the committee

some indication of the numbers and the length of time it takes to process them? I could nominate some posts, but perhaps I will leave it to you to identify the busiest posts and just give us an example here and perhaps a fuller picture on notice, if you could.

Mr Giuca—The number of persons we have in the pipeline currently overseas in the humanitarian program is 44,086. That was as at 31 January this year. The number registered so far this year offshore is 33,680. Again, that is at 31 January. In terms of the time that it takes, we do have an average processing time for cases. They do vary enormously. For refugees, 75 per cent of cases are done within 75 weeks. This is worldwide. For SHP it can take up to 111 weeks.

Senator McKIERNAN—Still for 75 per cent?

Mr Giuca—Yes, 75 per cent. Some of our key posts: for Ankara, for example, again for refugees, it takes 83 weeks; for Cairo, on the other hand, it takes 31 weeks.

Senator McKIERNAN—That is in the refugee program?

Mr Giuca—That is in the refugee program. That is for 75 per cent of cases finalised and granted visas. For Belgrade, it takes 73 weeks. I can give you the full range, if you like.

Senator McKIERNAN—I would appreciate the fuller information. On those examples you have given the committee now, thank you very much for that. Because of its geographical position, could you give us the figures for Islamabad?

Mr Giuca—Sure. For Islamabad, 75 per cent takes 103 weeks.

Mr Metcalfe—Senator, I might just say that one issue that will bear on the current processing times or the recent current processing times with Islamabad has, of course, been that the migration office in Islamabad was evacuated following 11 September because of a security situation there that prevailed for some time.

We removed the visa processing office to the Australian Embassy in Bangkok and some staff were relocated there. We have now returned to Islamabad, but there is an unusual aspect to those figures this particular year because of the fact that processing arrangements were not what they would normally be.

Mr Giuca—Can I add that, depending on the case load, often there are a lot of medical deferrals, depending on the situation of applicants and their condition, particularly in relation to large families and depending on the camp conditions. Often there is a high TB incidence and as a result there will be high deferral rates in some case loads.

Senator McKIERNAN—Perhaps at this time, to help with completeness, though it will not be complete, you might give me one of the posts in Africa as an example.

Mr Giuca—I gave you Cairo—31 weeks for 75 per cent of the cases.

Senator McKIERNAN—What about Nairobi?

Mr Giuca—For Nairobi, 75 per cent of cases are done in 58 weeks.

Senator McKIERNAN—Thank you very much for that. I do not have anything more on those figures. The only other question I want to ask in this area is on the developments in the renegotiations—is it renegotiation?—or the discussions around the refugee convention. The minister has had some comment to make on that, in particular during his visit to Geneva in the latter part of last year, and there were some earlier comments about interpretation. And, of course, we had legislation in the parliament which we subjected to great scrutiny on behalf of the people last year. I am cynical at times, aren't I! What are the latest developments, if any,

in terms of Australia's wish that the refugee convention be amended, changed, altered or interpreted differently?

Mr Farmer—I think the minister made clear in Geneva again what he has made clear, that Australia is not seeking to renegotiate the refugees convention. I think there is a widespread recognition that it would be very hard to renegotiate another instrument. So that element of your question, I think, is quite clear. What, though, the minister has been proposing—and, indeed, this was proposed also by a number of countries at the ministerial meeting in December—was that the international protection system needs to be safeguarded from a number of elements. One of those is the growth of criminal people-smuggling and the effect that that is having on the inclination or capacities of some countries to deal adequately with people in genuine need of protection. Secondly, the point was made at Geneva that the international protection system itself—that is, the operation of the convention regime, not the convention itself—has elements that need to be reformed or to be updated because, clearly, 2002 is not 1951 and some of the phenomena that we face now are really quite different from those we faced then.

Senator McKIERNAN—Were any views adopted at that ministerial meeting which would lead to any form of renegotiation of the content of the convention on refugees?

Mr Farmer—There was, if I remember correctly—my colleague will correct me if I am wrong—a ministerial statement that emerged at the end of the meeting. But I do not believe it could have contained any such reference because I do not think the issue of renegotiating the convention was addressed except in the case of statements like ours, which said that we are not talking about renegotiation of the convention but, rather, reforming some elements of the system that operates under the convention.

Senator McKIERNAN—There have been requests, or it might even be put more strongly as demands, from certain countries in Europe saying that the convention now is outdated and is not attuned to the demands that exist in the third millennium. Those requests were not pressed at this ministerial meeting? They use kinder language in the international fora, don't they?

Mr Farmer—Perhaps I am not being as helpful as I thought I was. On the renegotiation of the convention, I do not believe that western European countries are talking about that—and my colleague Mr Okely will correct me if I am wrong. But there are certainly views that the system that has grown up over the last 50 years—that is, the operation of the office of the UN High Commissioner for Refugees and the way in which the international protection system operates—that there are elements of that which need to be updated to take account of the current situation. Let us face it, that has happened since 1951. We have had a range of views expressed in the executive committee of the UNHCR about a whole range of matters that are not specifically taken up or spelt out very fully in the convention.

Senator McKIERNAN—Mr Okely, do you have anything further with regard to the western European nations' calls for renegotiation? Do you have any information with regard to that?

Mr Okely—I am sorry, with regard to?

Senator McKIERNAN—The western European nations' calls for renegotiation of the text of the UN convention on refugees.

Mr Okely—I do not have any particular knowledge or particular information on the western European countries' views on renegotiation. Certainly the secretary is right in saying that there was a reaffirmation of the convention as it stands at the ministerial meeting. But, as

Mr Farmer makes the point, a number of issues around the convention require better handling, some redevelopment, to make the convention in our current circumstances work better.

Mr Farmer—I do not know whether you already have the outcome document or documents from that meeting. Would that be helpful?

Senator McKIERNAN—I think it probably would. It would get them on the public record and, therefore, those people who are interested in this subject might become more informed.

Mr Farmer—Would it be helpful if we sent that or them—I cannot recall—to the committee secretariat for the information of the committee?

Senator McKIERNAN—I think it would be, Mr Farmer. Thank you for the offer. I had heard two streams of views with regard to European nations and their attitudes towards the refugee convention. The Scandinavian countries would like a widening of the provisions it contained, and some of the other western countries who have had a big influx of asylum seekers over the years want a narrowing of definitions. Perhaps at this meeting that is where the two met and nothing was resolved, other than the outcomes, which we will look at at a later time. Thank you for that.

On a related matter, on the interpretation, there has been some media comment about differences of view between the UNHCR office here in Canberra and the actions of the Commonwealth government, particularly with regard to the Pacific solution, as I recall it. I will not use names, but I have a name in my head of who was critical. When a dispute like that arises with a foreign agency who is operating in Australia, what are the protocols for dealing with that? I do not want to explore that particular incident, just the more general issue about a foreign agency.

Mr Farmer—In relation to the UNHCR, I would say we have quite close liaison with the regional representative based in Canberra. For example, the regional representative—the current person—has been here I think about five months, and I guess that I personally have had discussions with him maybe 10 times, perhaps more, and that pattern is reflected throughout the department. Certainly in the Refugee and Humanitarian Division there would be much more intensive engagement than that on a range of issues, including subprogram management issues, because of the number of offshore refugees we take. So I would say it is quite an intensive engagement. I am not sure what you mean by protocols, though. Could you perhaps be a bit more specific on that?

Senator McKIERNAN—No, I will not at this time because of the pressure of time. We will have more time in May, and maybe there will be fewer other matters to discuss, as well. So for the moment I will leave that.

CHAIR—Is there anything else in 1.2?

Senator COONEY—Can I just take up the issue of the convention? As I understand it, what you are saying is that there is not going to be any change in the law as written but there might be a change in the practice of how that law is put into operation. Is that what has been said by either Mr Farmer or Mr Okely?

Mr Farmer—My observation is that there is no appetite for renegotiating the text of the convention. So the answer to that part of the question is clear, I think. In part that is because countries recognise that there are differences of view. Some people would like a broader application of the convention grounds for protection status. Others would like a more restricted ground or to have other elements built into a convention. I do not perceive an interest in doing that. But over this last year the UN High Commissioner for Refugees has initiated a very extensive round of what it calls global consultations on the operation of the

convention and the areas in which states and other bodies like NGOs, for example, have views about the future operation of the convention. That has been a very extensive set of consultations which I think began early last year. Mr Okely might want to say something about the consultations and their progress.

Senator COONEY—Can I just interrupt? This might enable you to focus your reply. Central to the refugee convention is this idea of non-refoulement, no return. I think that causes a lot of angst—or whatever the proper word is; I was trying to get a nice sort of neutral word, but you probably cannot get a neutral word in these circumstances—and that is particularly significant in terms of people coming to Australia unauthorised and claiming refugee status. But it is that idea of non-return—the obligation that the state takes on of not returning refugees—that causes a lot of the problems. We have reaffirmed that we are going to keep that going. I am not asking you to accept what I think, but it is in this context that I am asking it. It causes lots and lots of problems here. You have this convention. People come unauthorised or otherwise, and once they are here you cannot return them. Has there been any discussion about that issue and how that is going to be handled?

Mr Farmer—There is a general acceptance of the core nature of that obligation. I have not been present for many of the discussions in the global consultations, but I have seen nothing—and I really would be surprised if there were anything—that went to questioning the core nature of that obligation.

Senator COONEY—Could I just have 60 seconds to comment? That is at the basis of a lot of the problems. If people get here we say, ‘Look, we cannot send you back. We have to process you according to our obligations and our law,’ which we now accept. So to prevent them getting here we have all these stringent conditions. Today’s meeting and the tension that sometimes arises during the questioning and the taking away of judicial review and all this sort of stuff comes from that problem. I was just wondering whether, in our negotiations with the world bodies, we raise that as an issue. I know we are going to stick to the treaty, so we would stick to the problems—and the highly emotional problems at times. I was wondering whether we might raise that as an issue in the negotiations. If you want to keep the negotiations, and I say this sincerely, confidential—but can you follow my problem? I am just trying to gather what we are doing on an international basis to try to solve these problems which cause real tension in our own country.

Mr Farmer—Yes. I will make a comment and then my colleagues can add to it if they wish. The global consultations are more properly called consultations than negotiations, I think. But to my knowledge, as I said, they do not touch on the core issue of non-refoulement—that is, return of people who have a well-founded fear of persecution. But there has certainly been a lot of discussion in the consultations of the question of return. That can be return of people who have fled as refugees when circumstances change. Obviously, that can happen when you have neighbouring countries. For example, people fled out of Rwanda or they have fled out of other countries in Africa—the neighbouring countries—while a situation exists and then they have returned. There has been some discussion about the history and practice of return in those areas. But also there has been quite a lot of discussion in the consultations of a different sort of return—and that is the return of people who do not engage protection obligations. The point of view put by some states is that they have an interest in a system which basically works more effectively to protect those with a real protection need but also takes account of the return requirements in the case of those who do not have a protection need.

Senator COONEY—Thanks for that. The other problem seems to me to be this concept of accepting non-return to the national’s country but sending them back to parts that they may

have come to along the way. If A is the country where the persecution is, everybody says, 'Look, there is a persecution there.' But you come through B, C and D, and once you get to D, D says, 'Look, you have come through B and C. You have had your chance. We will send you back to B or C', which then raises this whole issue of your international relationships, and that creates difficulties, as well. I was wondering whether there was any discussion about that sort of thing at these consultations.

Mr Farmer—I would imagine so, Senator, because the discussions have been quite broadly based. On that issue, clearly the core non-refoulement obligation still exists, that you must not return someone to a place where they have a well-founded fear of persecution. If someone has a prior protection in another country, then the return to that country in circumstances where they have protection is practised in a number of places.

Senator COONEY—As long as PM&C are willing to look after it.

Mr Farmer—Yes.

Senator COONEY—Through these consultations are there any efforts to get places like Indonesia, Malaya, Singapore and India for that matter to sign up to the treaty? I am not criticising those countries. They can either sign in or sign out. I am not criticising them at all, but is there any effort to get them into the convention?

Mr Farmer—A number of non-signatories to the convention are in fact members of the executive committee of UNHCR. They are and have been actively involved in the process of consultations. I would say that the UN High Commissioner for Refugees takes his own opportunities to try to encourage non-signatories to sign.

Senator COONEY—I was asking you before if we could get some sort of profile of the people we have got in the detention centres. This might be harder because there are many more people involved in it. But can we get a profile of the people we bring here on the UNHCR recommendation? We get 12,000-odd every year. It varies, but it would be about that much. That would be a bit difficult, would it?

Mr Metcalfe—I think we possibly have already done some of that sort of work. For example, in the work that was done last year with a number of schools around Australia, the Australia 2030 project, which was largely designed to provide factual information about refugees and associated issues and ended up in a major competition and whatever, there was some profiling of the sorts of circumstances under which some people were coming to Australia and the reasons that they were being resettled in Australia. So we can have a look and see whether that satisfies your interest or whether we could possibly do some further—

Senator COONEY—My own view is that you probably will not be able to do it because there are so many over the years and the individual stories are very hard to relate. You are getting a lot of stories now written by people who came here after the war. It shows what spirit, courage and strength they had. It also says a lot about Australia. It puts us in a bit of a positive light for a change. Wouldn't it be nice to have a few stories like that?

Mr Metcalfe—I agree. Absolutely. We do take the opportunity, through things such as Refugee Week and this particular project and through other means, to try to promote those terrific stories that do exist.

CHAIR—Thank you very much, Senator Cooney. Senator Bartlett?

Senator BARTLETT—Just before I start in this, can I clarify that the issuing of temporary protection visas comes under this output?

Mr Farmer—Yes.

Senator BARTLETT—Are you able to indicate—and some of these may be taken on notice, which is fine—since the introduction of the temporary protection visas in October 1999 how many children under 18 have been issued with TPVs?

Mr Giuca—I can. The number of minors—this is all children under 18—would be in the order of 1,693.

Senator BARTLETT—Of those who are issued with visas—and we are not talking about children in detention now; we are now talking about children or minors in the community—do you know how many are unaccompanied?

Mr Giuca—The total number of unaccompanied—this is both wards and non-wards, that is, both children who were in the company of an adult who was not a parent and those who were not in the company of an adult, totally unaccompanied—was 285. A number of those have obviously turned 18 since they were granted a TPV.

Senator BARTLETT—What is the status of those children? Are they wards of the state if they are not in the company of an adult?

Mr Giuca—If they are unaccompanied and in the care of an adult above 21, the adult carer is responsible for those children. In relation to those who are not in the care of an adult, under the Guardianship Act the minister is the guardian and he delegates his responsibility for the care of these children to state welfare authorities.

Senator BARTLETT—So Mr Ruddock is the legal guardian, and the exercise of that guardianship is delegated to the relevant state families department?

Mr Giuca—That is right.

Senator BARTLETT—In terms of when people do an initial interview for a protection visa—so with the departmental officer—my understanding was that that initial interview was taped and a copy of that tape has been provided to the applicant. Is it the case that that practice is now going to cease, the applicant will not get a tape of their interview?

Mr Illingworth—It has been the case that the protection visa interview has been taped, and in the past a copy of the tape has been given to the applicant. That arrangement has recently ceased.

Senator BARTLETT—What were the reasons for that arrangement ceasing?

Mr Illingworth—There were continuing concerns about the use of the tapes. In some circumstances we were hearing reports that the tapes were being sold on or sent back to other countries where they would be used to research lines of account that would be delivered by new arrivals.

Senator BARTLETT—Were you concerned that they would be sent back to other countries and they would be used as coaching—

Mr Illingworth—Templates for coaching, and there were reports out of the community that for similar sorts of purposes the tapes were changing hands and often sold.

Senator BARTLETT—So it is not a cost issue, then, that has driven this?

Mr Illingworth—No.

Senator BARTLETT—So people actually will not be able to get a copy of their tape?

Mr Illingworth—It is a decision integrity issue in the face of our concerns about attempts to deceive or frustrate our attempts to identify people correctly and identify refugees reliably.

Senator BARTLETT—Let me confirm that people can have a legal adviser or representative with them at that initial interview?

Mr Illingworth—That is the case, yes.

Senator BARTLETT—Is that person able to tape the interview?

Mr Illingworth—That person is not prevented from taking a record of the interview if they wish.

Senator BARTLETT—Including a tape-recording?

Mr Illingworth—Yes.

Senator BARTLETT—Wouldn't this mean that if somebody is refused of that primary decision and is wanting to make an appeal to the RRT they will not be able to refer back to the tape of the initial interview if they do not get a transcript? They do not get anything like that?

Mr Illingworth—No. That was one of the issues that we looked at very closely where there might have been an issue of natural justice to ensure that individuals knew the information that might have been relied upon by the decision maker. In essence, a tape really represents a record of what somebody has told us and what somebody has heard. So there is nothing on the tape that the person does not have knowledge of first-hand and, in addition, we disclose as part of our normal natural justice process specific elements where we believe that they are adverse—they come out of the interview or from any other source. That is disclosed to the applicant and they have an opportunity to comment on it formally. So there is a safety net, which means that for ensuring equity of the process the individual knows the case against them if the case officer is heading towards a negative decision.

Mr Metcalfe—Just to supplement that, a person who is the subject of a refusal decision at the time of the decision stage is given a written notice by the department, which indicates the reasons upon which we have based that decision. So in terms of their being able to prepare a submission to the Refugee Review Tribunal, then they clearly have material that is provided to them, which indicates the reasons for the primary decision.

Senator BARTLETT—I presume that that primary interview with the department official would have a translator involved there in many cases—I do not know how many, but I presume that is not uncommon. Certainly some complaints people have in their appeals to RRT are that they were not correctly interpreted. If they are not able to actually have a tape of that, they will not have any way of getting someone else to verify whether the interpreter was accurate. Is that correct?

Mr Illingworth—If somebody makes that claim or feels that the interpreter was not adequate, then that is an issue which the Refugee Review Tribunal is charged to investigate of its own volition. The tribunal is not a body where the applicant has to go and prove their case. If somebody makes an allegation or raises an issue like that, then the onus is on the tribunal to satisfy itself whether that is well grounded. So they would have our file, our tapes and could check to see whether, in fact, they were happy with the quality of the interpreting which happened at the primary interview or whether they felt there was a problem.

Senator BARTLETT—So you guys still tape it and keep that and you can provide a tape to the RRT.

Mr Metcalfe—Yes.

Senator BARTLETT—But the applicant cannot get access to a tape?

Mr Metcalfe—That is right.

Senator BARTLETT—Is that a normal practice in other legal jurisdictions, do you know?

Mr Illingworth—I do not think protection visa decision making is readily comparable to other administrative decision making. I certainly would not compare it with a court, which has its own standards of record keeping. The key issue is that we deliver natural justice to the individual. They hear the case against them and they have an opportunity to comment on any adverse inference which has been drawn against them from whatever source of information. As Mr Metcalfe pointed out, at the end of the day if the decision still goes against them, they have quite a comprehensive decision record which explicitly sets out the basis for adverse conclusions and what those conclusions were.

Senator BARTLETT—I know that they cannot in appealing an RRT decision, but in appealing against the DIMA decision to RRT, are people allowed to use lack of natural justice as a ground?

Mr Metcalfe—It is important to recognise, of course, that the RRT is not a court and is not applying judicial standards. It is a merits based decision-making body. It has the powers to grant a visa, providing other requirements are met, or it has the power to make a determination as to whether the person meets the refugee criteria and it reaches that decision according to the merits of the situation. So it is not actually examining the primary decision so much as reaching its own conclusions on the material.

Senator BARTLETT—And that natural justice requirement is not there under the act with the RRT?

Mr Metcalfe—The act requires the tribunal to apply substantial justice in its methodology. But the point that I am trying to draw out is that it is not actually reviewing the legal correctness of the primary decision; it is actually reviewing the decision and is forming its own view as to whether or not the person is a refugee.

Senator BARTLETT—In your annual report, preventing unlawful entry and promoting international cooperation—is that under 1.2?

Mr Metcalfe—It could vary between 1.2 and 1.3, but we are happy—

Senator BARTLETT—I am specifically asking about the joint AFP-DIMA strike team.

Mr Metcalfe—That is 1.3.

Senator BARTLETT—I will save that one for the moment. I have received representations from the Community Aid and Advice Bureau in Springvale, Victoria—probably in Melbourne, I would guess by the postcode. They are raising concerns in relation to people who have permanent residence status—so pre-TPV days; 1999 and previous—trying to access the split family provisions that allow an asylum seeker to bring family. That is still available to people with a permanent protection visa, I presume?

Mr Giuca—That is. They also have available the spouse provision under the migration program.

Senator BARTLETT—That provision has a cost to it, does it not?

Mr Giuca—That is right. The split family provisions for permanent residents who are PV holders, in terms of priority, certainly those with spouses who are in their own right in difficult situations where they have been subject to human rights abuses or persecution would certainly be treated as a matter of urgency. But spouses who are in areas of comparative safety would not get that same priority. So they would be processed but it may take longer, given the limited number that we have under the program.

Senator BARTLETT—I have had raised with me concerns a number of different people—all Afghanis, I believe. I do not think that it is necessary for me to go into the details of each case, or names, or whatever. For example, I have an email from the senior migration officer in the Islamabad processing office in Bangkok from October last year. I will just read a couple of bits from it. It says, firstly, that the processing of all humanitarian applications have been temporarily suspended until they return to Pakistan. That is now back under way again, isn't it?

Mr Giuca—Perhaps a slight clarification. I think the granting of visas was extremely difficult from Bangkok, but wherever possible processing continued.

Senator BARTLETT—So that is still in Bangkok now?

Mr Giuca—No, they have returned to Islamabad.

Senator BARTLETT—There is another bit here. It follows on and states that in this case it appears that the sponsor arrived in Australia illegally—which I think is the case—but received a permanent visa and is now a citizen actually in terms of the one that I am specifically looking at. In that case, we are treating all refugee applicants where the sponsor has arrived illegally in Australia with the lowest priority. Is that actually the case?

