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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Reference: Migration Legislation Amendment (Identification and Authentication) Bill 2003

MONDAY, 8 SEPTEMBER 2003

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WITNESSES

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Monday, 8 September 2003

Members: Senator Payne *(Chair)*, Senator Bolkus *(Deputy Chair)*, Senators Greig, Ludwig, Mason and Scullion

Participating members: Senators Abetz, Brandis, Brown, Carr, Chapman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Humphries, Kirk, Knowles, Lees, Lightfoot, McGauran, McLucas, Murphy, Nettle, Ray, Sherry, Stephens, Stott Despoja, Tchen, Tierney and Watson

Senator Bartlett for matters relating to the Immigration and Multicultural Affairs portfolio

Senators in attendance: Senator Payne *(Chair)*, Senator Bolkus *(Deputy Chair)*, Senators Bartlett, Ludwig, Mason and Scullion

Terms of reference for the inquiry:

Migration Legislation Amendment (Identification and Authentication) Bill 2003.

Committee met at 7.03 p.m.

GIBSON, Mr John Aubrey, Victorian Bar

MORAN, Mr Simon, Principal Solicitor, Public Interest Advocacy Centre

WISEMAN, Ms Claire, Solicitor, Public Interest Advocacy Centre

CHAIR—This is the first hearing for the Senate Legal and Constitutional Legislation Committee's inquiry into the provisions of the Migration Legislation Amendment (Identification and Authentication) Bill 2003. The inquiry was referred to the committee by the Senate on 20 August 2003 for report by 11 September 2003. The bill proposes measures to strengthen and clarify existing statutory powers to identify noncitizens and provides a framework for authorised officers to carry out identification tests in order to obtain personal identifiers. The committee has received six submissions for this inquiry, all of which have been authorised for publication and are available on the committee's web site. Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Further copies of those notes are available from the secretariat. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. I welcome Mr John Gibson from the Victorian Bar and I welcome witnesses appearing via teleconference from Sydney, Mr Simon Moran and Ms Claire Wiseman, from the Public Interest Advocacy Centre. Do you have any comments to make on the capacity in which you appear?

Mr Gibson—I thank the committee for the invitation to appear. I am authorised by the Refugee Council of Australia, of which I am a member. The submissions I make today have the support of the Refugee Council of Australia.

CHAIR—I indicate to our witnesses this evening that because the committee is meeting while the Senate is in session, we are subject to the demands of the chamber. Should there be a spontaneous burst of democracy which requires a division in the chamber we will be required to attend that division and those members of the government who are here will be required to attend quorum calls. If we seem to desert you for a period, it will be as a result of that spontaneous burst of democracy.

Mr Gibson, a submission from you—submission No. 4—has been lodged with the committee. Mr Moran and Ms Wiseman, you have lodged a submission with us—submission No. 2. Do either of you wish to make any amendments or alteration to those submissions.

Mr Gibson—Could I mention three matters? The first is in paragraph 1.1, where it says:

There can be no objection to the general statutory purposes set out in paragraph 1 ...

that should be 'paragraph 1.6'—

of the Outline and the Explanatory Memorandum.

CHAIR—I see. Yes.

Mr Gibson—If I could take you to item 16, at the end of the first sentence, ending 'Refugees Convention' it should continue 'see too item 13, s40(3)(b)—grounds for refusal of visa'.

CHAIR—Okay. And the third?

Mr Gibson—At item 30, paragraph 1.12, before the words 'request an authorisation' please insert the words 'be informed that they may'.

CHAIR—Thank you for clarifying that, Mr Gibson. Mr Moran, are there any issues in your submission that you wish to make amendment or alteration to?

Mr Moran—No, there are none.

CHAIR—You have kindly consented to appear as witnesses simultaneously with the committee and we are very grateful for your assistance in that regard. What I am going to ask you to do, perhaps starting with Mr Gibson, is to make a short opening statement. Then, Mr Moran and Ms Wiseman, I will ask you to do the same. Then we will move to questions.

Mr Gibson—I will hand up some documents, which are three EXCOM resolutions from the UNHCR, the agenda for protection and the regulation which is referred to in the submission in relation to the Eurodac system that is in operation in the European Commission. First of all, looking at all the submissions there is a definite consistency and complementarity between the Victorian Bar submission and the ones from other sources like the Privacy Commissioner and PIAC. We have intended to focus more in a micro fashion than in a macro one. Obviously, given that probably only 10 or so items are referred to there, clearly there are a large number of provisions to which no objection can be taken.