Mr Giuca—As I explained—perhaps it could have been better worded—it relates really to the situation of the applicant. As I indicated, if applicants do have an alternative method of getting to Australia—and we certainly will eventually process them under the humanitarian program—given the limited number of places available, priority does go to those who are in very difficult human rights situations.

Senator BARTLETT—But what has that got to do with whether the sponsor arrived in Australia illegally or not?

Mr Giuca—The issue is the permanent residence. It does not relate to how the person arrived in Australia.

Senator BARTLETT—So this statement here that is saying that all applications where the sponsor has arrived illegally in Australia gets the lowest priority is not correct?

Mr Giuca—As I said, I would not have put it that way.

Senator BARTLETT—Because it is not correct?

Mr Giuca—That is right.

Senator BARTLETT—This particular case and some others that I have got have even fewer details. In this case I think it is six children and a spouse, which adds to the costs if they were going to use the normal family migration process. His wife put in an application on 21 September 1999 and shortly after that received a letter from the Islamabad office saying that processing times can be as long as 75 weeks. Obviously, it is now getting close to 2½ years. Going back to the email I quoted from before from the senior migration officer in Bangkok, he suggested going down the spouse migration application road, which you have already said, because it would be processed far more quickly. He also said that in relation to the existing application, which is already two years old—this is back in October—processing had not commenced. Would that be the case as well—that is, an application that is over two years old and processing has not commenced on it?

Mr Giuca—I would be very surprised. If you like, I would be happy to look at those cases and get back to you on it.

Senator BARTLETT—I can give you copies of this. I do not think I need to put the details on the record, but I am trying to get the broader procedural picture at the moment.

Mr Metcalfe—We would be more than happy to take that communication from you with those details and get back to you with the details of precisely where those cases are and why they are where they are now.

Senator BARTLETT—As a final question in relation to this, and this is obviously something that needs to be taken on notice, this correspondence details about 10 or 11 different separated families where spouses have put in applications, mostly in Islamabad.

CHAIR—You just need to be cognisant, Senator, that it would be on the public record of course and so all of those names—

Senator BARTLETT—I am not tabling it. I am not reading the names. But I have a list here which I presume is correct. It quotes file numbers and the like. Most of them were lodged in 1999 and it is now approaching that 2½ year mark. Firstly, can you provide statistics to us about how many applications for that type of visa would be that old or older?

Mr Metcalfe—Mr Giuca may have some details, but we provided some statistics earlier for Senator McKiernan about Islamabad and about 75 per cent of the caseload. These do sound like unusual cases. To the extent that we can provide any details on the longest case that may be around, Mr Giuca will do that. The other complication as I mentioned to Senator McKiernan, and this would not explain that length of a delay, is that processing for our Islamabad caseload has been interrupted because of the need to evacuate our staff from Islamabad and relocate them in Bangkok. Naturally enough, that led to a disruption in the processing. But those sorts of delays do sound quite unusual and certainly privately we are more than happy to look at that to try to advise an explanation and see what can be done, if anything needs to be done, to process them quickly.

Senator BARTLETT—As a final question on this area, these are visa applications under the humanitarian program. It seems to me a classic example of the so-called queue in the operation. These are people who tried to do it the right way—that is, apply to the embassy, stand in the queue, get letters saying it will be done in a maximum of 75 weeks and then 2½ years later they get something saying that their application has not even started to be processed. In terms of the quite laudable government policy, which I support, of encouraging people to go through application processes rather than risking finances, life and the like through other channels, surely these sorts of delays are hardly helping to encourage people to go through the queue, so to speak, if the queue is at a dead stop.

Mr Metcalfe—I think we have discussed this on previous occasions and elsewhere, but one of the issues around the humanitarian program is of course, as Mr Giuca indicated earlier, there are far more applicants than places. It is open to people who are in spouse relationships to apply as spouses where there is no quota as such on the number of visas being granted. There are issues about fees, entitlements and those sorts of matters that could influence people's decisions as to which particular route they go down. That may be a factor here. But, in any event, we understand our processing times in that post are quicker, so we will have to have a look at the situation with those cases.

Senator BARTLETT—Moving to another aspect under this program—I think it is under this program; it might be 1.5, but I am sure you will tell me—does the secondary movement offshore visa come under this section, or is that 1.5?

CHAIR—Mr Illingworth is nodding.

Mr Metcalfe—I think the officers here can discuss that.

Senator BARTLETT—As I understand it, this was brought in with the various legislative changes in September last year and there is an ability to set a number for those visas. Firstly,

can you let me know if there has been a number or a cap set for this financial year for this category. If so, how was that number arrived at or determined, or if it is not yet determined how is it going to be determined?

Mr Giuca—There has been no number set on those sorts of visas. The 451 generally would be for people who have been found to be refugees and in need of resettlement from Indonesia. The 447 would usually be from offshore processing centres. They will be assessed and determined in terms of how many places are required, but there has been no number set.

Senator BARTLETT—Temporary relocation is a five-year visa, is it not?

Mr Giuca—That is right.

Senator BARTLETT—In shorthand, that is people in Indonesia who go to UNHCR and apply as opposed to people whom we take to Nauru to get the other one, which we can talk about later. Do the same restrictions apply to that visa category, the secondary movement offshore? I have not got the number of it in my head yet because it is a new one. Do the same restrictions apply to this category in terms of access to government services that apply to the standard TPV?

Mr Giuca—For the first five years, that is the case. They have the same conditions as current TPVs.

Senator BARTLETT—At the end of the five years—sorry, I would have asked these questions in the Senate last year but we did not get the chance, or at a committee hearing into legislation, but we did not get a chance to do that either—can they then apply for permanent residency under that?

Mr Giuca—That is right. They can apply for permanent protection after five years and they will be assessed at that time. If they get a protection visa, that will be for permanent residence.

Senator BARTLETT—So that one would also have the restrictions on family reunion, leaving the country and all of those sorts of things that the TPV has?

Mr Giuca—That is right. As a temporary visa they will not have sponsorship rights and they will not have re-entry rights.

Senator BARTLETT—Being stuck in Australia for five years without any certainty seems like a very long time. Has there been any monitoring? I guess we have not issued any yet, have we?

Mr Giuca—No, we have not.

Senator BARTLETT—I might wait till we have issued a few and pursue that a bit further. In relation to the other visa, what is the title of it? The one from Nauru?

Mr Giuca—The secondary movement offshore entry visa.

Senator BARTLETT—How long is that for?

Mr Giuca—That is for three years.

Senator BARTLETT—When you get to the end of that, can you apply for a permanent visa or do you have to apply for another temporary one?

Mr Giuca—You apply for a protection visa, and it will depend on whether the applicant had prior opportunity to apply for effective protection on their way to Australia within a seven-day period. So if they had prior opportunity and did not take it up, they would only get a TPV.

Senator BARTLETT—And that will be permanently temporary, if I can use that phrase?

Mr Giuca—That is right, because the requirement is that you did not have an opportunity to apply for effective protection on your way to Australia.

Senator BARTLETT—That assessment of temporary protection of seven days in another country, can you explain to me how that is determined, because that is a new provision as well, is it not?

Mr Illingworth—Yes. It is taken into account by the protection visa or the offshore refugee assessor as part of the decision-making process of determining whether or not the individual is eligible for a visa. So it is a similar provision that is considered offshore in relation to applications to enter Australia under the humanitarian program; and in the onshore context, when people are considering an application for a protection visa onshore and deciding whether the person is eligible for a permanent or temporary protection visa, it is considered as part of the decision-making process on the facts of the case.

Senator BARTLETT—On the facts of the case, case by case?

Mr Illingworth—Exactly.

Senator BARTLETT—What are the appeal rights for these two new visas? Can they appeal to RRT?

Mr Illingworth—It forms part of the protection visa decision and is therefore subject to the same administrative review opportunities as the protection visa decision is subject to, the RRT. It is a review right to the RRT.

Senator BARTLETT—I want to make sure I have got that right.

Mr Illingworth—Just as a point of clarification, I am talking about the application onshore for permanent residence or for a further protection visa, which is onshore and has review rights available to it.

Senator BARTLETT—Is that the Indonesian one or the Nauru one?

Mr Illingworth—This is the access to a permanent as opposed to a temporary protection visa, which would be the decision made once they are in Australia, having been granted either a 451 visa or a 447 visa. But in relation to the decision offshore as to whether a person fails or passes that particular seven-day test, there is no review tribunal right, just as there is no merits review tribunal right for the decision itself about whether the person is in need of protection.

Senator BARTLETT—The secondary movement offshore entry visa, which is the Nauru one, I think, also has those same restrictions in terms of access to services and family reunion and leaving the country and all that sort of stuff?

Mr Illingworth—Yes.

Senator BARTLETT—We have not issued any of those, either.

Mr Giuca—That is right. The secondary movement offshore entry, secondary movement relocation and the temporary protection visa have the same entitlements.

Senator McKIERNAN—I had some questions in regard to some of these matters under 1.5. Is Senator Bartlett in the right area for them?

Mr Metcalfe—I indicated to Senator Bartlett that the issues of visa eligibility in terms of travel to Australia do fit under 1.2. But it is possible, I think, that some of the issues could also be relevant to an examination of 1.5. We will be asking the relevant officers to remain for the consideration of 1.5. So if you have questions later, we will have the right people here.

Senator McKIERNAN—I do not want to double up. But I would have started with the fundamental of the numbers that are there, not only looking at Nauru and Manus Island but also Cocos. I do not want to interrupt, but I wonder if it is better if I leapfrog onto Senator Bartlett.

Mr Metcalfe—I would have thought it would be better, Senator, with respect to have questions about the numbers on Manus and Nauru dealt with under 1.5 and the issue of Cocos dealt with under 1.3, because that is part of Australia. It is not an offshore process.

Senator McKIERNAN—I thought it had been excluded, actually.

Mr Metcalfe—I am sorry, under the program and output element at 1.5, that is correct. I stand corrected.

Senator BARTLETT—I have only a couple more questions on this area and it is not to do with Nauru.

CHAIR—Have we actually resolved Senator McKiernan's question? Do you want to ask questions in this area now? Senator Bartlett is about to conclude. He has just said he has a couple more questions.

Senator McKIERNAN—No, I am happy to leave the numbers questions under 1.5 and come back to that.

Senator BARTLETT—Just going to the additional estimates portfolio document, page 33, under 'Output' you have had a drop of nearly \$5 million in your performance information costs, a decrease of 1,500 in anticipated interventions, a decrease of over 2,000 in onshore protection finalisation and a decrease in numbers assisted under IAAAS. What is the reason for that decrease? Is that because we have got people offshore?

Mr Davis—Those reductions relate to a transfer of resourcing from onshore to offshore associated with the creation of output 1.5. The purchasing arrangement we have with the Department of Finance and Administration has a number of areas where they pay us based on the level of activity, and those areas of activity there were all reduced when the events and the people were taken to Nauru and Manus also. So those reductions reflect, if you like, a transfer of resourcing out of this output. Also, output 1.3 has similar reductions because the resourcing was transferred to Nauru and Manus budgets.

Senator BARTLETT—Thanks for that. My last question under this outcome is in relation to the use of decisions under section 417. A whole number of statements to parliament of the minister's use of this decision were tabled last week. I counted them up. I think there were about 85, although I might have counted a couple wrongly. Can you firstly confirm that those amounts that were tabled are all for the six months from July to December last year? The total number of them may be a little more or less than 85. And is it possible to get a country breakdown of where those various people came from?

Mr Illingworth—Just to confirm, you would like to know the number of visas granted under the 417 powers for the first six months of this financial year. There have been 131, and that covers 80 cases.

Mr Metcalfe—There were 80 notices, I think, or thereabouts if I am right in thinking a notice may cover more than one person.

Senator BARTLETT—And probably on notice, is it possible to determine the various countries that those people were from?

Mr Metcalfe—We will take that on notice.

CHAIR—Thank you, Senator Bartlett. We are still on 1.2 as I read it.

Senator COONEY—If people with visas leave they cannot come back. There is the notable case of the boat that went down and people drowned. I think it was a husband who wanted to leave Australia, and the story was that if he left he could not come back. I take it that was according to the regulations. Does the department want to have a say on the record about that? It looks very, very harsh. Or do you just want to let that swing in the air?

Mr Metcalfe—Firstly, I think we should put on the record the fact that of course the drowning of hundreds of people was an incredibly tragic issue. Indeed, there are major issues that surround that and the preparedness of people smugglers to embark people on leaky vessels.

I will be careful in what I say, because I understand that there are criminal proceedings occurring in Indonesia relating to some of the organisers concerned. But clearly, it was a tragic issue and it does underline the fact that irregular travel, travel by non-certified means through the use of people smugglers, can lead to very tragic outcomes. In relation to the particular issue of the gentleman who tragically lost family members, there are current processing issues that I would be loath to go into right now for reasons of privacy, because that particular man's circumstances are well known in the public domain. I do not think that it is proper that we flag developments in relation to that. We could have a private discussion with you in relation to that issue, if you would like.

Senator COONEY—Just leading on from that, you do get heavy criticism from parliamentarians, often times for carrying out what parliamentarians pass into law? I understand all that—not that I ever do that. Does the legislation allow you any discretion? I am not sure on this.

Mr Metcalfe—I think the short answer is no. There is no entitlement to grant a re-entry facility for a person who is a temporary protection visa holder.

Senator COONEY—So the system has not provided you with any legislation?

Mr Metcalfe—The law does not permit a re-entry facility. Whether the situation and the humanitarian issues involved could be dealt with in other ways is something that we are currently looking at.

Senator COONEY—But there is no legislative underpinning that would allow you to do it?

Mr Metcalfe—Not in terms of a re-entry facility.

Senator COONEY—All right.

CHAIR—We are still on 1.2. Do you have any further questions on 1.2?

Senator COONEY—No.

CHAIR—There being no further questions on 1.2, we have concluded the output on refugee and humanitarian entry and stay. I thank the officers for their assistance.

[5.51 p.m.]

CHAIR—We will move on to output 1.3, enforcement of immigration law. We will begin in this area with Senator McKiernan.

Senator COONEY—Can I just ask this question while Senator McKiernan is preparing for his discussion? Just to continue the theme that I was on before, there is no doubt that the legislation as laid down by parliament as to mandatory detention and other things and the way visas are allowed through regulations and what have you make it necessary for the department to act in ways that are interpreted from outside as very tough. But there are ways of carrying

out these obligations, such as where detention centres are placed, what the conditions are and who runs them. I have never thought the ACM was a particularly good agent for the department to use. Does the department give consideration as to how it can make its obligations to execute the laws laid down by parliament as humane as possible?

Mr Metcalfe—That is an absolute fundamental. I think that we have discussed on a number of other occasions that one of the core principles established in the immigration detention standards is where, really for the first time, when the detention and management contract was put out to a formal tender process, we actually articulated what our requirements were in terms of the respect, the dignity, the standards of care and a whole range of other things that were required. I think that any fair reading of those standards, which have now been revised and will essentially, through the new tender process, be updated, indicates that we have a very strong concern in providing the best amenity that we can in the circumstances.

Senator COONEY—I have never been to Woomera. I probably will not ever go. I have been to jails—not actually sentenced.

Mr Metcalfe—On remand.

Senator COONEY— There is a tendency to have trouble in jails and not to have trouble in jails depending on how they are run. If you feed people well, treat them with an amount of respect, give them good shelter and give them a reasonable environment, it is a lot less likely that you will have trouble. You just get the impression from Woomera that you have people in uniforms—who are dressed up—who are not official policemen by any means. They are people taken from outside any police force. I do not know how much they are paid, but I imagine that they are not paid a great deal of money. They are stuck out in the desert, put into conditions that I would have thought would make you short-tempered and put in charge of people who are obviously quite distressed in the circumstances. How many people are out there from the department? Is it one or two? I remember going to Maribyrnong once and I think that there was one.

Mr Metcalfe—We have a number of DIMIA staff present at the various detention centres. You made a number of observations there and I think that it is important that I respond to a couple of them. There are, of course, distinctions between administrative detention in relation to persons in Australia without visas who are in detention and corrective detention, or judicial detention, in relation to people who are criminals. One of the most obvious differences is that a person serving a criminal sentence usually has a reasonably good idea of how long they will be there for, allowing for parole and work release and various other things. Normally they know that they will be there for a week, a month, a year, 10 years, or whatever it might be.

With administrative detention, of course, the obligation is that a person is detained until either they are granted a visa or, alternatively, they depart Australia. Sometimes it may be for a matter of hours; in other circumstances it may be for many months, if not for a year or two. The reason for a person being in detention for any particular period of time sometimes is within their own province in terms of the fact that they are not a refugee, they have no right to be in Australia, and it is a question of their own cooperation as to whether they actually seek to return home.

In other circumstances, there are processing issues that we have been through many times before. But the point that I am trying to make is that the period of time that a person is in detention can be sometimes difficult to determine. Yet we may have people who have expectations, quite often given to them by people smugglers or others, that they will be in and out of a centre quickly. Naturally, that leads to a situation of frustration on their part when they are not getting what they think they were going to get. So the fact that there is not a

known period in some circumstances means that people are unsure as to exactly what period they will be in detention.

That can have a whole lot of effects on, for example, the ability to develop and tailor programs for people, which go to those issues of keeping them busy, helping to further their education and so on. That can be difficult to manage when we are not sure how long a person is going to be with us and, indeed, their own participation may vary depending upon how long they think they may be in the centre. The other complications we have of course are probably described in two broad areas. Firstly, unlike prisons, which usually are single-sex institutions, we try to accommodate as best as we possibly can people in family groups or in the groups in which they arrive. So we have a mixture of men, women and children. Some are married; some are not and so on. We quite often have people from different cultural backgrounds and different nationalities, so it is a far less homogenous circumstance than a prison might be.

Finally, there is the issue of the quality of the facilities. It is a matter of record that we have had to develop facilities at very short notice in the last few years and then work steadily to improve them. Woomera of course was opened in the last quarter of 1999 because we simply had no accommodation elsewhere. That was on the basis that people do not ring ahead and say they are coming. People turn up and we have to accommodate them as best we can. We are the first to concede that sometimes the facilities are not optimal and we have to work quickly to try to improve those facilities. Sometimes our task is made more difficult if in fact the facilities are damaged or destroyed because of the actions of people themselves.

So there are a number of distinctions I think between jails and immigration detention facilities. I have not talked about staff, but we have said many things about staff in the past. Certainly, our expectation is that contract staff in the centres under ACM perform to the highest possible standards. There is a very strong commitment to working with the company to ensure that its staff meets those standards. Where they do not, action is taken. The issues of training, cultural awareness and all of those issues that go to try to manage facilities as well as possible are issues that are daily preoccupations for a number of us—a very large number of us—and issues we take very seriously.

Senator COONEY—You make the point that people in jail have a specific period because they have been sentenced, except when they are waiting for trial, which sometimes goes on and on and on. We have been through this before, and I do not know whether you have any further thoughts about it, but it almost seems to me that if unauthorised arrivals were charged with some offence and then went through the court process and could apply for bail, which is one of my perennials, that would make it much more satisfactory. But I think we have agreed before that we really cannot do that and be consistent with the refugee convention.

Mr Metcalfe—That is correct. Essentially, the convention requires that you not penalise a person in those circumstances. So it brings you back into administrative detention. We have no interest in a person being in detention for a day longer than necessary. We do a lot to try to expedite our processes, but sometimes those processes take time because of the need to undertake security checks or to ascertain and verify a person's story. It can be complicated because quite often people turn up without identifying documentation or material that can tell us really who they are. We have to go through that process. Many people in detention have been found not to be refugees but are either unprepared or unwilling to cooperate in securing their departure from Australia. I would hesitate to say that that makes it a more challenging environment than a prison environment, because I am sure they have their own issues to deal with, but we do not in any way resile from the fact that this is a very complex area in Australia.

Senator COONEY—The other problem is that it causes stress within the Australian community itself. One group of Australians says that these people are not refugees and have come here claiming to be that, and that leads to one reaction. At the same time, other Australians say that these people are refugees, and that leads to another reaction. I just do not know what the answer to that is while the law remains as it is with mandatory detention.

Mr Metcalfe—The simple answer is that some people are identified as refugees and some people are found not to be refugees. Until you have a process to actually work out who is who, indeed Australian law requires—it is not just the view of a particular government at any particular time—that a person be detained and the rationale for that is to ensure they are available for that process.

Senator COONEY—I should say that over the years we have been discussing this I think that the department has shown concern and has been worried about how it can do things better. I think the problem lies with the law, which you cannot comment on.

Mr Metcalfe—I think Ms Godwin had one additional comment to something I said earlier, Senator.

CHAIR—Not on that point, however. Ms Godwin.

Ms Godwin—Thanks, Madam Chair. I just want to add a couple of comments. I think the other thing which distinguishes immigration detention from a correctional setting is that the incentives work almost in exactly the opposite way. In a correctional setting, the longer you have been in prison the closer you are coming to the end of your sentence. In a detention centre, the longer you have been in detention, generally speaking, the more likely it is that you are not going to be getting a visa, because generally speaking the longer you are the further along the processes you are and you are getting the answer ‘no’. As I say, as people proceed in detention and the longer they are there, the more certain they are that they are not going to get the outcome that they were aiming for.

Senator COONEY—That is a fair point, Ms Godwin. I have always agreed with you.

Ms Godwin—Not always, Senator, but I am pleased to hear that you do on this occasion. The other thing you asked about was numbers of staff, and I can give you that. For exactly the reason that I just mentioned—that is, the longer people are in detention the more likely it is that their immigration status is that they are not going to get a visa to go into the Australian community—we recognise that that means that the number of immigration staff as opposed to ACM officers needs to be increased so that people can have the opportunity to discuss their immigration status and the implications of it. We now have at Woomera eight officers, at Port Hedland eight officers, at Curtin seven officers, at Maribyrnong two officers, at Villawood 10 officers and at Perth, Christmas Island and Cocos Island one officer each.

Senator COONEY—This is my last question, because Senator McKiernan is desperate to get on to it. The other problem I want to ask you about is the person who has been refused a visa—it is all over—and he or she is kept in imprisonment in a detention centre or a jail because no country will take him or her. That is another issue. Does anyone have any thoughts about that, because that is another centre of criticism?

Senator McKiernan—Before you answer that, it might be helpful, because I have a train of questioning around this line, if we knew the totals that are involved and where they are located. If we can do it problematically—

Senator COONEY—If you want to do it later on, why don’t we leave it till then.

CHAIR—That will incorporate the information you are seeking, won’t it, Senator Cooney?

Senator McKIERNAN—No, it is just tagging it onto your question.

Ms Godwin—Senator, can I clarify, do you want the statistics of total numbers in detention or of people awaiting removal or both?

Senator McKIERNAN—Let us just deal with the people awaiting removal in response to Senator Cooney's question. If we can deal with not just the concept of it but with the hard numbers as well, because—

CHAIR—That would be good in estimates.

Senator COONEY—What is that?

CHAIR—The hard numbers that Senator McKiernan was referring to.

Senator McKIERNAN—You have trained me well.

Senator COONEY—But we go back to the original purpose.

Mr Metcalfe—I might start the response and Ms Godwin can provide the statistics later. The issue of the ability to return people can of course be as infinitely difficult as the number of people we have awaiting return. For some people it is very easy to secure departure from Australia. They have a travel document, they have a passport, they are prepared to cooperate, and usually they leave the next day. Sometimes they even have their own airline ticket. But that can then move through a variety of circumstances to people who are willing to leave Australia but have trouble in obtaining a travel document. Some countries do not place high priority on providing consular assistance in terms of providing travel documents to their nationals or, indeed, their own internal checking procedures to see whether a person really comes from that country or comes from some other country. It can take some time for them to verify before they will actually issue a travel document.

There are some countries that are only prepared to accept the return of their nationals when formal arrangements are in place. For example, fairly recently Australia and Vietnam reached agreement in relation to the return of certain Vietnamese citizens who had been serving prison terms in Australia and were being deported. We now have had the first of those people return, and there are more in the pipeline. That has resolved a longstanding issue in relation to the ability to return foreign nationals. Other people are, of course, not prepared to cooperate at all and sometimes make it difficult to establish exactly who they are or what country they come from. We have found over time that continuing discussions with people, continuing negotiations with foreign governments in fact do produce results. I think we can point to a number of areas where, although people are not prepared to cooperate, we can reach a situation where they will in fact leave Australia. So there is no one answer in relation to that issue, but it can be simple or it can be very difficult and it is an area again where we place a lot of attention.

Senator COONEY—The trouble is that refusing to cooperate is not a criminal offence. That is the real problem that I find, and I think lots of other do. Because of the law and because of conventions and because of how things work out, no criminal offences can be created. So you have this situation where you have people locked up for quite significant amounts of time without—

Mr Metcalfe—The parliament has of course provided legislation in relation to this issue. I suppose the question is whether the parliament's will that the person be removed from Australia should be subverted through a person's lack of cooperation. Ms Godwin probably has some statistics that may give you a dimension of this issue.

CHAIR—I do want to get to the statistics that Ms Godwin has, and I particularly want to get to the questions that Senator McKiernan has—although perhaps not nearly as much as Senator McKiernan wants to get to his questions.

Ms Godwin—I actually have a whole stack of statistics here. I might give you the overview stuff and then tell you what else I have got. If you want them we can table all of it. At the moment we have 730 people in detention awaiting removal. That is made up of 284 boat arrivals, 63 air arrivals and 383 overstayers and others. Others are people we have picked up in the community and their visa has been cancelled or something of that sort. I have each of those categories broken down by centre. I am not suggesting that I would necessarily go through all of those, but I can give you some of them, if you wish. I have them broken down for nationality, as well.

Mr Metcalfe—We could table that.

Senator McKIERNAN—That probably would save time.

Ms Godwin—Can I just clarify that I also have awaiting removal by the time people have been in detention.

Senator McKIERNAN—That was going to be my next question.

Ms Godwin—I can give you all of that.

Senator McKIERNAN—Can you give the committee some idea of what the time lines are on awaiting removal?

Ms Godwin—Sure.

Senator McKIERNAN—I recall there was one particular individual in Perth who had been there quite some period when I last visited the Perth detention centre—maybe the longest in each of the centres or something like that to give an overall perspective and then table a more complete document.

Ms Godwin—I would have to take on notice the time awaiting removal by centre. I have got it by category of arrival. But just to give you an overview—I should clarify that these statistics are at 4 February, and as you know the statistics vary virtually day by day—of the 730 people awaiting removal, 50 have been awaiting removal for up to one month, 98 for one to three months, 109 for three to six months, 112 for six to nine months, 112 for nine to 12 months and 249 have been awaiting removal for more than one year.

Senator McKIERNAN—Of that last number, what would be the longest period?

Ms Godwin—In terms of the time people have actually been awaiting removal, I do not actually have the longest period. Ms Sykes has just pointed out to me that we have 21 people in detention who have been in detention for three years or more. But that does not mean they have been awaiting removal for that full period. So of that number awaiting removal there would be very few who were at more than one or two years.

Senator McKIERNAN—You have got the waiting periods broken down by category, as well?

Ms Godwin—I have got the period awaiting removal by boat arrival, air arrival, overstayers and others. We can probably get it by centre for you, if you wish. I also have the total period in detention, because of course there are two factors. Sometimes people will say, ‘I have been in detention for two years’ but they have only actually been awaiting removal for three months of that two years.

Senator McKIERNAN—Awaiting the final determination?

Ms Godwin—Yes. I have got both of those sets. As I say, I do not have all of those with me, but if you wanted these figures broken down to centre level we could probably do that.

Senator McKIERNAN—I am not so sure I would require that other than Woomera, which seems to be receiving most of the attention. Woomera has now been open just over two years.

Ms Godwin—Yes, and we have at Woomera 67 people awaiting removal.

Senator McKIERNAN—Would they be all in the category of boat people?

Ms Godwin—They are all boat people.

Senator McKIERNAN—What would the waiting periods be for those particular ones? Would there be people who have been there the total time that Woomera—no, obviously they could not be, because there are processing times that come into that.

Ms Godwin—That is right. Some of them would have been in detention for probably two years, but they would not necessarily have been awaiting removal for that period. I do not have it broken down to Woomera, but I could get that.

Senator McKIERNAN—Yes, I would ask for that in relation to Woomera. I do not think I want the breakdowns on the other detention centres. I am not too sure how useful that would be. But Woomera is receiving some degree of attention. What I really wanted to do in this series of questioning was to start at the macro and work through to the micro. We have slightly got off track on that. What I really wanted to do was start with the overall numbers in detention centres and the category where they are at. I am making an explanation now. We only have 10 minutes till dinner. We would actually break that sequence of questioning by stopping for dinner. So what I would want to do is perhaps leave this questioning for now and let Senator Cooney, if he wants to, finalise any element of this, and perhaps we could use the 10 minutes on other matters that are not of this nature and we can come back to a more sequential questioning after dinner.

CHAIR—All right.

Senator Ellison—And also any question on notice prior to dinner for which the answers could be obtained over dinner and given to you after dinner.

Senator McKIERNAN—You probably have the detail of the number of people in detention—the areas where they are at in terms of processing, the number who are still in primary review, litigation, awaiting removal. I was going to move sequentially, but we have actually jumped a little bit.

Senator COONEY—Mr Farmer, some of my forebears enjoyed the ticket of leave system.

Senator McKIERNAN—I actually have some more questions relating to this portfolio.

CHAIR—I do not think that it was actually an open invitation, Senator Cooney, to cede the ground. I think that Senator McKiernan was going to continue.

Senator COONEY—I see. I just thought that we could ask a question. I was just going to ask that question. I will get your opinion later on about that.

CHAIR—But you have a hint there.

Senator McKIERNAN—There was a matter which was brought to my attention earlier in the week about the Afghani government delegation going to visit Woomera. There has been some mention on this laptop computer that the delegation is not actually going to visit Woomera now. Can you give us an update of what is going to happen with that? There was some protest from the individuals in the detention centre that they did not want to be seen in detention by the Afghani government delegation.

Mr Farmer—The delegation has visited Villawood, I understand, and is visiting Port Hedland today.

Senator McKIERNAN—And they are not going to Woomera?

Mr Farmer—That is correct.

Ms Godwin—Sorry, could I just add something on this, too, though? It is standard practice in any of these situations, regardless of whether they do or do not visit, that no-one in a centre who does not wish to speak to somebody—a representative of the country—is required to do so. So it is entirely voluntary. Also, the delegation does not have free access to the centre, if I can put it that way.

CHAIR—Do you know if that was made clear to the detainees in Woomera?

Ms Godwin—I believe that the centre manager discussed all of those aspects with them and I have today signed off a letter to the detainees responding to a letter to us on that point.

Senator McKIERNAN—I have received a copy of the letter from the detainees to the Prime Minister. I wonder if you could take on notice whether we could have a copy of that.

CHAIR—Response.

Senator McKIERNAN—I gather that it would be a response to the content of the letter from the detainees to the Prime Minister. If you could take that on notice to see if we could have a copy of that and an assurance. I have some real concerns with this for obvious reasons, but I am assured by your comments that no detainee who did not want to be seen or talk to a delegation has been exposed to that against their will and that—

Ms Godwin—That is standard practice. It is not just this particular delegation.

Senator McKIERNAN—That would have occurred in Port Hedland where the delegation visited today?

Ms Godwin—It is only voluntary.

Mr Metcalfe—And Villawood. There are obviously issues that go to people who are in the process. There are issues to ensure that they are not, in fact, placed in a situation that may lead to surplus refugee claims. Secondly, there is the basic privacy issue. If you do not want to see one, you do not have to see one. Those were live issues in developing a program for the delegation. So in all circumstances we believe that those arrangements will work well in relation to Villawood and Port Hedland.

Senator McKIERNAN—Thank you. I think that will assure the person who forwarded that letter to me. I did give an assurance that I would raise it here today. Senator Ludwig has asked me for updates on certain questions that were taken on notice and responded on the last occasion that the estimates met. It is question No. 40, which dealt with the people trafficking and a number of people who had been prosecuted. Are you in a position to provide an oral update on those figures now—the number of persons who had been prosecuted for people smuggling offences under the Migration Act?

Ms Seigmund—Can I just clarify whether that was smuggling or trafficking?

Senator McKIERNAN—I was actually quoting from the responses to the examination of those budget estimates of 2001-02. A proper definition would be people trafficking, wouldn't it, in law?

Mr Metcalfe—Probably what I think we are talking about is people prosecuted under section 233 or 233A, or whatever, of the Migration Act.

Senator McKIERNAN—232A and 233 is quoted here.

Mr Metcalfe—I stand corrected. I suspect that the actual precise information on that is in the province of the DPP or AFP, who actually conduct those prosecutions. But if we have that information from them, I think that we will take that on notice and respond.

Senator McKIERNAN—Okay. Perhaps you might take the next one on notice. It was question No. 41 dealing with the number of overstayers in Australia and a breakdown of the length of time that they were in the country. Question No. 42 is dealing again with overstayers and the detection of them. The explanations are included in this, rather than me reading a whole lot out at once. He was also interested in those of UK nationality. I encouraged him not to go ahead with the question, but I think in fairness to him we should probably put that question on notice as well.

Mr Farmer—We can hear it extensively now, if you like.

Senator McKIERNAN—No, I am anxious to make sure that we finish this portfolio deliberation today and not have to come back to this like we do with indigenous affairs. Probably No. 47 from the last estimates could be taken on notice as well—the number of people who are awaiting criminal deportation from the country. On the last occasion, there were 46 people. We have heard in earlier explanations that the agreement with Vietnam has now been signed. Has there been a reduction in that number?

Ms Godwin—I can quickly run through that. We had at the beginning of the reporting period 36 people awaiting deportation—Vietnamese. As a result of the conclusion of the MOU and the agreement now with the administrative procedures that underpin that, we have presented the details already of 17 of the 36 people to the Vietnamese authorities. They have already agreed to eight of that 17, three of whom have already left the country, two of whom are actually scheduled to leave next week, and a further three for whom we have travel documents and arrangements being made. They will leave probably within the next month or so. So although we have not moved the 36, we have certainly, I think, started to make a significant impact on that number. What is clear is that the MOU and the administrative procedures seem to be working well. The level of cooperation between us and the Vietnamese authorities, I think, has been very considerable and they have been working through the details that we have put to them at a very steady rate.

Senator McKIERNAN—Thank you for that explanation. There is some comfort to be taken from your explanation on that. The matter was the subject of an Ombudsman's report some time ago and there were some criticisms contained in the report. Those measures are going some way to addressing those concerns.

CHAIR—Senator McKiernan has just indicated that if we take a break now, we will come back to this area. So we will adjourn for one hour and resume at approximately 7.30 p.m..

Proceedings suspended from 6.28 p.m. to 7.32 p.m.

CHAIR—Welcome back, ladies and gentlemen.

Senator Ellison—I have here a letter from the Commissioner of the Australian Federal Police, with a copy to Senator McKiernan and you, with some clarification of answers. I think one was a correction about the SIEV4 sinking.

CHAIR—That is possibly the nicest letter I have ever had from the police then, Minister.

Senator Ellison—I seek to table those.

CHAIR—Thank you. Senator McKiernan was continuing with questions on output 1.3. Can we ensure that Senator Bartlett knows that we have resumed and that we are on output 1.3.

Senator Ellison—It is all fairly straightforward, and I think it is self-explanatory. The commissioner wanted you both to have a copy of it. He wanted to correct that accordingly.

CHAIR—Given he cannot be here to join us on this Friday night, it is nice to know that he is thinking of us anyway.

Senator Ellison—I am sure a lot of other people are too.

CHAIR—Not if they have anything better to do.

Senator McKIERNAN—In preparing for these estimates, I thought I would try to get as much factual detail on the record as possible. There are a whole number of questions to do with detention centres, but before we get into the more controversial of those, I thought we should get the details down as to how many people are in detention as we speak. Regrettably, the updating on the web is not happening as quickly as it used to by the department, so perhaps we might go through it now centre by centre.

Ms Godwin—I have a fair bit of stuff here. I will be drawing from statistics on our computer databases for 8 February. That is when all of the tables were done. I will just make one point at the beginning so you can see there will be some slight discrepancies. If you wish us to, we can update all of these subsequently. According to the database, on 8 February there were 2,268 people in detention. The situation report—which is an actual head count—on 19 February showed a total of just over 2,000. I am sorry; this is in a slightly different format, so there is a slight discrepancy. I will be going from the 8 February figures, if that is okay with you, but these are slightly fewer than the numbers that I will be giving you as of today.

Senator McKIERNAN—Would that discrepancy account for the removals? I know a number of Sri Lankans went out recently.

Ms Godwin—It is removals—people who have already been granted a visa and released. The numbers shift, but if I stick to the figures for 8 February I will be clear about what I am doing. We have 2,268 people in detention, of whom 1,630 are adult males, 289 are adult females, 135 are female children and 214 are male children—minors under the age of 18. By centre, we have 463 people at Villawood, 75 people at Maribyrnong, 23 people at Perth, 685 at Woomera, 14 in the Woomera alternative detention project, 475 at Curtin, 292 at Port Hedland, 30 on Christmas Island and 132 on Cocos.

Without confusing all my tables, let me explain that, if we did the figures today, the numbers at Christmas Island would be 88 and the numbers at Cocos would be down to about 31. There are two reasons: one is that there has been a removal off Cocos, and the other is that we moved some of the people from Cocos back to Christmas Island. As I have said, there are variations in those figures as of today. Do you want me to run through period in detention?

Senator McKIERNAN—Yes, please.

Ms Godwin—We have 69 people who have been in detention less than one week, 23 from one to two weeks, 27 from two to three weeks, 26 from three to four weeks, 12 from four to five weeks; 10 from five to six weeks. Then we go into months. From 1.5 months to three months, 194; from three months to four months, 56; from four to five months, 54; from five to six months, 696; from six to nine months, 245; from nine to 12 months, 245; from 12 to 18 months, 373; from 18 months to 24 months, 107; from 24 months to 36 months, 109; and from 36 months, 22.

Before the break, I gave you a figure of 21. This figure of 22 includes one person who has escaped from immigration detention but would be over three years if they were still in detention. It is just a glitch in the figure. That is why it does not match with the figure I gave you before, if you wanted to query me on that one missing. That comes to 2,268.

You might also be interested in the total number of individuals. In the current year to date—from 1 July to 31 December—5,414 individuals have been in detention. That represents 612,981 detention days. I am sorry to go backwards, but when I gave you the locations, I forgot to include 79 people in other detention facilities. That includes people who happen to be in hospital, prison, alternative places of detention and whatever.

Senator McKIERNAN—Thank you very much for that. I have made some rough notes here, but if you have it in chart form, it will be much easier to read. Hansard might be interested in receiving a copy for their purposes as well so it is more readily understood by those who may read from this. I would certainly appreciate it in chart form; it would save me from having to do that.

Ms Godwin—Senator, before you go on let me clarify. At the break, the secretariat asked us for the tables. Given that we have taken some stats questions on notice—and others we have given—with your agreement, I proposed to the secretariat that we give you a complete set of statistical tables next week. If you wish, we can update it for the current state of play at that point.

CHAIR—That reminds me: I should note for the record that other senators who were not here today will be placing questions on notice, broadly in relation to aspects of the immigration and multicultural affairs portfolio.

Senator McKIERNAN—Do you have a breakdown of the numbers of people who are at primary stage, those at review and those involved in litigation? We already have the numbers of those who have completed all stages.

Ms Godwin—I will give you the stages as I have them. We may need to footnote a couple of them to explain the categories. The 2,268 were broken down into 509 who have made no application; 732 who are at the primary stage of a protection visa process; four who are at what is called the review lodgement window—the gap between when they get the decision and when they have to lodge, so we are not sure whether they are going to; 191 who are at review—at the RRT; and 106 who have been remitted from the RRT and are awaiting grant.

Senator McKIERNAN—Can you clarify the comment ‘and are awaiting grant’?

Ms Godwin—This goes to an issue that was discussed the other evening. Once the RRT has decided on what they refer to as the inclusion clauses, they remit the case to the department. We then have to go through the rest of the process. We have 106 people who are in that category.

Senator McKIERNAN—Yes, I understand now.

Ms Godwin—We have 301 people at judicial review and 411 who have been PV finalised.

Senator McKIERNAN—PV finalised?

Ms Godwin—That means they have been right through the process and they have no other processes in train. Fourteen have been screened out. That brings the total to 2,268.

Senator McKIERNAN—There are 509 that have no application. Would I be right in guessing that it is mainly overstayers who fall into that category?

Ms Godwin—The bulk of them would be that or, in amongst that group, there would be some unauthorised air arrivals who have not been removed within 72 hours but who have not made an application of any sort. It would be essentially what we would refer to as the compliance case load plus some unauthorised air arrivals.

Senator McKIERNAN—They have 48 hours to make an application, so would it include some air arrivals?

Ms Godwin—I am not sure about the reference to the 48 hours. It would certainly include some people who had arrived unauthorised by air and who had not indicated that they were seeking protection but who could not be removed within the 72 hours.

Senator McKIERNAN—And those who could not get through the borders?

Ms Godwin—They are not Immigration cleared. We have not been able to turn them around at the airport and therefore they are required to be taken into detention.

Senator McKIERNAN—Earlier, you gave us a figure of 730 who were awaiting removal. How do we equate that number with the later numbers that you have given me? That is part of the problem of starting from the back and working forward.

Ms Godwin—Yes. I apologise for this, but I will actually have to take that on notice because I do not have the crossmatch between these stages and the ‘awaiting removal’ category. The bulk of the ‘PV finalised’ would be awaiting removal, and a considerable number of the ‘no application’ would be awaiting removal. As I said, I would have to do a crossmatch.

Senator McKIERNAN—On the figure of 732 at primary stage, Mr Farmer indicated yesterday—not yesterday, two days ago—

CHAIR—Time flies when you are having fun, Senator!

Senator McKIERNAN—that you wanted to go into some detail about primary applications and what happens. Is this an appropriate time for you to give the explanation you were seeking to give? I think it was when we were talking to the Refugee Review Tribunal on Tuesday evening.

Mr Farmer—I think what you are referring to is the information I was giving earlier on about the moves that we have made in areas like electronic lodgment and repatriation of case loads to Australia in an effort to handle some case loads more cost-effectively and with better client service so as to make more resources available to handle other case loads. That is what I had in mind when I made that point earlier on.

Senator McKIERNAN—I will not press on that one now, but I will press on whether that 732 at primary represents a significant blow-out in the processing times that the department was achieving over the course of the 12 months that the annual report refers to.

Mr Illingworth—There has been a slight increase in the completion rates for primary processing, but it is not as large an increase as one might have expected. The best point, in terms of our timeliness at primary for detention cases, was in relation to finalising cases that arrived in the first quarter of the last financial year, when we were producing decisions in 13 weeks for 80 per cent of people. There has been a slight increase in the processing time, largely in the latter half of last calendar year, which is attributable to a number of factors. The processing time is still 80 per cent under 18 weeks, so that has increased by about five weeks.

We have not as yet got a clear picture for the groups that have arrived very recently because, understandably, only about 60 per cent of them have received primary decisions. But the 700-plus cases that are referred to have since shrunk to about 638 IRPC cases at primary stage. The majority of those have been affected by security assessment issues and offshore checking.

Mr Farmer—I would like you to know some of the factors that have led to that increase in the processing time.

Senator McKIERNAN—So would I; I was going to ask that question.

Mr Farmer—I will start off the batting, but Mr Illingworth can continue. One of the important things that occurred in the second half of last year was the growing evidence of a need to do more linguistic analysis on the case load because of both allegations and findings of fraud in the case load. That linguistic analysis at the moment has to be done offshore, although we are looking to see whether that can be done increasingly onshore, which would basically cut down the time required. But that is something that Mr Illingworth could talk about if you like. The other element, which would have had a role, is the changed circumstances in Afghanistan. I invite Mr Illingworth to elaborate on those remarks.