As we have indicated so far as the statutory purposes are concerned, there is really no objection to what is set out in the explanatory memorandum in those paragraphs. Concerns lie obviously first of all in item 11, which might be described as an excessive degree of delegation in using various devices like prescribed circumstances in circumstances which we would submit should be matters for parliament, not for delegated legislation. That is the first point that should be made.

Equally, in section 5A(1)(g), it would be our submission that the expansion of future mechanisms should either be provided for by a later amendment to the act or be incorporated now by redrafting this section. In the definition of 'character concern' in section 5C, we find the notion of the terms 'association' and 'danger' arguably too vague and unacceptably broad.

One of the most critical objections we have is item 16, at paragraph 1.8 of our submission. This is effectively the attempt to preclude consideration of asylum claims where there is an inability to produce evidence of identity. We would submit that an attempt to deny a person who cannot produce evidence of identity access to a refugee determination process is simply wrong in principle. There are plenty of examples of people who are unable to obtain documentation in their country, given its lack of sophistication, who flee conditions of persecution in anonymous circumstances by design or who employ fraudulent documentation because they are fleeing persecution. While one would certainly qualify in situations where there is a deliberate attempt to mislead, as a matter of principle it is our submission that the inability to produce evidence of identity should not preclude consideration of claims.

Looking at items 24-27—and specifically items 26-27—it is of some concern that, with the operation of the new provisions, people who are permanent residents and/or who have rights as permanent visa holders could end up in section 189 detention. You will note in paragraph 1.10 of our submission we make the point that, while someone may be released in certain circumstances pursuant to section 191(2), that requires both the provision of a personal identifier and an officer being satisfied that the person is not an unlawful non-citizen. So theoretically the provisions of section 196 may still apply. It is a matter of some concern that these amendments mean that someone who to all intents and purposes is a permanent resident, with the rights that pertain to that, may end up in that form of detention.

On item 30, the analysis we have put forward in paragraph 1.12 of our submission is arguably open to doubt. It is not entirely clear. If one looks very carefully at the various provisions, the elision between the various sections in question and their use elsewhere in the bill—for example, in section 192A(5)—there is a distinction between a questioning detention and a section 189 detention. Depending on what interpretation is given, it may well be that someone who is in section 189 detention does not have the same right to be

informed that they may request an authorisation. It is certainly not free from doubt and, on any view, we would submit that that should be clarified.

On item 31, paragraph 1.14 of the submission, we say that the obligation to inform should be strengthened and should be contained in the statute; and the various provisions which are usefully provided for in the explanatory memorandum at page 32, paragraph 13, should be included in the act. They provide for a series a matters which, it is conceded, it seems, by the proponents of the bill, should be provided by way of information.

I do not need to go any further with item 32—it is an example, we would submit. There are concerns about reasonable force and there are concerns as to what this may mean regarding the degree of restraint, as well as the qualifications of those who are exercising this force. Item 33 concerns a number of matters relating to statutory meaning and the use of the term 'meaningful'. In relation to modification, we would submit that appropriate standards should probably be included. There is certainly no right of access for a person to information, or to verify the factual accuracy of the information, which is held in relation to him or her.

Another important and objectionable component is section 336F relating to disclosure and disclosure to foreign governments, particularly in the context of asylum seekers. The provision is made for disclosure after the matter has been finally determined, which is defined in the act effectively as completion of merits review. It is our submission that there should be a statutory amendment to make it clear that an asylum seeker whose application has been rejected, who has no judicial review rights or appeals outstanding and has no other applications to remain in Australia, may have his or her information disclosed to a foreign government. There are serious concerns about the way the provision is currently drafted; it may even have the effect of creating class claims in the case of someone who has arrived here and whose identity becomes known before the end of the process. There are various matters which the Privacy Commissioner referred to and we, of course, adopt those matters—there are six or seven set out that relate to this issue of disclosure.

In conclusion, the bill itself also raises serious issues relating to collection, storage, use and destruction of identifying information, and we submit that this is not adequately provided for in the bill. There is no reference to standards and mechanisms by which identities will be checked and comparisons made; it is quite clear from the appropriate section that the intent is to match data in order to ascertain identities through personal identifiers. The Eurodac system, which is in operation in the European community in relation to the operation of the Dublin convention, contains a whole series of mechanisms and provisions to this end. I have handed up the relevant council regulation which sets out the various matters and safeguards which are in operation.