Mr Illingworth—As well as streamlining the processing which we have outlined in previous appearances, we have also been taking steps to ensure that the integrity of the processing is maintained. One of the initiatives that the department has put in place has been the use of expert language analysis to try to identify people who perhaps are saying that they are from country A when in fact they are from country B. We have been increasingly concerned about allegations that that is occurring. The results of our language analysis tests have indicated that it is occurring, and the wider use of language analysis means some delays.

The other major impact through the year has been our capacity to receive large volumes of quick security clearances for cases in the wake of the events of 11 September. That is an issue that has been addressed and, in more recent weeks, there has been a very pleasing response. So we were getting lots of clearances coming through earlier in this calendar year.

The other issue, which is a potential impact more than a real impact in a large sense at this stage, is to the problems with getting clear country information in relation to Afghanistan. There are a group of cases which have had to be re-interviewed, and which are quite challenging to resolve, but we are pushing ahead to resolve cases wherever this is possible. Nonetheless, the re-interview process to give people an opportunity to revise claims and provide new information in the light of changed country circumstances in Afghanistan has built in some more time. My reference to it not being a major impact on timeliness at this stage is that, because of other checks—particularly security checks—the number of cases that could have been finalised were it not for the changed country circumstances is, at the moment, quite small. There are 34 cases which, on our records, are over six months in the system. The only issue that is holding up the decision in these cases is our need to re-interview the person and to start assessing their claims again. The other members of the Afghan case load have various arrays of other checks also outstanding.

Senator McKIERNAN—With the reinterview caseload that you have, would they—and I am trying to think of their acronym—continue to receive the advice?

Mr Illingworth—IAAAS.

Senator McKIERNAN—Yes. So they would continue to receive advice and assistance, and natural justice provisions would prevail?

Mr Illingworth—That is correct. We have put in place special arrangements with the IAAAS providers to perform this work, recognising that it is an additional workload that could not have been contemplated when the original contracts were entered into. It is, essentially, almost a doubling of the effort that has to go in. They have to deploy to the IRPC and conduct interviews. They would have to reinterview their clients and essentially prepare a submission on their behalf. All of that is conducted along the lines of our initial processes. We have a back-to-back arrangement.

As soon as they have finished talking to their clients, the IAAAS provider stays on at the centre, and our onshore protection case officers go in and do another interview with an interpreter with the IAAAS provider present. The normal requirements in relation to

disclosure of information apply and, in addition to the protection visa processing arrangements that I just outlined, there are also some undertakings that we have given to the Afghans in detention to keep them regularly informed of the country situation in Afghanistan, so they can have as clear as possible an idea of what the situation is on the ground.

Senator McKIERNAN—Would that reinterview mainly or exclusively apply to Afghani nationals?

Mr Illingworth—This particular country situation applies to the Afghan caseload.

Senator McKIERNAN—I have not asked for a breakdown by nationality of those that are in detention. I understand that there may be sensitivities about that; are there?

Ms Godwin—We have that information and we can provide it. I think that giving the raw statistics is okay; it does not identify individuals and we would not normally go down to the very small caseloads. What we would normally give you, if it is okay, would be, say, the top six nationalities and then—

Senator McKIERNAN—As I said, I appreciate the sensitivities. That is why I framed the question in the way that I did—

Ms Godwin—Sure.

Senator McKIERNAN—in order to account for it. So I did not just ask for the statistics in case you gave me a knockback.

Ms Godwin—No, we could give you something that would give you an overview without necessarily, as I say, going to the very small groups where there is a possibility that if there is just one or two, people might start to try to work out who they are.

Senator McKIERNAN—There is one thing I have to go back to. When you were giving the numbers per centre, you included in that number Christmas Island and Cocos Island, but you did not include Manus and Nauru. I was actually going to ask about Christmas, Cocos, Manus and Nauru in the one package, being as they are not part of Australia as the will of the parliament decreed.

Ms Godwin—Perhaps if I can clarify. They are still part of Australia.

Senator McKIERNAN—We did not excise them?

Ms Godwin—We have excised them for the purpose of the way in which unauthorised arrivals are treated but, for everybody else on Christmas Island, the normal Migration Act provisions apply. We are seeing the Christmas Island and Cocos centres as part of the group of detention centres for which my area is responsible. Mr McMahon, who has also copped a fair bit of bad karma in his life, apparently is responsible for Manus and Nauru.

Mr Killesteyn—We are a bit schizophrenic on it at the moment because we have got the 1.5 as far as the costing is concerned. That covers both Manus and Nauru as well as Cocos and Christmas yet, in terms of the actual management of the detention of people, that falls into a different program. So there is a little bit of overlap. I think we would need to admit that.

Mr Metcalfe—The simple issue is that the offshore centres—that is, those not part of the Australian processing centres, Manus and Nauru—are administered by the International Organisation for Migration. The centres in Australia, including Christmas Island and Cocos, are administered by the department. However, for processing purposes, the refugee processing arrangements for persons on Christmas and Cocos are effectively the same as for those persons in Nauru and PNG by virtue of the excision legislation.

Senator McKIERNAN—Probably for completeness, without moving to 1.5, you might be able to give me the numbers of people who are on Manus and Nauru.

Mr McMahan—We have a total of 1,515 people offshore; 356 of those are on Manus and 1,159 are on Nauru. In terms of nationality, 95 per cent of them are either Iraqi or Afghani.

Senator McKIERNAN—Is there anything stopping you from telling me what the other five per cent may be?

Mr McMahan—I can give you the break-up if you like.

Senator McKIERNAN—Sometimes there can be sensitivities about this if you get down to small numbers, and five per cent may be a small number, so that is why I framed the question the way I did.

Mr McMahan—There are roughly 30 Palestinians, 17 Iranians, 10 Turks, a few Bangladeshis and Pakistanis and one Kurd.

Mr Farmer—For all these, both the on- and the offshore, the nationality is claimed nationality.

Senator McKIERNAN—Thank you for that explanation. I did not write down the Afghani or Iraqi figures when you gave them to me earlier, Mr McMahan. Could you repeat them? I think I had bad karma as well, somewhere along the way.

Mr McMahan—I will give you the percentages. Fifty-one per cent of people offshore are Afghans and 44 per cent are Iraqis. In total, we have 663 Iraqis and 776 Afghans. In terms of their disposition, all the Afghans are on Nauru and the Iraqis and other nationalities are spread out.

Senator McKIERNAN—Thank you for that. I have described a blow-out in the processing time, Mr Illingworth. I am pleased that you mentioned the figure of 80 per cent in 13 weeks. The annual report had less than 15 weeks for applications lodged in late 2000, so you have actually made an improvement. The blow-out of processing time is of concern. I understand from my earliest involvement with this process that we have always been moving towards quicker and faster processing, providing it was fair to everybody. We are going in the other direction. You have offered some reasons as to why that has occurred. What is happening now to address that?

Mr Killesteyn—I would like to make some points there. We agree with you. The blow-out in the processing times is obviously of concern and it goes to the issue of not having people in detention for any longer than is absolutely necessary. It has been of concern for some time and, as part of the process to try to deal with that, we have a weekly teleconference with all the state office personnel and managers in those areas that are responsible for processing. The process is one of constant harassment to look at all the various components of the process from language analysis through to security checking through to the decision making to ensure that there is no stone left unturned to continue the process of making decisions one way or the other.

I should add that there are perhaps some statistical adjustments that are working here against us. In a sense, as far as boat arrivals are concerned, there are lower numbers entering the system. We have not had a boat arrival moving into the system since August. As you move through the case load and get smaller numbers, inevitably you are going to be dealing with a harder core of people where the processes of checking take a little bit longer. That, in itself, is going to lead to the average time starting to blow out. Of course, if we had more boats—which we do not want, obviously—that would see the averages starting to move the other way, because you deal with the easier cases more quickly, and it would obviously bring

down the processing time. That is one of the statistical issues starting to emerge simply as a consequence of our success in preventing further boat arrivals.

Senator McKIERNAN—One of the points you made there, Mr Killesteyn, was that there have been no boats since August, but the people on Christmas and Cocos would have to relate to about that time, would they not?

Mr Metcalfe—Onshore? This is in terms of onshore processing?

Mr Killesteyn—Onshore processing, yes.

Senator McKIERNAN—I think we agreed earlier that Christmas and Cocos have now been processed as part of onshore, did we not?

Mr Killesteyn—The processing times that Mr Illingworth and you are both referring to do not include any counting for those people who are being processed in the offshore centres.

Mr Metcalfe—I made that comment earlier, Senator, to be absolutely clear. From a detention administration viewpoint, we, the department here in Australia, are responsible for the mainland centres as well as for the administration of those on Australia's external territories such as Cocos and Christmas. The International Organisation for Migration is responsible for the management and administration of those centres on PNG and Nauru. The processing times that we are now discussing relate to the onshore case load, which is being processed according to protection visa applications made in Australia and rights of review to the RRT and so on. Those persons on Cocos and Christmas Island who have arrived since the excision legislation are not subject to those arrangements—they are subject to the same arrangements as persons held outside of Australia on PNG and Nauru. Our 700 or so cases that are going through processing onshore do not include persons who are held on Christmas Island or Cocos Island.

Senator McKIERNAN—Thank you for that.

Mr Killesteyn—I know we are straying into output 1.5, but I will add that, in terms of processing, a large number of the 1,515 cases are being processed by UNHCR. Trying to count the processing times and so forth for that group starts to become a little bit messy, so we have tried to focus clearly and distinctly between the onshore processing versus the offshore processing.

Senator McKIERNAN—I asked my question in regard to Christmas and Cocos, rather than bringing Nauru and Manus into that particular equation. How many case officers are now working on processing?

Mr Illingworth—We currently have 94 full-time trained case officers and a further 25 trained case officers from elsewhere in the department who are available to be deployed, as needed, to do this work.

Senator McKIERNAN—As we speak, how many would be fully occupied in processing?

Mr Illingworth—We have 94 case officers who are available to do all PV processing in Australia, and we draw on those, as and when we need to, to make up the teams which go to the detention centres to do the processing work.

Senator McKIERNAN—Would all of those 94 be now occupied in processing in our detention and processing centres?

Mr Illingworth—No, Senator.

Senator McKIERNAN—You do not know?

Mr Illingworth—No, I am saying that not all of them would be involved in processing.

Senator McKIERNAN—How many would be?

Mr Illingworth—I would have to check how many have cases on hand. It is not an easy calculation because some people may have been on a task force five or six months ago and still have one case outstanding which is awaiting, for example, an effective protection check from a foreign country to see if the person is a national of that country, so they would still be notionally handling part of the detention case load. Others will be solely working on that case load.

Mr Farmer—If you are asking whether delays are caused because we are applying insufficient resources in the form of trained officers to the case load, I very much hope that Mr Illingworth's answer to that would be no, there are not.

Mr Illingworth—That is totally correct. Case officer resourcing has not been the constraint in our response to the upswing of boat arrivals either through 1999 or to the present day. The reasons for the prolongation of processing times relate to factors which are largely beyond our control but over which we are taking every possible step to have some influence. That relates to the fact that the haranguing that was mentioned earlier extends to constant follow-up with other countries where, for example, we are seeking information which might indicate a person is a dual national or to confirm identity where we suspect that they are not who they say they are, and in relation to our very close engagement with other agencies where we rely on them for advice. Of the capacity that we have—those 94 case officers and the 24 on-surge capacity, so to speak—we have not had to draw on that 25 case officer off-line surge capacity at all recently. We have a capacity to process about 15,000 to 18,000 protection visa applications a year, if we are talking about the existing types of case load with the people we have, in an environment where the number of boats arriving on shore has dropped off and the underlying community application rate when you look at last year has dropped off substantially as well. We are looking at the management strategies that we need to have to sustain a capacity without having the workload which would, under a pricing agreement, generate the revenue for the department to pay them. It has got to that point and that is our challenge.

Mr Killesteyn—One thing that might help ease your mind about this issue is the way in which the Department of Finance and Administration has structured the financing for the department for the processing of these cases.

Senator McKIERNAN—Could you just hold on for a moment, though, Mr Killesteyn; I will come back to that. I was going to follow up and ask the question in this way for my understanding rather than anything else: your annual report last year gave 100 case officers with a further 37 being available. The actual numbers you gave me tonight were 94 and 24, so it is an effective reduction. If those 24, who are on stand-by, as it were, were put to processing, would that aid the situation? Are all those cases that are at primary level—from the boats; not counting the ones that came in last week at Villawood or Maribyrnong—in active processing by a case officer?

Mr Illingworth—Deploying the 24—I think it is actually 25—case officers we have off-line would make no difference. The issue is one of having too many trained case officers, in a purely economic sense, than could be sustained by the flow of work. The issues that are holding up the processing are those that relate to our dependence on other agencies and other nations to provide input, with the one exception of the need to reinterview and reconsider that group of Afghan cases.

Senator McKIERNAN—Mr Killesteyne?

Mr Killesteyn—I was going to make the general point that, for the funding model that we are subject to, we have a certain fixed period, which is 14 weeks, for which we are funded. If a case goes beyond 14 weeks, a simple rule applies: if the processing time beyond 14 weeks is as a consequence of the department's activities, we do not get any revenue or funds; if, however, the delay is caused by an external agency, such as ASIO doing the checking, we do continue to receive funding. There is obviously a very large incentive for us to remove all of those things for which the department is responsible so that we continue to receive the appropriate funding. While I do not have the figures here with me at the moment, by far the majority of the cases that are outstanding over 14 weeks are ones that we are continuing to get funding for because we are waiting for another agency, either in Australia or overseas, to provide some further information.

Senator McKIERNAN—Will you be able to supply those figures? Would it be helpful to this question and answer session if you did supply it?

Mr Killesteyn—Sure.

Senator McKIERNAN—Thank you. Did the suspension of processing that occurred at the end of last year or the early part of this year apply only to Afghani nationals in detention or was it people from that region?

Mr Illingworth—Actually, the processing continued but we were unable to make reliable decisions in relation to some of the Afghan groups. It was restricted to Afghan nationals but not all Afghan nationals. There is a class of case where the country situation and our uncertainty about it would not affect a decision. That might be a case where we have fundamental credibility concerns with the individual, we believe they are actually not the nationality they are claiming to be or there are war crimes or other issues which would preclude them from protection; or, on the positive side, they might have claims which relate to persecution where the current uncertainty in the country information would not really affect their need for protection and our capacity to approve them. But there is another group of cases which would turn very much on the current situation on the ground in Afghanistan. For those cases, we needed to try and find updated, clear information which would enable us to make a decision. As part of that process, we also need to provide people an opportunity, if they had been claiming protection on the basis of a Taliban-controlled Afghanistan, to realise that the circumstances had changed there, in case they had persecution concerns that they wanted to bring forward but obviously may not have thought were relevant a few months beforehand. So, for part of the Afghanistan caseload, it was very hard to make a decision. It was for those Afghans that we were not making decisions for a short period of time over late December and into January.

Senator McKIERNAN—Are you in a position to put a figure on the delay that that suspension of processing may have caused?

Mr Illingworth—We did not delay processing, but for the people who we have reinterviewed, that in itself is a process that would take a three- or four-week period of work. The lead times the IAAAS provide for preparing an application would take a week. The process of our teams being deployed to interview large numbers of people would take a week to 10 days, and then there would be consideration of those new claims. So that process of gathering information—natural justice disclosure—would have added perhaps three to four weeks.

Senator McKIERNAN—We have got the numbers for review. Are there any identifiable blockages in the system for dealing with those persons who are awaiting review or going through review?

Mr Illingworth—Those are issues which, again, we do not have direct control over because we are a separate agency from the RRT. But, from our observation of their processing, they are providing appropriate priority to the detention cases. They are the highest priority for us and for the tribunal.

Senator McKIERNAN—From the department's point of view, is that a smooth operation; there are no glitches in the system which would cause any delays in review?

Mr Illingworth—In review? That is correct.

Senator McKIERNAN—We got the figures on review from the tribunal the other evening. I am not going to pass on those at the moment. Before we get to litigation, are there any persons remaining in detention who are awaiting a decision from the minister—those who have decided not to go the litigation route, who are out of time to go to the courts and who have applied to the minister for an exercise of his discretionary powers?

Mr Illingworth—I am advised that there are no people, as at 8 February, who are awaiting consideration of possible intervention from the minister under section 417.

Senator McKIERNAN—Thanks for that. We got some details the other evening on the 106 persons who are remitted awaiting a grant, and I do not know if I need any further information on that at this time. As for the 301 who are involved in judicial review, probably Ms Godwin is going to respond to this—

Ms Godwin—Sorry, Senator?

Senator McKIERNAN—I think it is likely that it is you who are going to respond to this, because you seem to be the one with the statistics.

Ms Godwin—That is because I have been caught before.

Mr Metcalfe—Although Ms Godwin is just about to respond, Mr Illingworth mentioned interventions under section 417. Am I right in thinking that you are referring to the issue which was discussed on Tuesday night of persons who may not have applied to the court within the 28-day period and who are seeking intervention to allow a fresh application to be made?

Senator McKIERNAN—No. I did not ask it in that context. I asked more in the context of the ministerial discretion on 417 where the individual did not have legal assistance or did not seek to self-represent before the courts and was merely going directly to the minister following the 28 days. They can make requests to the minister prior to the 28 days, if I understand the process.

Mr Metcalfe—Yes, persons who have not gone to court and are seeking intervention by the minister. In that case I think Mr Illingworth's response is fine.

Senator McKIERNAN—Thank you. I started asking a question about litigation. Are you able to break down the 301 persons involved in judicial review? Are you able to break down the number who are involved at the Federal Court itself, at appeal to the full Federal Court or may be going to the High Court of Australia?

Ms Godwin—I do not have those statistics. I do not know whether anyone else here does. The main focus of my gathering was to work out where people in detention were up to. But if someone else has got those statistics—otherwise we could take that on notice.

Senator McKIERNAN—It does not look as if there are any volunteers.

Mr Metcalfe—We will take that on notice.

Senator McKIERNAN—Would it be possible to get that detail?

Mr Metcalfe—Yes. We will do the best we can.

Senator McKIERNAN—We will come back to the effect of the judicial review bills later. This is probably an early warning of a question that may come at a later time, but are there any figures for the number of applications that have been made since passage in September last year of the amendments to the Migration Act on judicial review? I am not going to canvass all of the judicial review and the effect of that; I am just asking for the numbers at this stage.

Mr Matthews—Since the passage of the privative clause in early October last year, there have been 508 applications to the courts.

Senator McKIERNAN—They were applications traversing all of the migration zone?

Mr Matthews—Yes. I am including applications to review decisions subject to the privative clause. We have had 471 in the Federal Court, 16 to the full Federal Court, two to the Federal Magistrates Service and 19 to the High Court.

Senator McKIERNAN—I have not taken down those figures because we will traverse them at a later time. I was more interested at this time in applications from persons who were in detention since the passage of that legislation. Is it possible to get a breakdown of those figures?

Mr Matthews—In answer to an earlier question, Ms Godwin replied, I think, that there were in total 301 current judicial review matters involving applicants in detention. I would have to take it on notice if we were to break that down to the different sorts of courts; I do not have that detail here.

Senator McKIERNAN—Could you break it down to applications since the enactment of the judicial review bill?

Mr Matthews—I would have to take that on notice.

Senator McKIERNAN—Thank you very much. I think I have exhausted all the questions I want to ask on the background, but there are other questions on detention. I might give my colleagues an opportunity at this time.

CHAIR—I will ask Senator Bartlett to continue in 1.3 with questions.

Senator BARTLETT—Firstly, in your portfolio statement under output 1.3.1 ‘Regulated entry and departure’ on page 34 under table 2.1 you refer to a drop in unauthorised arrivals which is fairly clearly explained. Above that, you have the initial performance indicator at budget time which was 7¼ million travel authorities and passenger processing transactions. You now revise that to 9.8 million, which is an increase of 2½ million. It seems a very substantial increase. To clarify, I presume the first column is what you estimated it would be last budget and the second column is what you are now estimating it would be.

Mr Davis—In a broad sense, our purchasing agreement with the Department of Finance and Administration in this area is based on the number of arrivals and departures across the border and the numbers of checks that the airlines make with the system. The revision in the numbers reflects the changed expectations from the output area. The changed expectations of the numbers of checks the airlines are doing and, indeed, the higher level of checking are a higher level of integrity from our perspective, so that is a good thing. Mr Moorhouse may have more information on why the number has increased significantly.

Senator BARTLETT—Before I get to that, in terms of defining precisely what these electronic travel authorities and the advanced passenger processing transactions are, that 9.8

million is not 9.8 million people coming in or out of Australia. It is just more checks being done on potential travellers, isn't it?

Mr Davis—It is actually checks of travellers in the systems, as I understand it. The unit prices in this area are based on a systems cost associated with the check. So it is simply a payment to the department to cover the cost of the electronic checking process. But that is a check of travellers prior to their departure or upon arrival. I do not quite know the technicalities of how the check operates.

Mr Killesteyn—Perhaps I can give you a very simple explanation. Every time an eligible person applies to come to Australia for tourism, they can do that through a travel agent. The travel agent simply enters their passport details. Each time that happens there is a check against the system and we pay a transaction cost for that particular check. So that covers the electronic travel authority. Then, when that same person seeks to board the flight to come to Australia, a further check is done through the check-in process of the airline. Again, that incurs a transaction cost where we take the traveller details and once again confirm, firstly, that they have authority to a travel to Australia and, secondly, whether they appear on one of our alert lists.

Senator BARTLETT—What are the reasons for that increase of 2½ million? It is a pretty big jump, from the initial estimate of 7¼ million up to nearly 10 million.