Finally, section 336L, which is at paragraph 1.24, relates to the issue of retaining indefinitely certain identifiers for persons—and this is where our concern lies—who are ultimately granted status, despite having been in detention, despite having been illegal overstayers, despite having been persons who have been subject to action for the purposes of removal or even where they have been convicted for minor infringements of the act. In all these cases, indefinite retention is provided for. It is our submission that, consistent with provisions of the Commonwealth Crimes Act, where destruction is mandatory on acquittal, there must be destruction as soon as is reasonably practicable—consistent with Eurodac, where destruction is mandatory on departure or the granting of residency or acquisition of citizenship, or consistent with the UK position, where someone is given indefinite leave to remain. We submit that, consistent with those positions, this section of the act should be amended, particularly, as we have indicated, where the person in question—despite some position they had been in or their previous status—is granted status of some kind in Australia. There is also a final question as to whether there in fact should be a limit of 10 years. These are the general matters we wish to put to the committee.

Mr Moran—Thank you for the opportunity to address the committee. We make many points in our submission that have already been articulated by Mr Gibson, so I might simply give our broad concerns with the bill. Then, perhaps, you can ask us questions on specific points and we can address those. Broadly speaking, we see this bill as a substantial interference in the rights of individuals. Particular rights are articulated in the ICCPR, and I might come to those in a moment. In general, where parliament interferes or intends to interfere in the rights of individuals—and particularly where there is significant interference, which is this case—there needs to be a clear basis and a clear reason for that interference.

In our submission, we have argued that in this case there is not clear evidence to justify such an interference in individual rights. There does not, in our opinion, appear to have been articulated a clear basis for justifying these provisions. There is no clear evidence of the nature and extent of identity fraud. Perhaps if there were we may have a different position, but at this stage it does not appear to us that that has been clearly identified.

We also have a concern that the bill, if it becomes law, will not achieve its purposes or the purposes it claims. We are concerned with the compatibility of data with other countries and concerned that there may not be the appropriate arrangements and safeguards around arrangements with information sharing with other countries.

Those are our general concerns, and we have a number of specific points. Again I will summarise what is contained in our submission. The first and probably most fundamental is that the bill, as currently drafted, would be in breach of article 17 of the ICCPR. The convention states that there is a right to be free from arbitrary interference with an individual's right to privacy. 'Arbitrary' has been defined in the general comment no. 16 which was adopted by the human rights committee, and essentially that comes down to being reasonable in particular circumstances. We would say that in these circumstances, given the lack of clear evidence of identity fraud and a number of matters that are not fully articulated in this bill, such as the inappropriate use of delegated legislation, interference is not reasonable.

There is a use of delegated legislation where, at a later date, the minister can prescribe circumstances where personal identifiers are required and exceptions to these circumstances. We would say that, where you have such a significant interference with fundamental rights, these are not matters which should be left to regulation. They should be put before the parliament when it is seeking to pass the initial interference in people's rights.

We are also concerned that there are limited, or no, appropriate safeguards to protect the right to privacy. In particular, there are no safeguards in relation to the destruction of identifiers. What safeguards there are provide little protection to people's rights of privacy. There are also few provisions in relation to the supervision of the information collected, and these are two critical areas for the maintenance of the right to privacy. They are areas which have been addressed in the Eurodac system, about which I think Mr Gibson handed up some material.

Overall we would say that the scheme is not proportional to the identified problem. That lack of proportionality increases the perception of harshness with which asylum seekers are treated when coming to this country. The invasive and demeaning processes only increase the sense that, in some circumstances, particular individuals seeking asylum in Australia are treated worse than criminals. There are points in this legislation where it appears that is the case, as its provisions here are harsher and more invasive than in the Crimes Act. We have set some of those out in our submission.

In summary, the problem has not been clearly identified and as such this bill, which significantly interferes with individuals' rights to privacy, does not do so proportionally. Therefore, we essentially oppose the bill in its current draft.

CHAIR—We will move now to questions. Mr Gibson, as regards the matters you raised in your submission, and in your verbal remarks on the material under item 16 in your submission, are you aware of any other country which operates on that basis?

Mr Gibson—I am sorry—which basis?

CHAIR—The basis of 'no identification, no refugee claim'.

Mr Gibson—No. And in that sense, even though there is nothing specific in terms of UNHCR authoritative opinion, there are certain strong indications in the two EXCOM resolutions I handed to you—

CHAIR—Which I have not had a chance to speed read.