Mr Moorhouse—There are three reasons. One is the increasing number of people who are applying for, and obtaining, electronic travel authorities to Australia. The second reason is that the advanced passenger processing system that we use to collect data on passengers and clear them before they arrive in Australia is being gradually expanded to an increasing number of airlines. The third reason is that there are increasing numbers of airlines representing an increasing proportion of passengers who are using the APP system.

Senator BARTLETT—I would have thought that the number of people wanting to travel internationally dropped in the last six months rather than increased, after September 11 and the like.

Mr Moorhouse—To a degree, but not as much as you might have expected.

Senator BARTLETT—Not as much to balance out this other increase—

Mr Moorhouse—No. We are working to increase the number of airlines that use the APP system so that we can have a much higher degree of security in terms of who is coming to Australia, and as we sign up more airlines, substantially significant percentages of passengers are using the APP system.

Senator BARTLETT—In the first column of output component 1.3.5, last year you estimated 5,500 unauthorised boat arrivals. That is obviously way more than did arrive, partly because of shunting them off to Nauru and partly because the number is lower than 5,500, I suppose. In the second column you have changed that. Instead of measuring it by the number of arrivals you have changed it to the number of 'boat arrival detainee days', which is a completely different thing. I am just wondering why you have made that change from one column to the next.

Mr Davis—That is a presentational thing that we did so that the numbers were more meaningful. If you look at output component 1.3.2, there were 5,500 boat arrivals—it is the same figure. In the right-hand column we state that we have had 1,212 arrivals to the mainland so far, and then further arrivals will be dealt with either through mainland detention or this output, if you like, and output 1.5. So the uncertainty over the arrival figures and the rest of the year led to that change under 1.3.2.

Under 1.3.5, because we have not had any more than 1,212 arrivals this year, the thing that is currently dictating the costs associated with detention and the funding is really the number of days for the people who are already here and in the detention centres. So we thought it would be more meaningful to present a new figure, which has been agreed with the Department of Finance and Administration, which is the number of detainee days for the year rather than the number of arrivals. It was more meaningful in terms of where we will end up given that no mainland arrivals have occurred under this output since August last year. So it was our attempt to make the measure more meaningful.

Senator BARTLETT—Just looking at 1.3.2 again, you have fewer unauthorised air arrivals than you forecast, a decrease of 264, and you have way fewer unauthorised boat arrivals than was forecast. Obviously that is partly counterbalanced by the people that are now in Nauru and PNG, but I do not think that there are 4,300 people on Nauru and PNG.

Mr Davis—No, there are not.

Senator BARTLETT—So it is fair enough to say that the original estimates of unauthorised arrivals, made around budget time last year, are higher than what has actually turned out to be the case.

Mr Davis—Well, Senator, we still have five months in the year and there are a lot of uncertainties. We have said for a long time in risk statements, in budget documents and whenever asked that these are volatile and difficult numbers to predict. Certainly, extrapolating arrivals both offshore and onshore from here to the end of the year would suggest that a number less than 5,500 is likely. But, given the uncertainties of many factors, the numbers have not been explicitly reduced in terms of a new revised target because, to some degree, we believe that that is probably not a meaningful thing to put as a target for performance purposes.

Senator BARTLETT—Thank you for that. Can I just ask—and this is touching on what I asked about the lip-stitching issue earlier on—about the MOUs that you have between your department and the Department of Human Services in South Australia. Is it correct that similar MOUs are being negotiated at the moment with state governments in New South Wales, Victoria and Western Australia?

Ms Godwin—Yes, it is.

Senator BARTLETT—And that is still in process?

Ms Godwin—I made the point, when I talked about the South Australian one, that we actually had a set of practical arrangements and protocols which were formalised into the MOU. That is essentially the situation in the other states as well. The fact that we have not yet finalised an MOU does not mean that we do not have standard operating practices, if I can put it that way, but we certainly are working to formalise all of those into formal MOUs with each of those other states that you have mentioned.

Senator BARTLETT—What is the legal situation if the relevant state department—they are usually called family services or something like that—assess that a child is in danger? Normally they would have the power to move that child out of danger. With children in detention, is it the case that they basically have to recommend to the immigration department that they be removed and then it is totally up to you whether you follow that advice? I am not saying that you would deliberately ignore it, but the ball is in your court to make the decision, not in the family services department's, is that right?

Ms Godwin—I guess I would draw a distinction. They cannot make a decision that the child is no longer in immigration detention, but they can certainly provide advice that the

child should not be in that place of detention. So, for instance, in relation to a number of the unaccompanied minors in Woomera, they recommended that they be transferred out of Woomera and what we in fact put in place was an alternate place of detention arrangement. So they remain in immigration detention for the purposes of the Migration Act, but the child protection issues have been addressed by moving them to an alternate setting.

Another mechanism that is available is the use of a bridging visa. That is available in certain circumstances, depending on where people are up to in the process. The other mechanism that we have used—although obviously we try to use this in as limited a way as possible—is to move the child to an alternative place of detention or to give the child a bridging visa while the rest of the family remains in detention. Usually it is our view, and also the view of the state welfare authorities, that it is best for the child to remain within the family group unless there is an issue in relation to the child in the family group.

Senator BARTLETT—Can you tell us how many of those bridging visas are currently in operation? Taking that on notice is fine.

Ms Godwin—Yes. It is a small number, Senator, but I would want to take it on notice so that I give you an accurate figure.

Senator BARTLETT—I have been listening very closely in my office to everything Senator McKiernan has been asking, but I might have missed one or two things, so if he has asked this already just tell me. What is the progress of the trial that places the women and children in Woomera out in the community? It has been going for over a year now, hasn't it?

Ms Godwin—No. We first moved people into the project in about the middle of August last year. A series of people have been through the project. I have some figures here, if you want them. We undertook to evaluate the project formally after about six months of operation, and that evaluation is currently being conducted.

Senator BARTLETT—Here is a bit of extra evaluation for you. When I was in Woomera, in January, the women in the main supermarket in town said their best customers were the Afghani women.

Ms Godwin—We will add that to the evaluation.

Senator BARTLETT—They are good shoppers.

Senator McKIERNAN—Senator Bartlett, would you mind a few extra questions on that area?

Senator BARTLETT—No.

Senator McKIERNAN—It was to be a three- to six-month trial. It is now six months.

Ms Godwin—It is now six months and the evaluation is under way.

Senator McKIERNAN—Are the same people part of the trial now as when it started?

Ms Godwin—No, Senator. There have been a series of people through it. The total number of women is 21 and the total number of children who have been in the project is 36, so that is a total of 57 people. At the moment there are 24 people in the project.

Senator McKIERNAN—What would be the duration that a family would stay in the program?

Ms Godwin—I would have to take that on notice. It really depends on where they were in the process when they went into the project and on how quickly their case was finalised.

Senator McKIERNAN—You are catching on from Mr Farmer—pre-empting my next question. I was expecting a six-month evaluation to see where it is going now. The

evaluations are under way; when will some published information be available on this trial? When will you be in a position to publish something?

Ms Godwin—I want to be careful here, because I do not want to find myself at the next estimates having to account for having got this wrong. I would expect that it would be published shortly, but the evaluation has not been concluded. We then have to ask the consultant to write up the report and we have to report formally to the minister. Whether that is a matter of three or four weeks or longer, I could not say at this point.

Mr Farmer—Senator, I would just like to make clear that I am not sure that the minister has undertaken to release a report. In other words, I do not think we are making a commitment to release a copy of the report. It will be a report that we make available to the minister.

Senator McKIERNAN—Could I urge you to consider that, because it would save time, dragging it out, question after question, to see what the results of the trial are.

Mr Farmer—I am sure it will be considered, Senator. I just did not want to go a step further than we have so far discussed with the minister.

Senator McKIERNAN—Let me make a plea that there be some form of a report or document—it is probably too much to call it a report. There is wide interest in this trial that has been going on for a period of time. Had it not been for the difficulties of Woomera and where it is, I would have had a look at it myself, but I have not been able to arrange that. Travel is difficult if it is not within your own state, so I have not actually seen it. But I would be very interested in receiving some further information. I think the community as a whole would be very interested in receiving some further information on this and the details of the trial conditions under which the women and children live, the freedom of movement that they had, the limitations on the freedom of movement and the number of visits they were allowed. I know they were able to visit the detention centre more or less at their will on a daily basis to meet up with their partners, but it would be useful if those visits could be in some way detailed and put in the public arena. In regard to that, are there any plans or discussions at this stage to extend that trial to other detention centres?

Ms Godwin—I think the minister has said that he would await the outcome of the evaluation. I think he has also indicated that all the indications are that it has gone well and that he was interested in what that would mean for the future. But there is no commitment at this point. It does await the outcome of the evaluation.

Senator McKIERNAN—I forgot to ask the question that you were preparing for: at what stage in the process are the people selected to take part in the trial? Are the mothers still in the primary stage or are they at the review stage?

Ms Godwin—The initial selection criterion was that people had to be at the primary stage. But if, while they are in the project, they get a negative primary decision and go to review, they remain in the project.

Senator McKIERNAN—So a person who is in review or involved in litigation would not be eligible to volunteer?

Ms Godwin—They would not be selected at that point, but they would be able to stay on if they had been selected at the primary stage.

Senator McKIERNAN—Has a dollar figure been put on the trial? Is it possible to put a cost to it?

Ms Godwin—We certainly know the costs, but one of the issues for the evaluation is this whole question of costs. We need to tease out the difference between setting it up on a small scale and what the ongoing costs of such an approach would be.

Senator McKIERNAN—Perhaps in May and June, when we come back for budget estimates, you might be in a position to provide some more detail about that.

Ms Godwin—Sure.

Senator McKIERNAN—I repeat: there is a lot of interest in this trial—

Mr McMahan—Could I just make a point which is relevant. My point about the report is that I am having regard only for process. We have not discussed this with the minister. My point did not proceed from any particular view that there would be elements in an analysis that would be of the sort that were difficult. It is just a process. We have not talked to the minister about what would happen by way of follow-up when the analysis was done.

Senator McKIERNAN—Thank you.

Senator BARTLETT—You spoke before about the MOU, I think it is, that has been developed with the Vietnamese government in relation to deporting people. I think you said that one or two have already gone back. How many are still in detention?

Ms Godwin—I said three had already gone back. The group that we were focusing on was 36. We have presented the details of 17 of that 36. We have had formal approvals now in respect of eight, three of whom have already left, two of whom have actual scheduled travel and the other three will be scheduled in the next few weeks.

Senator BARTLETT—Why didn't you give them all 36 at once?

Ms Godwin—Once we had negotiated the MOU, we sat down and worked out with the Vietnamese government an administrative procedure that was satisfactory to them as well as to us. The core issue for them is to verify the identity of the individuals and to agree that they are in fact Vietnamese nationals who have the right of return to Vietnam. Because of their own administrative procedures, their indications to us were that they would like those cases to be put to them in groups in an orderly fashion so that they could work through them rather than having a whole bunch that would take months to work through. That is essentially the process that we have been engaged in.

Senator BARTLETT—Vietnam has been a problem in particular, but it is my understanding that Iraq has also been a problem, not so much for criminal deportation but because it is often difficult to return failed asylum seekers. Is that correct?

Ms Godwin—This goes to a point that Mr Metcalfe was making before the break. There are a variety of countries where the arrangements of returns are administratively complex. It does vary a lot—right across the spectrum from where there is no difficulty at all through to countries where the difficulties are very significant. Iraq is characterised by the fact that we have no formal government to government relations with them, there are no direct flights in and all of those sorts of things. Nonetheless, it is still possible for people to voluntarily return. A lot of our efforts are around discussions with individuals about the possibility of voluntary return.

Senator BARTLETT—I refer to pages 38 and 39 of your annual report—which is all part of this output. There are a few different bits I want to raise. You mentioned the initial planning for establishing a new IDC in Brisbane and an IRPC in Darwin. What is the progress of those now? I understand there is one at Port Augusta close to finalisation. What is the date for the likely finalisation of that facility?

Mr Farmer—In relation to Brisbane various bits of planning are proceeding. The minister has already said publicly that he wants to ensure that any proposal for an IDC in Brisbane is not ‘pushed on to an unwilling community’—I think that was the phrase he used. So he is looking at possible consultative arrangements in relation to an IDC in Brisbane. He has not yet come to a decision on what those consultative arrangements might be. I think that would be the next step.

Senator BARTLETT—Speaking of unwilling communities, I have seen reports with the Lord Mayor of Brisbane, Councillor Soorley, who is normally a mild-mannered chap and who apparently—

Mr Farmer—Which Councillor Soorley are we talking about?

Senator McKIERNAN—Be careful—we might have points of order!

Senator BARTLETT—I gather he has expressed dissatisfaction with the concept of it being situated in the Brisbane local government area. I am not sure, but I have a feeling that I have seen similar comments from maybe Ipswich and Redcliffe or somewhere like that in the surrounding area. Are there ongoing discussions with local government authorities in the area? What is the degree of willingness or unwillingness at that level?

Mr Farmer—We have certainly seen a number of statements of the sort that you are talking about. We have also had a number of approaches from local government authorities of one sort or another throughout Queensland saying that they think they would be a terrific place for a development of this sort. As I said, in terms of a consultative process, Mr Ruddock has not yet decided on the next steps. But that is the process that he has envisaged.

Senator McKIERNAN—Do not overlook Western Australia in that process.

Senator BARTLETT—It is not very close to Brisbane. What about Darwin and Port Augusta?

Mr Farmer—Planning is proceeding in Darwin, but consultations have not gone beyond the stage that they reached some time last year when we were talking about some temporary facilities there. Subject to anything that Mr McMahon might like to add, my understanding in relation to Darwin is that we are essentially in the same position as in relation to Brisbane.

Mr McMahon—I would just make the point that we have been doing a few other things in the meantime.

Senator BARTLETT—Yes, indeed.

Mr Farmer—Mr McMahon can give you an update on Port Augusta.

Senator McKIERNAN—Before we move on to Port Augusta, I have some questions on notice from one of my colleagues in relation to the temporary facility in Darwin. The news reports on 31 January suggested the next boatload of people will be sent to Darwin. Have any policy decisions been made on that? I guess the news report would probably have been in the *Northern Territory Times*.

Mr Farmer—In relation to that report and other things in the *Northern Territory Times* I would say it is a croc.

Senator McKIERNAN—There are about eight or 10 questions on this. I will put them on notice.

Mr McMahon—The Port Augusta facility we are calling Baxter. All the buildings are in place and we are just starting now with the fences. The government has made no decision on when it will be commissioned, or whether it will be commissioned. It was announced as a

contingency facility. I have to say that we have put considerable work into it. It is probably the first facility where we have been able to actually sit back and design it. It is not technically a purpose built facility because we did not start from scratch. We have used demountables. We have been able to put considerable thought into the placement of the demountables, the level of amenity and the nature of the security. For example, it is the first time that we have been able to break a facility down into smaller, more manageable compounds. There are nine compounds, which will take up to maybe 160 people, but maybe as low as 80 people.

Senator BARTLETT—Who is the Baxter that it is named after?

Mr McMahon—There is a Baxter Range around the place. It was nominated by the local community.

Senator McKIERNAN—I have questions on notice from a colleague regarding the proposed permanent centre in Darwin. I have just noticed as I am going through them now that one of the dates is probably a typo, so we will need to come back to you in regard to that particular question, which I am putting a star against at the moment. I will put these questions on notice as well.

Senator BARTLETT—I noticed there were 17.5 million arrivals and departures in 2000-01. A very small percentage of these were visa cancellations and deportations, which is interesting to note.

Mr Metcalfe—What page is this?

Senator BARTLETT—It is on page 38 of the annual report. I also note that you had 347 applicants referred by processing officers for advice on their public interest and foreign relations character and security. None failed the public interest criterion with character or security, and only three failed in relation to foreign relations, which seems a very small number and a tiny bit lower than in the past. Are those character security and foreign relation checks all carried out by ASIO?

Mr Metcalfe—Security checks are carried out by ASIO; character checking is a more broad term which encompasses security checking and criminal record checking, as well as those issues covered in section 501 of the Migration Act, such as community discord and those sorts of issues more broadly. I think we discussed this on Tuesday night, but character is a broad term. Within the character requirement there are particular elements, the security element of which is carried out by ASIO, but the other elements may be carried out by ourselves, police agencies or other people, depending upon the particular issue.

Senator BARTLETT—You mentioned also that the details of 227 visa applicants were referred to the International Criminal Tribunal for the former Yugoslavia for screening. Is it right to assume that none of those visas were refused because of anything to do with that or were those the three foreign relations ones?

Mr Metcalfe—I think the foreign relations ones would be different. We will need to check to see whether we actually have an answer in relation to whether there were any visas refused as a result of the referral to the ICT.

Senator BARTLETT—On page 40, the litigation area: firstly, 320 matters were resolved in the AAT. What is the timeframe for that? Is that the 2000-01 financial year?

Mr Metcalfe—We will bring the relevant officer to the table.

Senator BARTLETT—I presume it is, because it is in the annual report for that year.

Mr Matthews—Yes, that is correct.

Senator BARTLETT—Out of that 320, there were 31 withdrawn by the department and 66 where the decision under review was set aside, which I presume basically means that the appellant was successful in some form or other?

Mr Matthews—Yes, that is correct.

Senator BARTLETT—So 97 out of 320—my maths is not too flash—is between 25 and 30 per cent. Is that a usual sort of percentage? It seems to me to be a fairly high success rate.

Mr Matthews—I think that the difference between outcomes in the Administrative Appeals Tribunal and the courts is that the Administrative Appeals Tribunal is conducting merits reviews. It is similar to an answer that I think Mr Metcalfe gave earlier with the Refugee Review Tribunal in the sense that the decision maker in the AAT stands in the shoes of the original decision maker and looks at the application afresh with such new evidence, et cetera, as may be available to the decision maker.

Senator BARTLETT—Is it correct to assume that virtually all the AAT ones would be migration issues not refugee issues?

Mr Matthews—Very few of them are related to the refugee jurisdiction. The vast majority would be visa decisions or cancellations on character grounds. There would be some criminal deportations and citizenship issues.

Senator BARTLETT—Does the legislation we passed last year in any way affect people's ability to appeal to the AAT?

Mr Matthews—No.

Senator BARTLETT—The other section with the courts says that 1,549 matters were resolved in the courts, including 221 ministerial withdrawals and 101 cases in favour of the applicants—322 out of 1,549, which is over 20 per cent of a positive result. Is that percentage around average or is it more or less unusual?

Mr Matthews—Yes, that would be around average.

Senator BARTLETT—Is it possible to determine how many of those were refugee related issues as opposed to other migration issues?

Mr Matthews—Yes. I am not sure I have that.

Senator BARTLETT—When it says 'the courts' does that mean Federal and High courts or just Federal Court?

Mr Matthews—Both.

Senator BARTLETT—I presume in this area that this would be affected by the legislation we passed last year?

Mr Matthews—Yes.

Senator BARTLETT—Theoretically, at least. It is a bit hard without it being broken down between federal and high courts.

Mr Metcalfe—We could provide a breakdown to you, if you wish—

Senator BARTLETT—That would be good.

Mr Metcalfe—of the applications to the High Court in its original jurisdiction with those that go directly to the High Court as opposed to matters that originate in the Federal Court, some of which may have ultimately ended up in the High Court on appeal. We can give you, on notice, a more descriptive breakdown of the litigation.

Senator McKIERNAN—When you break that down, can you take into account the passage of the judicial review bills of last year?

Mr Metcalfe—So, essentially, before whatever date in September and after whatever date in September?

Senator McKIERNAN—Yes, there was a proclamation on 1 October, I think.

Mr Matthews—I think you will find it was 2 October.

Mr Metcalfe—These figures, of course, relate to the previous financial year. To the best we can, we will provide that break-up in relation to the previous financial year and then the year to date. We will obviously distinguish between the period before the commencement of the judicial review amendments and the period after.

Senator McKIERNAN—I was going to address some questions in regard to that, but I was waiting until we had completed the detention element of things. I do not mind which way we handle it, but I do not want to be jumping back and forward. It would be better if we went through programmatically.

Senator BARTLETT—I am just bouncing all around the whole output, outcome, whatever it is called. I think it is all under 1.3.

CHAIR—Output 1.3, Senator Bartlett.

Senator BARTLETT—There is a lot in there.

Mr Storer—Just to be clear, what was it precisely that you wanted?

Senator BARTLETT—Which of the court cases related to refugee issues, as opposed to other migration matters?

Mr Storer—Since the privative clause came in on 2 October, is that it?

Senator BARTLETT—I was initially asking in terms of the 1,549 and the successful—

Mr Matthews—I can answer that.

Mr Storer—We can answer that now, and I think we can answer the second part too.

Mr Matthews—Eight hundred and eighty-five of those applications for the last financial year emanated from the Refugee Review Tribunal.

Senator BARTLETT—It may not be a correct assumption, but you have had a success rate of about 20 per cent plus for the appellant.

Mr Matthews—Except to bear in mind that, as it is a judicial review process, the successful outcome is simply a remittal to the RRT to reconsider.

Senator BARTLETT—It is the case with ministerial withdrawals as well, usually.

Mr Matthews—That is right. It would go back to the RRT for reconsideration. Of course, the outcome may be the same again.

Senator BARTLETT—But it is still fair to say that over 20 per cent of people were successful in getting it reconsidered, whether by the RRT or the MRT.

Mr Matthews—That is right.

Senator BARTLETT—Those people will now not be able to. You had 20 per cent plus of people being successful. That group of people, over 320 in the last financial year, now—at least in theory, if your bill works the way it is allegedly going to work—will not have that opportunity.

Mr Matthews—Probably.

Senator BARTLETT—Okay. You do not get much clearer than that.

Senator McKIERNAN—The information we got the other evening from the Federal Court was that the rate of application to the courts is increasing, rather than the expectation in a lot of people's minds, including my own, that there would be a dramatic fall-off in the rate of applications to the Federal Court because of the insertion of the privative clause.