Mr Gibson—that, consistent with the refugees convention, while detention is permitted in the case of misuse of misleading documentation, there is no provision or suggestion that disqualifying someone because they present false documentation or arrive with no documentation is compatible with the convention. As I have indicated, there are plenty of scenarios which can explain that, but to preclude people from having their claims even considered is, with respect, a draconian step. I appreciate the difficulties. I was a member of the Refugee Review Tribunal for four years and there are matters clearly that one has to assess in terms of credit, but that should be a matter for the determination process; it should not be a question of invalidity.

CHAIR—In the Privacy Commissioner's submission, in relation to the handling of personal information—an issue, in other circumstances, to which this committee has turned its mind on more than one occasion—under the heading 'Overseas disclosures' the commissioner refers to, as I understand it, their advice to the department that memoranda of understanding should be prepared with countries to which officers may intend

to disclose personal information. Would the development of memoranda of understanding address some of the concerns you have raised?

Mr Gibson—Memoranda of understanding would not address the fundamental concern, which is that disclosure of information is seemingly permitted before the conclusion of a judicial review or appeal process. They certainly will not do that.

CHAIR—They would set out a structure for the relationship between the two countries: grounds upon which information can be given.

Mr Gibson—I agree, and that is the way the Australian government has dealt with foreign states—by the conclusion of memoranda of understanding. The concern would be that these memoranda of understanding should have within them something similar to the Eurodac system, whereby there are protections in relation to comparability of information regarding identifiers, comparisons, the mechanisms for comparison, retention, nondisclosure to third parties—a fairly sophisticated scheme within the memoranda of understanding which, if adopted, could go some way towards allaying the concerns that we have.

CHAIR—In relation to, for example, the fingerprinting of noncitizens and other forms of taking of personal identifiers, is it clear to you which noncitizens will be subject to this, or do you think that it is to apply to all noncitizens?

Mr Gibson—The gateways to the taking of identifiers—apart from the provisions that relate to people who are in immigration detention, where these provisions apply—are sections 188 and 192, 188 being basically an immigration officer requiring somebody to disclose their identity and 192 being questioning detention. Effectively, it seems to me, that will cover the field. The concern that we indicated was in terms of this elision, if one looks carefully at the various provisions, which seems to then permit 189 detention with the consequences that flow from that. Notwithstanding the exclusion provisions which say that someone must be released, that is a far more draconian form of detention, as the committee will appreciate.

Given the amount of litigation and jurisprudence at the moment in relation to section 196, my concern would be that it applies to people who are current visa holders, who may have been permanent residents for 20 years—certainly people with existing rights and status within this country. One can have no objection to questioning detention. Certainly the act currently provides for an officer to request information; it is clearly within the act. It is this third scenario which is of concern in relation to noncitizens.

CHAIR—Both your submission, Mr Gibson and, Mr Moran, PIAC's submission—and certainly the Privacy Commissioner's submission—refer to the need for proper safeguards in terms of the destruction of personal identifiers within a specified time frame. The bill is silent on that point. I understand that PIAC would certainly support a system such as Eurodac, which provides for a particular time frame after which PIs must be destroyed.

Mr Moran—Generally we are opposed to the bill. If there is to be any system, our view is that Eurodac is more appropriate. It is important in relation to safeguards that there also be independent monitoring of the system. In relation to the memorandum of understanding points, we have had recent experience of trying to obtain a copy of a memorandum of understanding which Australia has with a foreign government. We have been unable to obtain that. The basis for the refusal to provide it is that it contains material that is confidential. Therefore, I imagine that any memorandum of understanding that Australia has in relation to the passing of personal information would also fall under that exemption. So an organisation like PIAC cannot obtain that memorandum of understanding, but there needs to be some independent body that can look at that, can monitor that the transfer of information is not putting asylum seekers in a position of jeopardy or harm. Those are the sorts of safeguards that can ameliorate some of the effects of the interference in privacy. I think they are extremely important.

Senator LUDWIG—I just note a couple of issues. How would the memorandum of understanding that is reflected in the Privacy Commissioner's statement effectively work if a country were under stress, if its administration were not placed to deal with an MOU? It might be an area from where refugees or the like might flee. How would that work? Would it be a treaty, or similar to a treaty? You would have to go through the process of effecting it and then together with an MOU you would have to establish which countries. You might not get all countries to agree to an MOU, so you then are faced with an A list and a B list.

Mr Gibson—I agree with those propositions, and possibly the DIMIA representatives will be able to explain how the MOU should operate. In Afghanistan, which we can take as an example, there are tripartite agreements with UNHCR and sending countries and receiving countries which contain a whole series of

standards and protections. Clearly, one of the points that has been raised elsewhere is that it is really problematic in terms of matching data and making comparisons—countries like Afghanistan or safe third countries, which are referred to in the PIAC submission, are in a position to do that. There are serious concerns, since this is what the purpose of disclosure is: to match data. Even within the terms of a memorandum of understanding, which might go some of the way—as I indicated before—you still have to have fairly strong built-in mechanisms and you have to be satisfied that the country to which you are sending failed asylum seekers back is, essentially, equipped to make these sorts of comparisons. They are, with respect, particularly important. The Eurodac system, which I would urge the committee to take into account, is admittedly based on sophisticated democratic systems but nonetheless provides serious safeguards in relation to all of these elements: control, retention, security, transfer of data et cetera.

Senator LUDWIG—Essentially, as I understand it, you are advocating that Eurodac or a similar system be implemented rather than this bill. Have I got that correct?

Mr Gibson—As I said, there are serious concerns, including the ones we have identified, about the bill. While admitting that certain technological changes now provide the capacity for a country like Australia—and consonant with UNHCR standards in the Agenda for Protection which I referred you to earlier—to effectively try to perfect a process of identification to meet the needs of both the asylum seekers and the host country, there are features of the Eurodac system which should find their way into any amended bill; that is what we are saying.

Senator LUDWIG—How do we identify those? This is my problem in the sense that I am not asking you to go to any lengths. I now have a copy of the council's resolution in respect of Eurodac. I am not sure whether that includes all the information that would go into a legislative instrument such as, in Australia, a migration bill, but I am assuming that it does. Is that the instrument I should look at as to how the European Union deals with these particular issues under the subheadings?

Mr Gibson—Yes, it is. It is the framework and it also contains the content. The issues that we point to, using very general terms in paragraph 1.23, are the safety and reliability of data, comparison—and therefore the transfer of data and comparison matching—storage, security, retention and destruction.

Senator LUDWIG—Yes, I surmised that you were using the headings. Are they from Eurodac?

Mr Gibson—Yes.

Senator LUDWIG—I have not had an opportunity to read that in detail yet.

Mr Gibson—They are from Eurodac. I suppose the point simply is that, in terms of the provisions of the bill that relate to retention, the bill lacks reference to the ability for a person to seek correction or to be advised of the data that is held, at least in terms of names and what have you. If you are going to engage in the matching of data on people coming from different countries with different systems, I would submit, respectfully, that these bases should be clearly identified. Certainly the scheme used in Eurodac is something that we would suggest should at least form the beginning of a consideration of what framework should be adopted.

The problem with the bill, as we see it, is that it is very light on things such as correction. It does not seem to make provision for it, and for people to check what is held, within national security limits, for storage and retention, which is the fundamental issue. That is why we urge consistency with prevailing standards, as well as with the Commonwealth Crimes Act, so that if someone is granted status then, as in the UK, the information should be destroyed as soon as is reasonably practicable. If this is an attempt to build up a massive database, irrespective of whether or not people are granted status in this country, then there are serious issues, as PIAC has suggested. I am not going that far, but I flag that as a serious issue.

Senator LUDWIG—In terms of an international comparison, do you say that it falls well short of the systems that are currently out there that are used by the UK or by Eurodac?

Mr Gibson—Yes. Certainly in terms of the European Union—and remember that is to be expanded to another 10 countries as of May next year—that is firstly where it falls short. But then there is this added concern of matching data with countries which might not necessarily have the sophistication that we might have.

Senator LUDWIG—Apparently, our problem is that our data matching in Social Security may not be that good either.

Mr Gibson—There is a presumption of sophistication, I would say, at least in relation to the system that is being proposed. One probably, without being offensive, could not say that about the countries which have been referred to in one of the submissions. And these are serious concerns, unless we have inserted this protection that this should only occur—that is, disclosure to foreign governments—once the whole process of determination has been completed. At least, at that point, it is probably less prejudicial and not jeopardising rights.

Senator LUDWIG—Have any of the groups been able to form a view about the extent to which noncitizens engage in this type of mischief that the bill is supposed to address—that is, identity fraud and of course whether they would forum shop as a consequence for visas and the like? It is designed to address a particular issue. Is Eurodac designed to address the same issue because these groups perceive there is a problem and, therefore, we are copying it, whether or not we think there is a problem here?