Mr Matthews—The issue there is that it is too early to say. As I answered a question from Senator Bartlett earlier, there have been 508 applications for judicial review of decisions subject to the privative clause since it came into effect. As of Tuesday, when I prepared the statistics, there had been 39, but since then we have had about another four. There are 43-odd resolutions or outcomes—decisions by the courts. The minister has won all of them—100 per cent of those. The approach that the courts seem to be taking at the moment is to examine the decision to determine whether it is affected by legal error under general law principles and only then to decide whether those errors are permissible under the privative clause. So far, in each and every matter, the court has decided that there is no legal error at all and has, therefore, upheld the decision under review, and has not yet looked at or examined in any way the scope of the operation of the privative clause.

Senator McKIERNAN—It is at this moment that I wish my colleague Senator Cooney were here to give me counsel on this matter. Are you saying from that explanation that the court, on all the adjudications it has done on applications lodged since 2 October, has judged all of those applications not to be within the ambit of the boundaries of the privative clause that were contained in the passage of the Judicial Review Bill of last year?

Mr Matthews—What they seem to have said is that the decisions under review are not flawed by any legal error whatsoever; therefore, the scope of the operation of the privative clause is not relevant. I think that is probably the best way of putting it.

Senator McKIERNAN—How much weight is on legal error as contained in the boundaries of the privative clause?

Mr Walker—I think that it is fair to say that what the courts have done is assess the decisions against the broader, more general grounds and they have not found an error there. The fact that the privative clause has narrower grounds has meant that, because you do not have an error of law more broadly, you do not have an error within those narrower privative clause grounds. That is the way they have, to my understanding, decided those particular cases. So they have not actually found something that would have, in more general law terms, been an error. But they have then had to consider whether it, in fact, is an error under the narrower privative clause grounds.

Mr Storer—To supplement that: there is only one case to date where a judge has even mused on whether he was minded to now make a decision under the new privative clause provisions. In musing he said, 'I would have to, obviously, apply to it the existing guidelines from the High Court in the Hickman case.' But he found he did not need to go that next step—in other words, to apply the privative clause.

Senator McKIERNAN—I noted you got into musing—I am glad Senator Cooney is not here!

Mr Metcalfe—I think the technical term is *obiter dictum*; 'musing' is a layman's term.

Senator McKIERNAN—I am indebted to you, Mr Metcalfe; thank you! One of the objectives of, certainly, the first and second and now what really is a third judicial review bill—the third bill was slightly different from the other two bills, which had been subject to

the scrutiny of the Senate committee; I am not saying that they were dramatically different but they certainly were different—was to cut back on the number of applications to the court. At this stage—and it is early stages—it does not appear that that objective is being achieved.

Mr Storer—The overall objective was to achieve the government’s policy of trying to limit judicial review to all but exceptional circumstances. But you might recall, Senator, in the various submissions that were made to various committees, that the only way that this could be achieved—given that under 75(v) you could not stop people applying to the High Court for anything—according to the counsel advising us on this, was with the privative clause, which does not say that you cannot apply to the courts. What it does is extend the decision maker’s ability, if you want. Of course, people are still able to apply to, now, the three courts—the Magistrates Court, the Federal Court or the High Court—for any decision. But the privative clause basically says, ‘Under this, you would take the guidance of the High Court, to date, in the Hickman clause.’

Mr Walker—To expand on what Mr Storer has said, it was recognised that it would take time for the privative clause to actually achieve the objective of reducing applications. Because the grounds of judicial review have been narrowed—and in many respects, from the government’s perspective, simplified—these cases could be dealt with more quickly by the courts, thereby removing the benefits of lengthy judicial processes. Subsequently, those who chose to appeal purely and simply so as to remain in Australia would lose that benefit, with the courts deciding the cases in a more speedy fashion than in the past.

Senator McKIERNAN—I accept that it is early days since the enactment of the legislation. I am going on the statistics that were provided to us by the court at the estimates hearing earlier this week. The matter of the increasing applications to the court was certainly one of the matters that the minister highlighted in the second reading speech in the House of Representatives on 26 September 2001. One of the other objectives that was given in argument in support of the insertion of a privative clause from the previous two Senate committee scrutinies was that it would give additional authority—I am not sure of the exact words. Rather than limiting the power of the tribunal members, it was actually enhancing and increasing their powers and making them, in more instances, the final determinator in decisions on migration matters.

Mr Walker—On page 5 of the yellow booklet that you are looking at, Senator, under the heading ‘What is a privative clause?’, it says that the practical effect is ‘expanding the legal validity of the acts and decisions of decision makers’. That is the point: it is not actually affecting the jurisdiction of the court. Basically all it means is that, provided you have not fallen foul of the four basic principles that Justice Dixon enunciated in the Hickman case, you have made a lawful decision.

Senator McKIERNAN—I am leaving the heavy legal argument for dissection by others. I am very aware of the accusations that were made during the course of those two inquiries that some individuals were abusing the legal process by making applications to the courts in order to delay their departure from Australia. From the information that was given to us in estimates earlier this week, it appears that individuals are still taking advantage of making applications to the courts and the courts are taking some time to move to a position where they are able to make decisions on those applications, even if the forward end—the boundaries of the privative clause—could be dealt with reasonably quickly. You have probably read the transcript and the questions I was addressing to the courts’ representatives about their power to adjudicate on the applications that were made before them, and heard the response that they have to accept the applications.

Mr Walker—Yes, the court officials have to accept the applications because it is still possible that the decision breaches one of those four limited grounds, and that is a matter for a judge to adjudicate on.

Senator McKIERNAN—For the unrepresented litigant, the uninformed—like me, ignorant of these processes—what is in place at the moment, in terms of application to the courts, still provides those avenues for the alleged abuse that was there before. Individuals can go to the courts and, by going to the courts, seek to delay their departure from Australia. But, more importantly, the unrepresented, uninformed litigant who is in detention may say that there is some hope in going to the courts when many of the avenues that were previously available to them for court adjudication on their claims at the primary level and then the Refugee Review Tribunal are no longer available to them, and they are remaining in detention with very faint hopes of getting a successful outcome from the courts.

Mr Metcalfe—There are two essential conclusions from what we have been saying tonight. The first is that it is relatively early days and that over time there is an expectation that, as the community, as people, as applicants, become aware of the increased power or legal effectiveness of the tribunal decision, they will come to realise that it is futile to pursue judicial review in seeking to call into legal question the tribunal decision.

But I think you are making a very good point—that is, that the legislation does not, and indeed deliberately did not, attempt to go to the issue of the ability for a person to actually make an application to the court. The reason for that, as Mr Storer said earlier, is that under section 75(v) of the Constitution the original jurisdiction of the High Court does allow a person to challenge a decision by a Commonwealth officer. So, short of constitutional amendment, there is always that avenue for a person to go to the High Court. Of course, the High Court, which is primarily an appellate court, sees that much of this work should be done by lower courts or indeed by the Federal Magistrates Service.

It will be interesting to keep this matter under close review, which we are obviously doing; but we cannot, and the parliament cannot—short of constitutional reform—alter the ability for a person aggrieved by a decision by a Commonwealth officer to pursue a matter in the High Court. The privative clause was identified as the most effective means of validating tribunal decisions and therefore causing applicants to realise—and that may take some time—that there is no point in pursuing judicial review.

Senator McKIERNAN—We asked questions about the court preparing some material to help litigants be informed about these provisions. Is the department in any position to assist persons with material that would help them inform themselves? I am putting this not so much from the point of the abusers but rather from the point of those that would have faint hopes of success—building up their expectations and their hopes of having a court come in and adjudicate over the top of the tribunal decision and the earlier decision on refugee matters by the delegate of the minister.

Mr Storer—We were very aware that this was a conceptual change in the law. That is one of the reasons we took the initiative, with the minister's blessing, to go out and brief people—starting the week after, by preparing this yellow booklet that you have a copy of and others—such as the officials of the courts, law societies and community groups. You might notice that one of the things in this booklet—it was a very basic sort of thing—on page 11, was a pro-forma letter, with which we were encouraging tribunals to be able to get to the applicants, in the various community languages, as soon as possible. We hope to keep working and getting feedback on how to ensure that people are aware of the implications of these new changes.

Senator McKIERNAN—I am going to conclude with the comment that, whilst these processes continue, they do in some cases prolong detention. I have formed the view that prolonged detention is one, just one, of the reasons that lead to disturbances in our detention centres, disturbances which in turn cause great concern in the community.

Mr Metcalfe—Just for the sake of completeness, I mention that the other change that has of course been made in this area—a very important change made by the parliament last year—is the limitation on class and representative actions. The privative clause is certainly a very important legislative change, but the removal essentially of the ability for persons to pursue actions by way of joining a class—which quite often leads, as I am sure you will recall, to very low-cost entry to the courts—is also an important development. It will be interesting to see what sort of impact that has on our litigation, as well.

Senator McKIERNAN—Are you aware of any attempt by any individuals, or group of individuals, to make application for a class action since the passage of that particular legislation?

Mr Matthews—No.

Senator McKIERNAN—In the context of what the Federal Court had to say in response to questioning earlier this week about the court officer not being able to decline—to not accept—an application, could you take on notice and come back to me with advice as to whether or not a group of individuals seeking to make a class action could still lodge a class action that would in some way cause the delay of their removal or the prolonging of their detention. Am I making myself clear about what I am asking?

Mr Matthews—Yes.

CHAIR—We will go back to Senator Bartlett.

Senator McKIERNAN—Why don't we go back to detention and try to work through it?

CHAIR—Let us stick on detention.

Senator BARTLETT—I have some questions on detention as well, so I will start on those. I have a lot, but I will put them on notice because of the time.

CHAIR—Thank you, we appreciate that.

Senator BARTLETT—In fact, I will put them all on notice so you can go on now. I do have a couple of others, but we can go on to detention now if you want.

Senator McKIERNAN—You have finished, have you?

Senator BARTLETT—I will put all my detention questions on notice. I still have some others under 1.3.

Senator McKIERNAN—As you are so good, I have some more questions relating to the situation on Christmas Island, again on behalf of one of my colleagues. I have not gone through each of the questions in detail, but if there is any clarification wanted on them I will assist in getting that clarification.

CHAIR—They are also to go on notice, Senator McKiernan?

Senator McKIERNAN—Yes. I move to the matter of the costs of detention centres. Question 52 from the last estimates committee gave us some details of the total expenses per centre: Villawood, immigration detention centres and the IRPCs. Are you in a position to update those costs?

Ms Godwin—We could update them for the six months to the end of December, with the same caveat that I think I gave when this question was asked at the last estimates: except for

the full-year figures, they do not necessarily give a completely accurate picture because they are very sensitive to the number of detention days, and it may well be that the cost for the year turns out to be something different from the half-year analysis, if I can put it that way. Nonetheless, we could give you a half-year analysis, if you wish.

Senator McKIERNAN—If you could, but could you now add to that the establishment costs that were incurred in the establishment of Cocos, Christmas, Baxter and the Coonawarra facility at Darwin?

Mr Farmer—We will take all that on notice. Is that what you are after?

Senator McKIERNAN—Yes, if you would. I will not labour the point so late this evening. The earlier questions I put on notice regarding the Darwin facility were about the Darwin permanent facility that received some attention. This one is dealing with Coonawarra, which is still unoccupied. Has that been commissioned?

Mr McMahan—It has been built but has not yet been used.

Senator McKIERNAN—Is ‘commissioned’ a different word?

Mr McMahan—No, not really. I used it in quite a loose sense. Essentially it is there and available for use, but there has been no need to use it at this point in time.

Mr Metcalfe—We could bring it on stream very quickly if we needed to use it. It was only ever seen as an initial reception facility pending transfer fairly quickly to some other facility. It was not seen as a long-term processing facility. Largely, because we have not had a boat arrival on mainland Australia since late August, there has been no need to use it.

Senator McKIERNAN—And the Baxter facility?

Mr McMahan—No, it has not been completed yet. We do not expect it to be finished until about mid-year.

Senator McKIERNAN—As late as that?

Mr McMahan—Yes.

Senator McKIERNAN—I thought I had seen some publicity to say that it might come on stream earlier than that and that some of the people detained at Woomera might be transferred there.

Mr McMahan—Certainly, the minister has not indicated that that would happen. I think we did have an earlier date in the public domain at one stage—it could have been around March or so—but we would like it to be completely finished before it is used because of the problems you get when you are still building and using. Latest advice and the tender processes and so on are pushing it out to mid-year.

Mr Metcalfe—It is interesting to look back. When Port Augusta—or, more properly, El Alamein army facility, which we now call Baxter—was identified as being required for a contingency detention facility mid last year when we had very large numbers of arrivals, it was of concern to us as to whether our existing infrastructure would be sufficient, so we moved to rapidly begin a process of acquiring the necessary accommodation—locating it and getting it ready.

One of the issues that we have discussed on other occasions is: one of the particular management difficulties associated with both Curtin and Woomera was that essentially we were building a facility at the same time as people were arriving in the facility. With Baxter, we have not had that particular dynamic, because no-one has arrived since the end of August. What was originally conceived of was a very rapid facility coming on stream very quickly.

We have now had the opportunity to spend more time and develop it in a way that we hope will provide longer term, better facilities. Essentially we were able to complete that facility and have it ready, should it ever be needed and used, before people move in. We have had the luxury of being able to develop, plan, build and complete a facility in a much better way than we have in the past, because of the circumstances we have had to deal with.

Senator McKIERNAN—I have asked lots of questions about the people who are in detention, but there are a couple of questions about the people who are not. There were a number of escapes during the last period. Can you update the committee on how many there were?

Ms Godwin—Have you specific questions, or do you want me to give you the—

Senator McKIERNAN—Just the numbers: who are out, how many escapes, how many have been recaptured, and how many are still at large.

Ms Godwin—We have a table for the year 2001 to the present—that is, from 1 July until now. In that period, we had 57 people escape, in a total of eight incidents, of whom 15 have been recaptured. Therefore 42 of that group are still at large.

Senator McKIERNAN—There was one report of an individual getting as far as New Zealand—which probably served him right! Where is that individual? Does he count as being still at large?

Ms Godwin—No. I need to check that, but I think he was detained in New Zealand.

Senator McKIERNAN—And subsequently returned to Australia?

Ms Godwin—And brought back to Australia, I gather, yes.

Senator McKIERNAN—That issue leads into the contract with ACM—we have canvassed this in the past—that is, the contract, how the contractor was paid and the penalties that apply. Finance must be looking at the immigration department through rose-coloured glasses. With the number of incidents that have happened, added to the number of escapes, you would probably make money for the department of finance, because of the penalties that would be imposed on the contractor, would you not?

Mr Farmer—I can assure you that our relations with the department of finance are excellent, but that is probably not the level of detail that you are interested in.

Senator McKIERNAN—I know the level of detail I would like to get, but I know that I am not going to get it all. Nonetheless, currently, the contract cannot be as lucrative to ACM as it has been in the past, because of the penalties that are contained in the contract, the number of disturbances and continued disturbances, compounded by the number of escapes and the fact that people are still at large. You cannot be tremendously satisfied with how the contractor is fulfilling the obligations, can you?

Mr Farmer—I will ask Ms Godwin to talk about the contractual arrangements and, in particular, the dealings with things like escapes or specified events which are covered in the contract. I would like to make an introductory remark, though. Incidents that involve actions by detainees fall into a different category from escapes because they are not inherently or necessarily things where there is a causal role played by ACM or where ACM is involved in an incident which is accountable under the contract. They are of a different nature.

Senator McKIERNAN—Yes.

Ms Godwin—Thank you, Bill. In fact, that was the essential point I was going to make. There have certainly been a number of incidents, but not all of those would give rise to action under the contract. The contract issues go to the question of whether or not our requirements

under the contract—their obligations under the contract—essentially as set out in the immigration detention standards have been complied with. The fact of an incident does not necessarily mean that there has been any failure to meet the obligations under the contract or the detention standards. I need to be careful about what I am saying because there is a current tender process under way, so I will talk in generalities.

Senator McKIERNAN—I am glad you mentioned that.

Ms Godwin—I cannot believe that I pre-empted another question! When an incident happens, whether it is an escape or any other sort of incident, the first thing we have to turn our mind to is whether there has been a failure to meet one of the detention standards. If there has been, then normal processes under the contract come into effect. We have spoken about this process a number of times in these committees: we make an assessment, there is a point system and points are applied for the type of circumstance in the detention standards. Clearly, escapes are one of those and, because there have been a number of escapes, those elements of the contract have been activated over the last 12 months.

Senator McKIERNAN—But if there were, for example, X number of buildings in the facility in the morning and a lesser number the next morning, wouldn't that cost some points to the contractor?

Ms Godwin—It goes to the question of whether that fact was attributable to some action or inaction on the part of the detention service provider. Generally speaking, our overriding requirement of the service provider is that they keep people in detention and that they keep them safe. So if there is an incident happening which includes, for example, a building being put on fire, the first thing that we would expect the service provider to do is ensure that there are no escapes—to the extent that is possible—and that all of the detainees, including those detainees involved in incident, are kept safe. If that means their priority is focused on the safety of the detainees and the fighting of the fire becomes, in a sense, of a second order and the building, therefore, gets burnt down, that is obviously a factor—and I do not want to say which way we would necessarily go in any given incident—that we have to take into account. The focus has got to be on the safety of the detainees.

Senator McKIERNAN—If a detainee has been injured during a disturbance, does that count against the contractor?

Ms Godwin—Again, it would depend on the circumstances of the injury.

Senator McKIERNAN—I will come back to the tender process in a moment, being sensitive to the processes that are involved. There have been a number of disturbances in our detention facilities. Can you, on notice, provide details of the damage that has been caused in each of them? I think the last update we had was from the May estimates of last year. Could we have the details from that date? Woomera would be the focal point of that, but not exclusively so. Could you tell us the amount of damage that has been caused?

Ms Godwin—Yes.

Senator McKIERNAN—You would be aware that I asked some questions about the number of charges that have been laid, prosecutions that have been undertaken and the conviction rate that has been achieved from that. In regard to the most recent disturbances at Woomera, have any charges been laid—other than against reporters—against any of the persons who were involved in those disturbances, without going into chapter and verse on it?

Mr Farmer—You said you had already asked questions?

Senator McKIERNAN—I asked questions of APS the other evening and I asked some questions about DPP.

Mr Farmer—Yes. The questions you are asking us to take on notice are those of the cost of damage—

Senator McKIERNAN—The cost of damage, any prosecutions that have resulted from those disturbances that have occurred at detention centres and, if the matter has progressed on to court, if there have been convictions from that. We were given information about the Port Hedland disturbances of May last year and the fact that there were, I think, 12 convictions from that, but I am not quoting from the *Hansard*.

Ms Godwin—There were 22 convictions.

Mr Farmer—We will do that. I just wanted to make sure you were asking that of us.

Senator McKIERNAN—Thanks very much. The tender process for the contract—

Mr Farmer—That is Mr McMahon's area.

Senator McKIERNAN—Can you give the committee an update on where that is at, without going into the sensitivities of tender processing?

Mr McMahon—Yes, I can. On 5 December the department released an exposure draft for the request for tender. The idea was to get a response from industry and other interested people. The responses closed on 18 January. Since that time, we have been evaluating the comments which have come back and we are forming our view about what implications that might have for the tender documentation. We would expect to have that completed over the next month. We may need to go back to the minister with some final indications and we would expect within the next two months or so to have gone to the market to actually release it as a final, and then it will run through the normal tender process.

Senator McKIERNAN—If that process runs the normal course of time, when would a decision be expected to be made on the tender?

Mr McMahon—We would probably be in a position within about four months. To some degree it depends then on successful contract negotiation, so it could take a little bit longer. We do have a contract which will be attached to the tender document but, notwithstanding that, there is still contract negotiation to undertake. The process will probably take another six to seven months from where we are at the moment.

Senator McKIERNAN—I am trying to race through things—and thank you for your forbearance—to complete the detention side of things.

Senator BARTLETT—I have one question about Woomera, if you have finished detention. Have you finished detention?

Senator McKIERNAN—No, not yet.

CHAIR—I just want to say that we are going to finish right on 11 p.m.

Senator McKIERNAN—If I have not completed by then, the question of when we come back and for how long will be something else to be determined, but I am trying my very best. I got some questions from another colleague in regard to the provision of education services in detention. I will seek to paraphrase all of the questions into one and ask for a response on that. If I can, while the reply is being given, I will provide some of the detail of the question in writing so it can be answered on notice in a more comprehensive way—but I would like something on the record just for now.

In relation to the Maribyrnong detention centre, I am advised by my colleague that there have been experiences of children who have been detained at this facility being enabled to go to primary school and that there have been a series of requests over a period of time for some

secondary school children to attend at the nearby facilities. I am given to understand that there is cooperation from the local schools and they would be able to assist to facilitate this if it were allowed to happen, but to date the efforts have not been successful. My colleague is asking about the obligations on the service provider at the detention facility—which is ACM—to provide education services to children in detention. Could you just give a broad response to that? While that response is coming, I will amend some of these questions and provide them on notice for a more detailed response.

Ms Godwin—That is fine. In very broad terms—and I apologise, as I normally have a copy of the standards with me—the requirement under the contract is for the service provider to provide educational programs for children in detention appropriate to their age and other characteristics. So issues like their English language ability, level of education and so forth have to be taken into account.

At Maribyrnong, the numbers of children are, generally speaking, small and they fluctuate. At the moment, we have only three children at Maribyrnong, all of whom are quite young and therefore the issue of secondary education does not arise. My understanding is that, generally speaking—and I am talking in generalities here because I would need, as you say, to take on notice the more detailed aspects—because Maribyrnong is small, the number of children is small and often there are not children of a particular age, it has been the practice to try to get access for the children to local schools.

I think your comment that, generally speaking, schools in the area have been cooperative is correct, but there have been some limitations to do with the ages of children we have had there. On occasions, the children are only there for fairly short periods of time and it has not been possible to get them into school for the period of time that they have been at the centre, and in a couple of instances we have had minors—essentially, older teenagers—who have refused to go to school. We have limited powers to compel them to do so. So there are a variety of factors around Maribyrnong in particular. I could get you a more detailed explanation of what the arrangements have been over a period of time, if that would help.

Senator McKIERNAN—My colleague has also supplied me with copies of letters that she addressed to the then state director of the department in Melbourne. They are from a little while ago and I would appreciate it if you would take this matter on notice. As I indicated, there are some specific questions here and they do address the secondary level rather than the primary, so if I could again put that on notice I will endeavour to speed through the questions.

Ms Godwin—Yes.

Senator McKIERNAN—On page 9 of the portfolio additional estimates statements, it states, ‘Slippage of capital injection—Villawood Immigration Detention Centre,’ and it refers to a similar thing for the Port Hedland kitchen. Could somebody explain what those are?

Mr McMahan—These are actually delays from last year. They are essentially moneys that would have been spent last year but the work is being undertaken in this financial year. It is purely a timing issue.

Senator McKIERNAN—I will just make a comment. I was in Port Hedland very recently and I noticed that the kitchen and the dining area, which had been seriously damaged in the disturbance that occurred last March, was still not in use. I thought that was not the best that should be happening in a facility such as Port Hedland. There is a substantial number of people there now—292, of a few days ago—and they are having to take their meals out. I understand—and probably somebody is in a position to give me such information—that the dining room is now back in use. I would hope that is the case.

Ms Godwin—We were certainly working towards that. The original delay had to do with the question of whether or not it made sense to repair the damage if there was a major refurbishment about to take place. As Mr McMahan has mentioned, there has been some slippage on the timetable of that. We have turned our attention back to the question of what could be done to get the facility back in working order. I cannot specifically comment on whether it is back in operation, but I could certainly confirm that with you very quickly.

Senator McKIERNAN—I will not develop it any more. I have made the point.

Mr Davis—Can I correct Mr McMahan?

Senator McKIERNAN—Yes, please.

Mr Davis—The adjustment in these capital numbers—the kitchen has slipped from last year into this year and the fence has actually slipped from this year into next financial year. These are the adjustments here. There has been slippage in both projects. The fence relates to a perimeter fence at the Villawood site. Both projects have slipped, but one has slipped into this year from last year and the other from this year to next year.

Mr McMahan—On the kitchen, we have required ACM to fix it. We just do not have the information as to whether or not it is operational. We will come back to you on that.

Senator McKIERNAN—Okay. I have indicated to my colleague that there are only two more questions on detention, one of which relates to a speech by an acquaintance of mine—let me put it no higher than that. He is Western Australia's Inspector of Custodial Services, Professor Richard Harding, who in October last year gave a speech to a gathering in Perth and had some not so complimentary comments to make about the detention facility at Curtin which he visited accompanying the Human Rights Commissioner. Is the department aware of that document?

Ms Godwin—I was certainly aware of the speech at the time. I do not have a copy of it with me.

Senator McKIERNAN—I could, on notice, provide you with a copy!

Ms Godwin—I am sure we can find one.

CHAIR—Whatever is quick would be good, Senator McKiernan.

Senator McKIERNAN—Were there more time available, I would develop that point further. I ask the question in the context of independent analysis of the happenings within detention facilities. I know there are a number of bodies other than the department who go and examine the after-effects of various disturbances. Not all of them, in my opinion, are impartial in their observations of what led to the causes. You might take this on notice for the minister: I wonder whether the department has given any serious consideration to the suggestions contained in Professor Harding's speech about an independent person having the ability to go in and examine the conditions in detention facilities. I know the minister will say that HREOC, the Ombudsman, parliamentary committees and IDAC go in. I think Professor Harding operates in a very unique area in terms of the detention industry—for want of a better word—in Australia. There might be some merit in consideration of having a person like that overseeing what is happening in our detention facilities.

Mr Metcalfe—Professor Harding was suggesting that he was the right person for that, from my recollection of the speech. But, having made that observation, the issue of official visitors or something of the like has been something that the minister has thought about. Indeed, the establishment of the Immigration Detention Advisory Group around a year ago was seen as an important development in terms of people who have the ability to freely walk

into a centre at any time of the night or day, to observe conditions and to report directly to the minister without having to report through departmental or other processes. Indeed, the minister had a meeting with that group in Sydney today. The establishment of IDAG was seen as an important development by the minister in this respect.

Ms Godwin may have a little bit more to say about this issue—and I think we have canvassed these areas before—but in relation to particular incidents that may or may not occur and, particularly, whether there are issues between us and our contractor, we have established a panel of expert advisers who, essentially, are able to analyse a particular incident and then provide advice to us as to what happened and whether there are any issues that come from that. The precise suggestions by Professor Harding have not been adopted, but there are other mechanisms that go to the sorts of issues that he raised.

Senator McKIERNAN—The final point on detention for now is the recent disturbances at Woomera and the resultant publicity. I have had correspondence—I will not say who from—complaining about the fact that there are some lawyers who are appearing on our media outlets claiming to be representatives of, particularly, the Afghani population in the detention facilities. It has been put to me that these individuals are not actually legal representatives of all of the individuals who are in there. There are a few people involved in litigation who have legal representatives, and there are others who are in the primary or review stages who are getting immigration assistance. Is the department aware that there is such misrepresentation, using my words, happening in regard to this? And, if you are aware of this, is there anything the department can do to correct the situation and bring a true picture to the circumstances?

Ms Godwin—You have touched on, obviously, a very complex area, and I will try and be very brief. There is a group of lawyers who are in contact with a number of detainees in the centre. The requirements of section 256, if I am correct, are that an individual detainee who seeks access to a lawyer in relation to their immigration detention should be provided with reasonable facilities for doing so. Very mindful of our obligations under that section of the act, if an individual detainee asks to see a lawyer in relation to their immigration detention—notwithstanding that they may also have someone who is assisting them with their application—we believe that we are required under the act to facilitate that. Using that provision, it would be fair to say that some of the lawyers are saying they are representing the detainees when, in fact, they are representing a detainee or a number of detainees. I do not really want to comment on whether or not that is misrepresentation.

Mr Metcalfe—A related issue is that some of the so-called lawyers are not lawyers; they are students.

Ms Godwin—There is a related issue that goes to the question of a group of people who are referred to as paralegals. It is certainly true that with the lawyers come groups of other individuals. Some of them are students; some of them are other things. These individuals are presented to us as paralegals coming in with the lawyer to assist in the administration of the legal practice with the individual detainee.

We do have some concerns around that area. Some of the people who have been presented to us as paralegals raise particular concerns for us. In one instance, we understand that a child of one of the lawyers was brought in as a ‘paralegal’. We are looking at the issue of what are the appropriate steps that can be taken to, on the one hand, meet our obligations under section 256 and, on the other hand, ensure that the access under section 256 is limited to the appropriate people.

Senator McKIERNAN—If there is anything further that could be provided on notice in regard to that matter, I would appreciate receiving it at a later time.

Senator BARTLETT—I have one question on Woomera before I go on to a couple of other final areas under 1.3. There is a visit scheduled, I believe, in May from a representative of Mary Robinson and another human rights group. Can you detail who will be making that visit and what time it is likely to happen?

Ms Godwin—The background to this is that the Minister for Foreign Affairs issued an invitation to a body called the Working Group on Arbitrary Detention, which is a working group under the auspices of the Human Rights Commissioner. That invitation suggested a visit somewhere in the period May to August, so a specific date has not yet been set as far as I am aware. It is a matter that is currently with that working group. My understanding is that after the government was approached by Mary Robinson in respect of a visit the invitation was extended so that her representative could participate in that visit with the Working Group on Arbitrary Detention. So a specific date has not been set nor, as I understand it, do we have the details of who will be participating in that visit.

Senator BARTLETT—Is there any extra work going on at Woomera at the moment in terms of painting, presentation improvement, facility upgrades and repairs or anything like that?

Ms Godwin—There has been an ongoing program ever since the centre was commissioned of improving the centre. So the answer is yes, there would be work going on but it is part of the ongoing planned program of improving the facilities, the amenities and the landscaping of the facility. And, if I could add to that, of course, there is also the issue of the replacement and repair of buildings that were damaged during the incidents at the end of last year.

Mr McMahan—We had \$2.5 million worth of damage over November-December. We had 26 buildings destroyed. But I think the key point in all this is we are either replacing, doing maintenance, or are continuing programs which we have had in place for quite some time. Many of them were programmed six months ago.

Senator BARTLETT—So there is no special or extra step-up in repair work or improvements at the moment?

Ms Godwin—No.

Mr Metcalfe—Any suggestion that we are making the place look better because the group is coming would be quite erroneous, Senator. I am not suggesting that you are making that suggestion. Ever since Woomera opened, it has been continuously improved. That program will continue until we believe it is as good as it should be. Many people visit that centre every week. I think that people would observe that there has been a continuous process of improvement. That is not being accelerated or changed simply because a particular group of people are coming here sometime later this year.

Senator BARTLETT—I have a question about onshore detection of overstayers and the like, which you mentioned in your annual report on page 38. There was a very minor decrease in the second half of 2000 in the estimated number of overstayers, or at least a levelling off. There have been ongoing suggestions, proposals or plans for change to procedures with employers in terms of their requirements to detect or ascertain people's validity for paid employment, which do not seem to have come to the final stages yet. Can you tell me where those are up to?

Mr Metcalfe—Ms Siegmund or Mr Moorehouse may be able to add a little bit of detail, but essentially there has been ongoing work on that issue. Ultimately, the ability to penalise an employer who employs a person without work rights would require amendments to legislation. Under existing legislation there essentially needs to be an element of knowledge,

which can be extremely difficult to prove, and so the removal of the element of intent—*mens rea*—in relation to that would require amendments to legislation.

There are some quite complex issues associated with the proposition as to whether an employer can establish that an individual has permission to work. We have been working through those issues and I think there is still some more work to be done. There has been a trial in North Queensland, under some quite scientific circumstances, to try to establish how we might work with employers, particularly employers of casual labour where quite often they may simply recruit someone to work picking fruit or whatever for a day. There is a balance, of course, as to the obligations on an employer and what they can reasonably do.

In addition, we have had an information telephone line running as a trial and I think we will probably continue that facility so that people can ring in and try to establish whether the person in front of them does have permission to work. Some of the complexities go to the fact that there is no universal identifying card or anything like that, so there are delicate issues that any employer has to deal with as to whether or not the person in front of them is an Australian citizen, an Australian permanent resident, a temporary resident with work rights, a visitor without work rights or a student with limited work rights, and the list goes on. We have some real issues that we will need to continue to work through as to how we can provide some form of easy identification. I think the visa label has been traditionally the way that some people identify that there are work rights, but we accept that that can be difficult to look at in some circumstances.

What I am saying is that there are some quite complex issues that we are currently working on. The ultimate objective would be to find the formula that would enable employers to ascertain easily whether or not a person does have permission to work and then to bring in a regime that would in fact place some obligation on employers to check, but we have a little way to go yet.

Ms Siegmund—Thank you, Mr Metcalfe. There are two quick things I would add to that, Senator Bartlett. As you may be aware, for some time we have been conducting—and certainly after the RIRA recommendations were made public and accepted by government—fairly extensive consultations with a very broad range of groups, including industries, unions and other affected parties. Those consultations throughout Australia have been extremely important to us because they have given us a lot of first-hand knowledge about how we would implement and what implications this would have. Mr Metcalfe has already mentioned the telephone line. We have also introduced a free-call fax back facility as well, as a supplement to that. That enables employers to fax us with permission from people they are attempting to employ so that we can then fax them back immediately and confirm their permission to work in Australia and their status here—with, of course, the permission of the person who is standing in front of them.

The feedback we have had from those the trials of those facilities, and also from an enhanced information campaign that we are running, has been very positive and very successful. Through those consultations and those trials we are simply trying to explore more and more ways we can try and ensure that employers understand both what it is we are trying to do and what their responsibilities are. At the same time, we are trying to make it a relatively straightforward or as simple a procedure as we can for them.

Senator BARTLETT—Thank you for that. I will watch developments with interest. This is probably not your department, so if it is not then tell me, but obviously the immigration department has been pretty heavily involved in terms of the detection and prevention of unlawful entry out in the oceans. There was a report in the *Australian* newspaper on, I think, 12 January that said that—and it was quoting John Anderson so I do not know if it is a

transport department thing but I presume you folks are being consulted on it—there will be new rules put in place to force ship captains to call the Navy before they rescue people. Are you involved in that at all?

Mr Metcalfe—That is a matter for the department of transport.

Senator BARTLETT—Right. I will follow it up with them. My next question is about a similar sort of area, and it is in your area because it is about regulations that have been put down just recently. I might actually seek a briefing on this but I will very briefly touch on it in any case to put it on the record. I think the regulation is No. 10, which was tabled last week in the Senate. It seemed to be dealing with powers to board ships on the high seas and agreements between countries about the ability for people to do certain things on ships when they board them. Are you aware of those regulation changes?

Mr Metcalfe—They were tabled last week. They may well have been made last year but because parliament has only just resumed they probably have only just been tabled. Could we take that on notice? If you would like a briefing on that broad area we will be happy to get in touch with your office and arrange a briefing.

Senator BARTLETT—Okay. Just speaking of powers—and this is actually probably touching on detention again briefly, unfortunately—a significant number of people escaped from Villawood last year some time. I cannot remember precisely how many but it was about 70 or so, I think

Mr Metcalfe—There were two incidents and there was about that total.

Senator BARTLETT—Do you know how many, if any, of those have been found and returned?

Mr Farmer—This was touched on earlier by Ms Godwin in answer to a response.

Senator BARTLETT—I will read the *Hansard*. What actual powers does the department now have in terms of those sorts of things—like when you are trying to find escapees? There may have been some new powers in some of the bills that were passed last year—they might have even been earlier than the big group that went through in September. In tracking down people potentially involved in people smuggling and those sorts of things, what powers do you now have in terms of raiding homes, tapping phones and all those sorts of things?

Mr Metcalfe—The powers in relation to those issues have been unchanged for many years, Senator. I do not think that last year's legislation really altered the powers of search and arrest in relation to that. I draw a distinction between a person who is an escapee and therefore has committed a criminal act in relation to escaping lawful detention and one who, of course, also remains in those circumstances an unlawful non-citizen and therefore is subject to arrest and detention by the department. In relation to people in that situation—such as the people who decamped from Villawood last year—the department has powers which are the same powers that relate to the general issue of unlawful non-citizens in that if we locate a person in the community who is here unlawfully we must detain them. That is a mandatory obligation upon the department. The powers of search for people have remained unchanged for many years, as have powers regarding the entry of buildings without warrant in reasonable circumstances and whatever.

In relation to people smuggling or people trafficking, offences committed under the act are very serious criminal offences. The department works on those matters but primarily we work very closely with the Australian Federal Police. Usually any arrests and charges in relation to those matters would be made by the Australian Federal Police. We would have a role—and indeed it is referred to in much of our written material through the joint strike team and

through other cooperation with the AFP—but the actual power of arrest for that criminal matter and subsequent prosecution is through the justice arrangements: through the AFP and the Director of Public Prosecutions.

Senator BARTLETT—Using the Villawood escapees again as an example, what about Australians you suspect of assisting them in staying hidden or whatever? Apart from searching houses and the like, does the department itself have the power either to undertake phone taps and things like that or to ask the AFP to do so?

Mr Metcalfe—I will check this and correct or supplement my answer once I have read the *Hansard*. My understanding is that the powers in relation to phone tapping are available only to the Australian Federal Police in respect of offences which carry a penalty of seven years or greater. That is my recollection. I do not think that being part to the offence of harbouring an illegal immigrant or assisting in their escape would carry that level of penalty. To my knowledge, the use of phone taps has not been employed because it would simply be unavailable in those particular circumstances, in the case of an escape. In relation to people trafficking—in one circumstance there is a 20-year maximum jail sentence—those sorts of powers would be available to the Australian Federal Police.

Senator BARTLETT—That will do for 1.3. I have plenty of other questions, but I will put them on notice.

Senator McKIERNAN—As I indicated right through the process, I thought I had about four hours of questions. We probably do not have two hours left in the evening, so we have difficulties. I will do whatever I can in shorthand so the questions are on the record. They are not in a form that can be handed to the secretariat and put on notice. If I can interpret what I have and can ask you to take the oral question on notice if you are not in a position to give some brief response, we might get through the process this evening. I do not try to speak for everybody, but I think we would all like to see the process. We may need to refine the process afterwards because I learnt my English in Gaelic.

Mr Metcalfe—It does not show, Senator.

Senator McKIERNAN—At times I do not express myself the best.

Senator Ellison—Certainly we will do whatever we can to assist Senator McKiernan with his questions on notice and to put them in proper form or to make sure they are there.

Senator McKIERNAN—Thank you. I understand that Monday is the closing date. There are some that I could probably work on tomorrow on the aircraft back to Perth and lodge them by Monday.

CHAIR—That is certainly the case with Senator Harradine.

Senator Ellison—Yes, but we did say we would finish at 11 p.m. and I want to hold to that.

Senator McKIERNAN—So do I. I will endeavour to press this on and, if we need clarification, we can probably get it at a later time. The first question is with regard to the legal action about the East Timorese in Australia—the SSRP case—which I think is an AAT case. There were about 1,650 people involved in that. This is probably easier done on notice rather than getting an oral response to the matter now. Can information be given to the committee on where this matter is currently up to? If we had more time, it would be nice to tease this matter through. It is a matter that is of very great importance not only to the individuals involved in this particular litigation but to others.

Mr Metcalfe—We will take that on notice.

Senator McKIERNAN—Thank you very much. With regard to page 30 of the additional estimates statements, under outcome 2, there is an increase of some \$102,000 for the supervision and welfare support for unaccompanied humanitarian minors. This is a matter I have addressed in questions at estimates committees on previous occasions. Again on notice, could you provide the committee with details of where these unaccompanied minors are domiciled and in whose care they are domiciled. Are they under the guardianship of the respective state governments or are they in alternative accommodation? How many are there and how long are they provided with support? Is 18 the cut-off age for support for those people?

Mr Farmer—We will take that on notice.

Senator McKIERNAN—Thanks very much. I have finished now with 1.3. I think Senator Bartlett has too. I have only one question on 1.4, as to whether or not that program is now complete.

Mr Metcalfe—Before we leave 1.3, I can supplement an answer I gave to Senator Bartlett. That is on the question you asked before about a person who might be harbouring an unlawful non-citizen. I have been reminded that if someone is knowingly hiding someone who is illegal, the maximum penalty is 10 years. So, to my knowledge, the ability for phone taps through application by warrant would be available to the Federal Police were they investigating such a matter. I am not aware of whether that has ever been used.

Mr Farmer—Mr Giuca can answer the question on 1.4.

Senator McKIERNAN—I thought for a moment that Mr Metcalfe was responding to my question!

Mr Giuca—There are about 15 people on safe haven visas. They are a small group of people who arrived in Australia and their safe haven visas will terminate at the end of March—or it is being looked at in relation to the end of March. They are from Ambon.

Senator BARTLETT—Are all the 15 from Ambon?

Mr Giuca—Yes.

Senator McKIERNAN—I draw your attention to page 64 of the annual report, where you talk about assistance to 238. Now you are talking about 15.

Mr Metcalfe—That report was at the end of the last financial year.

Senator McKIERNAN—But additional money has been given for this forthcoming year. There is an additional estimate of \$102,000.

Mr Metcalfe—That is for the unaccompanied minors, I think.

Senator McKIERNAN—Are we not talking about the same thing?

Mr Davis—No. The humanitarian minors are actually under outcome 2, are they not? The safe haven resourcing was provided last year and we still have some appropriation from last financial year available to us to cover the costs in the current financial year. So there is no additional appropriation provided to us in either the budget or additional estimates. But we still have some access to appropriation from last year until such time as the safe haven visa holders situation is resolved. That money is more than adequate to meet our needs in the immediate future until the position is resolved, as Mr Giuca said, subject to the visa expiration or further activities.

Senator McKIERNAN—Going on to 1.5, is the Department of Immigration and Multicultural and Indigenous Affairs the lead agency in regard to the—

CHAIR—Senator McKiernan, I am sorry. I do know Senator Bartlett had questions in 1.4. Did you want to ask those or put them on notice, Senator Bartlett?

Senator BARTLETT—A bit of both.

Senator McKIERNAN—We are actually going to have to meet again on this portfolio.

Senator BARTLETT—I have more than half an hour on 1.5.

Senator Ellison—We agreed that we would meet again for indigenous affairs.

CHAIR—Yes, I am aware of the agreement, Minister.

Senator Ellison—There was a lot of questioning this morning which was repetitive and took up a lot of time. I appreciate that the questions tonight are genuine ones, but a time has been set down for estimates. Whilst I cooperate in relation to the further hearing in relation to indigenous affairs, we did know our time limits on Monday, and this morning there was extensive questioning; in fact, there was a lot of repetition. Of course we will assist in whatever way we can with questions on notice. Senator McKiernan suggested a very good method of dealing with that. Time is short and it is best if you work out how you are going to do it.

Senator McKIERNAN—The difficulty is that if we are not able to complain to the committee we will do it in the chamber.

Senator Ellison—I am willing to deal with that.

Senator McKIERNAN—That is much more costly and time consuming all round, and I want to avoid that. As I have indicated since Monday, I have about four hours of questioning, and I have not had the ability to put in that four hours of questioning.

Senator Ellison—For the record, Senator Collins, Senator Faulkner and Senator Ray all asked the same questions on the same subject, and that took about four hours this morning. That is something you have to work out. The committee has to work out how it arranges itself.

Senator McKIERNAN—The program is here to be scrutinised by the estimates committee. The program has not been completed. I have endeavoured to do that, as I think everyone will testify. We have got to 1.4, 1.5 is not completed, and none of the programs in 2 is completed at all—

Senator Ellison—Your questioning has been concise and your colleagues should learn something from you. Judging from the undisciplined approach by some of them, they need to look at themselves and the way they manage their time. You have covered a lot of area very well. That is no criticism of the questions you have asked, but there is a set time that we have agreed to in relation to estimates and I have gone beyond that in agreeing to this other hearing in relation to indigenous affairs.

CHAIR—Yes, Minister.

Senator Ellison—But let us move ahead, because we do not want to waste precious time; we only have just over half an hour.

Senator BARTLETT—We have just spent 30 minutes talking about how we only have 30 minutes left.

CHAIR—It is 33 minutes, to be precise.

Senator BARTLETT—On 1.4—I will put most of the question on notice—I want to clarify that there are now 15 people on safe haven visas in Australia. I notice the minister tabled a statement under section 91L(3) that in effect lifted the bar on two others in the first

half of last year. Could I have confirmation that those two were basically to enable them to receive ongoing medical treatment in Australia and, if possible, could I be informed where those people were from—whether they were Ambonese or Kosovar or from elsewhere? As well as confirming that the 15 that are here are all Ambonese, could I get information about how long it is since those people actually first arrived in Australia and whether they have had repeated renewals of their safe haven visas? You were saying they are all going to expire in March. I know you cannot foreshadow this, but is there a possibility that they may be rolled over into new safe haven visas? Is there some consideration of putting a limit on how many times you roll people over onto new safe haven visas? You may be able to answer all of those now, but for the sake of time perhaps you could submit answers in writing later.

Mr Giuca—I am not familiar with the two cases so I will come back to them on notice. In relation to the current safe haven visas, they have been rolled over a number of times. There is no limit to how many times they can be rolled over. I cannot foreshadow what the decision will be at the end of March.

Senator BARTLETT—On notice, could you provide us with exactly how many different times they have been rolled over and tell us when they first arrived here.

Mr Giuca—Yes.

[10.29 p.m.]

CHAIR—Senator McKiernan, that completes safe havens, as I understand it, and the other questions from Senator Bartlett will go on notice. Now we are on output 1.5.

Senator McKIERNAN—In regard to 1.5, is DIMIA the lead agency in regard to the happenings at Manus and Nauru?

Mr Killesteyn—I think one thing that has characterised this whole exercise of offshore processing is that there is a considerable whole of government approach to its management. Obviously, a range of agencies have a strong interest. The Department of the Prime Minister and Cabinet, obviously, has an interest from the point of view of the offshore processing policy and strategy. The Department of Foreign Affairs and Trade deals with government-to-government issues. AusAID has an interest to the extent that there are aid issues involved and clearly, DIMIA has an interest in respect of the management of the processing centres and the ongoing consideration of claims from asylum seekers.

That is by way of background. My answer to the question is that it really does depend on the issue. If it is focused simply on the processing centre and its operation, then that operational task is, in a sense, oversighted by DIMIA, although the carriage of all of the day-to-day work in relation to management of the centre is through IOM. We have a services contract, if you like, with IOM. That services contract provides that IOM provide to the asylum seekers, on behalf of the governments of Australia and Papua New Guinea in the case of Manus or Nauru, a range of services dealing with transportation, the health and welfare of the asylum seekers and so forth. If, however, the issue is around relationships or the structure of the relationship between the two governments, then in that case, the Department of Foreign Affairs and Trade would obviously be the lead agency, although clearly, given that one of the significant issues is the management of the centres, DIMIA would have a strong input into that.

Senator McKIERNAN—Would the establishment costs for each centre be billed through DIMIA?

Mr Killesteyn—The establishment costs are part of the fees that we pay to IOM, so one of the tasks we give them is to establish the centres and then run them. They would incur all of

the costs through their range of subcontractors. They have significant subcontracting arrangements with various suppliers and builders and they would then bill us for those costs.

Senator McKIERNAN—Can you, on notice, provide the committee with details of the establishment costs of both centres?

Mr McMahan—Senator, if you look at page 27 at 1.5, a figure of \$159.23 million is listed there. This is in the PAES.

Mr Killesteyn—That is the total operational cost which includes an establishment cost plus an ongoing running cost.

Senator McKIERNAN—Is the provision of security at both facilities and training for local people a DIMIA cost?

Mr Killesteyn—That is, again, a cost incurred through IOM.

Senator McKIERNAN—Which is included in this figure here.

Mr Killesteyn—Which includes a running cost, yes.

Senator BARTLETT—Is it possible to actually get a breakdown of what that \$159 million constitutes?

Mr McMahan—Yes, I can give you a quick breakdown if you like.

Senator BARTLETT—On notice is probably better.

Mr McMahan—I can do it in two seconds.

Senator BARTLETT—Okay.

Mr McMahan—Nauru \$72 million, Manus \$42 million rounded, Christmas Island \$37 million, Cocos \$7.6 million and we have \$0.5 million for a regional conference.

Senator BARTLETT—I was also thinking of the various components, construction, whatever.

Mr Killesteyn—We will take that on notice. We will break it down into various components.

Senator McKIERNAN—In respect of the processing of people at both facilities, the people have been at Nauru for a period of time now, has any person gone through to primary resolution of their claims?

Mr Illingworth—Not at this stage. Processing is proceeding on those cases.

Senator McKIERNAN—I think you told us earlier that UNHCR are doing the processing?

Mr Illingworth—UNHCR is processing some cases—the majority of the cases—on Nauru and Australia is processing the balance of the case loads on Nauru and the case loads on Manus.

Senator McKIERNAN—In weeks, what is the time line that people have been in the processing stage?

Mr Illingworth—We commenced processing in Manus in mid-December and, from memory, the first interviews were held on Nauru in September.

Senator McKIERNAN—How many weeks was that—roughly?

Mr Illingworth—About 2½ months.

Senator McKIERNAN—Thank you.

Mr Killesteyn—A point of clarification, Senator. There was a preliminary preinterview phase with the residents at Manus. Just to make it absolutely clear, there has been a number of phases which started around the time of my visit at the end of October, where a team of officers went to gather preliminary information, identity details and preliminary claims information. That then moved on to the interviews that Mr Illingworth has just described starting in mid-December.

Senator McKIERNAN—Thank you; I was not aware of that. What additional information to that very short commentary can you provide the committee? Can you undertake to provide more details?

Mr Killesteyn—I just wanted to make it clear to you that we started work very quickly after the residents arrived in Manus. A team of officers travelled to Manus at the end of October and started the work of collecting the biodata of the individuals there and some preliminary information about the range of claims that they would be making. That was then taken back and assembled. A subsequent team then travelled to Manus in mid-December to conduct the full interviews with the residents to fully probe and question the claims that they were making.

Senator McKIERNAN—That would serve to prolong the detention of the individuals. Had they been on the Australian mainland, they would have moved into the processing stage at an earlier point in time, would they not?

Mr Killesteyn—I think you have to appreciate that the environment is substantially different—

Senator McKIERNAN—Yes.

Mr Killesteyn—and there had not been prior to that time, given that the people were on Christmas Island, an opportunity to go through the preliminary gathering of data and biodata about those individuals. I acknowledge what you are saying, and that was an attempt to try and catch up and speed up the process. I think the work by the first team facilitated a much speedier process of interviews with the subsequent teams. There was also the break of Christmas, which added to the potential delay.

Senator McKIERNAN—Thank you. I have a series of questions concerning the charter of the aircraft, which was reported in the *West Australian*—‘To remove the people from Christmas Island to Nauru, the aircraft came from Lisbon to Bali, from Bali to Christmas Island, from Christmas Island to Nauru to Port Moresby,’ and so on. You would probably be aware of the story. Rather than asking you each of the questions, can you provide additional details, including, if you able to, the costs of the charter of the aircraft. It seemed to be, from the way they were presented in the *West Australian* newspaper—this is not the question here; this is the newspaper article—I have just paraphrased the question.

CHAIR—Thank you very much, Senator, I appreciate that.

Senator McKIERNAN—Can you provide the committee with details in regard to that?

Mr Farmer—Yes, we will do that.

CHAIR—Did you finish with 1.5, Senator Bartlett?

Senator BARTLETT—I think we can actually explore a lot of 1.5 through the select committee, because it has got the Pacific solution reference—and enjoy another four hours of questioning from Senator Faulkner and Senator Collins about children overboard! I would like to ascertain a couple of things that I am not clear about. The people on Manus Island are in PNG, and PNG, as I understand it, is a signatory to the refugee convention. How is it that

they do not have primary responsibility for the determination of refugee status, or why are their protection obligations not engaged by the fact that these people are in PNG?

Mr Illingworth—The key is that the person has to be seeking the protection of the country. We have no indication that the individuals that have been taken to Manus Island for processing have any interest in seeking protection from the PNG authorities. There is no obligation on a member state to undertake itself its own refugee determination process, and many states do not do so. In this environment we are undertaking the processing to a standard equivalent to the UNHCR standards of processing essentially on PNG territory in a situation where the individuals want to come to Australia and do not want to seek protection from the PNG authorities.

Senator BARTLETT—Under our agreement with PNG we have guaranteed that none of these people will remain in PNG; is that right?

Mr Killesteyn—The agreement provides that people will broadly be there for a period of six months or as short a time as is reasonably necessary to complete the humanitarian endeavours under the MOU. Essentially the expectation that both PNG and Australia have is that they would not remain permanently in PNG.

Senator BARTLETT—What if theoretically one of them was to specifically request that they be able to get protection in PNG? Do we still have the authority to ignore that and send them elsewhere? How can PNG ignore that if someone is to say, 'I want to seek protection here'?

Mr Farmer—I think we just regard it as really being at the extreme end of possibilities.

Senator BARTLETT—Worry about it if it happens?

Mr Farmer—I think that is the honest answer to it. We do not have any realistic expectation of that happening. I just do not believe it has arisen.

Senator BARTLETT—Certainly the ones on Manus and a fair proportion of those on Nauru are not being processed by the UNHCR. What state or organisation is ultimately responsible for those who are assessed as refugees? You are assessing them on PNG and Nauru. Who has got primary responsibility for those who pass?

Mr Metcalfe—The issue of those persons who are identified as refugees becomes a question of what happens then in relation to them. Essentially the government's expectation is that their resettlement in third countries would be pursued—and indeed is being pursued. The expectation is that persons who are identified as refugees in need of protection would be available for resettlement, and there will be continuing discussions as to international burden sharing in relation to this matter with other resettlement countries. I think the minister has said that Australia will certainly take its share.

Mr Killesteyn—But there is no legal obligation for Australia to take those people found to be refugees, if that is a direct answer to your question.

Senator BARTLETT—It is nobody's obligation.

Mr Killesteyn—There is an international obligation. I think that is what Mr Metcalfe was suggesting. There is no simple formula that suggests that Australia has an undeniable legal obligation to take any of the refugees. The government's expectation is that it will be working towards an international sharing of the burden in terms of where genuine refugees will be resettled.

Senator BARTLETT—I think this is a pivotal area that is not really the sort you can put on notice. It will probably be best pursued through the select committees. I have a whole

range of questions I will put on notice in writing, and there is one question that I will verbalise. On page 34 of this portfolio statement, output 1.5, Revised Performance Information, you are basically estimating 2,200 places available for accommodation. That is an estimate. How close are we to 2,200 at the moment?

Mr Metcalfe—We are 1,515.

Senator BARTLETT—That is an expectation that there may be around 700 more by the end of the financial year?

Senator Ellison—It is an estimate.

Mr Killesteyn—That is the capacity of the two centres, which talks about 2,200. There are 1,500 people there now. That is all it is. It is the capacity of the centres.

Senator BARTLETT—So that is not just an estimate; it is a cap, if you like.

Mr Killesteyn—It is what has been agreed with the two governments: 1,200 in Nauru and 1,000 in Manus.

Senator BARTLETT—And that 2,200 does not include people on Christmas Island or Cocos Island?

Mr Davis—No.

Mr Killesteyn—It is simply a carrying capacity.

Senator BARTLETT—But you are not counting in that 2,200 the people who are on Christmas Island. I know you might then put them somewhere else, but the 2,200 only counts for Papua New Guinea and Nauru.

Mr Killesteyn—That is right. That is only the carrying capacity of the two centres in Manus and Nauru.

Mr Davis—Senator, could I say one more thing, which perhaps helps. We have a purchase agreement elsewhere which has targets. For 1.5 there is no purchase agreement arrangement, in terms of the cost per detainee in this area. We have been provided with a fixed bucket of money. There is the capacity to hold 2,200 on Nauru and Manus at present. As it says in output component 1.5.2, we have accommodation on a needs basis on Christmas and Cocos. That could be fluid, in terms of how many people are put there at any one time.

Senator BARTLETT—So the \$159.23 million is your bucket of money?

Mr Davis—That is the bucket of money for Christmas, Cocos, Nauru and Manus, and it is a fixed bucket of money.

Senator BARTLETT—That amount is for this financial year, 2001-02?

Mr Davis—Yes.

Senator BARTLETT—I presume that when the budget was put in place this whole output did not even exist, so it is really money that is going to be expended in about eight months of the year.

Mr Davis—That is the budget that we have, based on our estimated need for the current financial year. To the extent that it is not used, we would forfeit those resources back to the budget. There is no provision for its forward use. That is a budget matter yet to be considered.

Senator BARTLETT—There is no forward estimate yet?

Mr Davis—That is right.

[10.47 p.m.]

CHAIR—That is the end of outcome 1.5. We have started on outcome 2 anyhow.

Senator McKIERNAN—On page 60 of the annual report, the overview of performance details some difficulties and concerns with the Federation of Ethnic Community Councils' affairs. Can we have some information as to what the current situation is regarding that peak body?

Mr Hughes—I am pleased to say that the situation with FECCA has improved quite a lot since the annual report was written. At the time, a couple of the state affiliates had suspended their membership. At the annual general meeting in the latter part of last year, those states—and I think it was Victoria, Western Australia and the Northern Territory—resumed their membership and active participation in the activities of the federation. So it has significantly improved its cohesion since the time that that was written.

Senator McKIERNAN—Are there any other matters of concern to the department regarding the operation of FECCA? I ask that because there is a not inconsequential amount of funding delivered to FECCA.

Mr Hughes—It has, as an organisation, been through a troubled period, but I think the signs after the annual general meeting late last year are quite positive that it is putting its house in order. It appears to be moving in the right direction.

Senator McKIERNAN—Have you had cause to put an audit on the expenses and the expenditure of the organisation?

Mr Hughes—Have we, Senator, specially?

Senator McKIERNAN—Has the department caused an audit to be done, or has FECCA itself caused an audit to be done of its funds and expenditures?

Mr Hughes—FECCA itself would conduct an audit in the normal course of its events. I do not believe that we have requested any special audit.

Dr Nguyen-Hoan—We have not received any information about that yet.

Senator McKIERNAN—You are leaving me hanging. 'We have not received information about it yet.' I am actually hearing some disturbing noises regarding FECCA—very disturbing noises. I am pleased that the problems that were described in last year's annual report have been overcome but, regrettably, I continue to hear some noises that are disturbing. I am being careful in how I am expressing things because I do not want to set the dogs barking in an area where there is no need to do it. What I am looking for is an assurance that there are no problems. If there are problems we move on and let other people resolve the problems.

Dr Nguyen-Hoan—When the ECCs and MCC rejoined FECCA, I think that they set out five conditions which had to be met before they rejoined. Some of the conditions were met; one condition was an external review of the governance of FECCA being conducted. A review has been conducted but I have not seen the result of that.

Senator McKIERNAN—It was not asked for by government; it was asked for by the rejoining organisation?

Dr Nguyen-Hoan—That is right.

Senator McKIERNAN—Thank you very much for that information; I do appreciate it. We have a serious problem now: in eight minutes I am not going to be able to complete the rest of the programs, and the questions I have got are not in a form that I could comfortably go through quickly and ask questions upon. There is a series relating to settlement services. In the light of what the minister said earlier about the timetables, as I understand it, if the processes are not completed during the committee, we return to the chamber. But that is not a

decision for me; it is a decision the minister will have to argue with the Manager of Government Business on the floor of the chamber.

CHAIR—Senator Bartlett, what is the status of your questions?

Senator Ellison—Senator McKiernan has his questions on notice. If he has them ready on Monday, they can be tabled and we can take them on board. That is an avenue around it.

CHAIR—Yes, we have discussed that.

Senator BARTLETT—On settlement services: in the portfolio statement on page 28, you have an additional estimates procurement of \$5.65 million; what is that for? I cannot find what that is going to be utilised for. I can find it for the TIS funding, but not for that.

Mr Hughes—That is the transfer from the Adult Migrant English Program administered item of the funds involved in administering the computer system. It is also referred to specifically on page 8.

Senator BARTLETT—I will look that up.

Mr Hughes—It is a technical issue of where the funds are accounted for. We are moving it from the administered item to the departmental expenditure—

Senator BARTLETT—It is not really an extra five million bucks for settlement services then?

Mr Hughes—No, it is a transfer within the total pool between administered and departmental.

Senator BARTLETT—I know the minister has received representations from organisations in New South Wales that are involved in the Community Settlement Services Scheme where, because the new social and community services award came into operation from November, basically, their pay rates have gone up significantly. Obviously their funding was only funded for the previous pay rates for the financial year. I know representation has been made to the minister asking if extra funding could be provided to cover that gap. They could either get extra funding to pay the higher wages or else cut back on the hours and the services that are provided. My understanding is that the minister has written back and said, ‘Them’s the breaks. You got your money for the year and that’s that.’ Is that still the case? Why wasn’t extra money sought under additional estimates? We have \$158 million for PNG; surely we could have got an extra million or whatever is required—I do not know what it is—for ensuring the maintenance of community settlement services at the same level in New South Wales as they were intended to be at the start of the financial year?

Mr Hughes—As you observed, the funds for the Community Settlement Services Scheme and the migrant resource centres are fully allocated at the beginning of the year. It is not necessarily possible to get additional funding throughout the year. We sympathise with the organisations that are affected by that. I think the effect would be differential depending on where the workers are working, how long they are working and what organisation they are part of. What we have certainly said, though, is that we are quite prepared to renegotiate the work programs for any organisations affected by that, to help reduce the pressure on those who are not able to fully meet the cost increases imposed by the wage rise.

Senator BARTLETT—Renegotiating work programs is presumably another way of saying reduce work hours and reduce service provision.

Mr Hughes—It may involve that. It may involve some changes to the more discretionary aspects of what they do, but we have certainly said that we are sympathetic and that we will look at releasing people from commitments that may be impossible to meet.

Senator BARTLETT—I appreciate that, in terms of the upcoming budget, you obviously cannot give any commitments and that every department battles for as much as it can get, but is it at least on the department's agenda to try to ensure that there is enough funding provided to maintain the same level of service as last year with the increased award rates?

Mr Hughes—It is always on our agenda to maintain the level of settlement services.

Senator BARTLETT—That is all I have for 2.1. I have one question for 2.2.

CHAIR—Will that be all you have for 2, Senator?

Senator BARTLETT—I think that is all I will be able to squeeze in.

CHAIR—Indeed.

Senator BARTLETT—On page 35 of the portfolio statement is what looks like a minimal increase in funding, but your performance information has changed from 3.6 million minutes of interpreted conversations, representing 240,000 calls, to 100,000 fewer minutes with 10,000 extra calls. How is that working? There are more calls but they are shorter calls. Is that based on some data or is that just a way of trying to squeeze in more calls with the same amount of money?

Mr Hughes—That is an estimate of the outcome and it shows that a pattern has emerged which is that we are continuing to get more calls and that business has gone up in recent years. The data shows, though, that the calls are somewhat shorter. That could be because of a change in the pricing structure that was made last year, which means that longer calls cost more for those who do not get free services. So it could be that some of the users are being a bit more efficient in their use of the calls.

Senator BARTLETT—That will do me.

CHAIR—Thank you, Senator Bartlett. Senator McKiernan, do you have anything else you wish to ask at this stage?

Senator McKIERNAN—I have lots of things that I have to ask but regrettably we are going to have to take them to the chamber, which will please everybody. No doubt the Manager of Government Business will be ecstatic when he hears it. We will have to negotiate a time for indigenous affairs. That will be done with agreement and we will be as agreeable as possible. During the course of these estimates, I have been reading an article by Mr Julian Burnside. When he is talking about the location of detention centres, he mentions Curtin, Adelaide, Perth and Port Hedland and says, 'These godforsaken places in the least hospitable parts of Australia hold over 80 per cent of the asylum seekers.' I resent those comments about my electorate of Western Australia and the people who live in Port Hedland and Derby, very close to Curtin. I think it shows an arrogance that is not becoming of an individual like Mr Burnside. He needs to learn more about matters before he puts pen to paper. I could dispute other matters that are contained in the article and, had I more time, I would give him a bigger serve than I am giving him now.

Senator Ellison—I might say that I do not regard Port Hedland or Derby as godforsaken; I agree with you.

Senator McKIERNAN—Thank you.

CHAIR—In closing this evening's proceedings, I thank all those members of the committee who have endeavoured to cooperate, given the particularly difficult nature of some aspects of this week's discussions. We have made arrangements—most particularly with Senator Harradine, but they obviously extend to all other senators—to enable questions to be put on notice up until the close of business on Monday. I hope there is some capacity for

senators who have not felt they have had adequate opportunity to ask questions this evening to do that. The government members of the committee have, I think it would be fair to say, particularly tried to ensure that the members of opposition parties have had every opportunity to ask as many questions as they can in the last three days on all of the portfolios before the committee.

I want to thank Mr Farmer and the officers of the Department of Immigration and Multicultural and Indigenous Affairs. It has been a fairly elongated process in getting to even tonight's proceedings, and we will, as Senator McKiernan said, arrange by cooperation a time to examine the additional estimates for indigenous affairs. Thank you to the secretariat; thank you to sound and vision in particular. I know Friday night is probably not the most popular time to conclude estimates. I am grateful to everyone, including the attendants, for their support.

Senator Ellison—Thank you to the committee and thank you for being a good chairman, Madam Chair.

Committee adjourned at 11.02 p.m.