Mr Gibson—There are certain unstated assumptions, and one is that there clearly is a level of this issue that requires these measures. Other submissions have clearly raised—not ours, although I think we did slightly at the beginning—the question of what is the perceived and actual need in the non-criminal context. Clearly, there may be different issues in terms of asylum seekers and criminal deportees. As you say, there is the issue of forum shopping. There is already a provision in the Migration Act in terms of people who have stopped en route to Australia, which may be a disqualifying circumstance. But with respect to forum shopping, unlike in the European context where people move from country to country within the Union once they have entered it, we do not have the same issues.

Senator LUDWIG—I do not whether you have had an opportunity to turn your mind to it, but section 26 talks about the storage of video material. They can use videotapes for part of this work, and it is like in a criminal investigation where they use a triple deck. But it does not seem to outline that process or say how the material will be stored. Is the videotape a personal identifier as well? I am not clear in my mind whether the bill is suggesting it is or it isn't.

Mr Gibson—I think it is suggesting that it is.

Senator LUDWIG—As such, how is it stored, where is it stored and for how long?

Mr Gibson—I agree with you. The whole issue of storage, coupled with retention, is a fundamental concern we have with the bill in its present form.

Senator LUDWIG—So you think that video is part of the personal identifiers?

Mr Gibson—Yes.

Senator LUDWIG—That was what I was trying to resolve in my mind.

Mr Gibson—In the definitions section, it is fairly all embracing.

Senator LUDWIG—I know it is all embracing, but it is a question as to whether you would take it into consideration.

Mr Gibson—It excludes a video recording—this is in section 5A—under section 261AJ, which is recording of identification tests.

Senator LUDWIG—That is what I mean. If you look at section 261AJ, you see that it is not a personal identifier—

Mr Gibson—Correct. I agree with you.

Senator LUDWIG—apart from the video recording. But what happens to this video recording?

Mr Gibson—As it stands, there is no provision in the bill for what happens to those sorts of video recordings.

Senator LUDWIG—I was just wondering whether you saw it the same way I did or whether I had missed something.

Mr Gibson—I do. I had not thought of it but, given the definition in section 5A, the exclusion in section 261AJ—not being a personal identifier—and the provisions for retention, destruction et cetera relating to personal identifiers, it would seem that, subject to correction, there is no provision made for those sorts of videos.

Senator LUDWIG—If you are carrying out the identification test—that is, taking a photograph of someone—you are actually videoing the person to begin with, I suspect.

Mr Gibson—Quite frankly, I have not thought through some of those issues, but I do accept the point you make.

CHAIR—I think you and Mr Gibson are in heated agreement, Senator Ludwig.

Senator BOLKUS—I have one or two questions about the sharing of information. This may have been covered before I got here. If it has, you do not have to answer again. There is a capacity under the legislation for the information to be shared with agencies outside the immigration context or foreign agencies. Have you had a chance to look at that?

Mr Gibson—We covered some of that ground before you came in, Senator Bolkus. We still maintain the concerns we outlined in the submission. So far as foreign agencies are concerned, there have been certain criticisms made which we basically support.

Senator MASON—Senator Ludwig has, of course, asked some penetrating questions, but I want to keep it very basic, Mr Gibson. This question is a matter of balance or degree, is it not? On the one hand you have the government seeking what seem, on the face of it, to be quite intrusive powers that perhaps on one reading might seem to infringe the rights of privacy and, on the other hand—to use Senator Ludwig's words—the mischief that the government is seeking to address is identity fraud at the lower end and potentially terrorism at the upper end.

Mr Gibson—I agree with that.

Senator MASON—Is that how you see it?

Mr Gibson—Yes, most certainly—like everything. Our submission attempts to look at it from a range of perspectives. As currently drafted, there are clearly plenty of provisions and items in the bill which—leaving aside the whole issue of whether in fact the bill is objectionable per se—are framed appropriately. We have identified the items and the sections in the bill which we would say raise serious issues. In terms of this issue of degree, I agree with you. It is a matter of degree, and ultimately the parliament will decide.

Senator MASON—All right. I think it was Mr Moran who used the term 'a lack of proportionality', and he also invoked article 17 of the International Covenant on Civil and Political Rights. In fact, this could be a breach of international law because it may be an arbitrary interference with rights to privacy. I suspect, Madam Chair, that we will ask some questions of the department about the evidence they have for this mischief.

CHAIR—It is entirely possible we may, Senator Mason.

Senator MASON—In other words, the gravamen of what we will be asking the department would be what evidence they have to show that the mischief that the government is presenting is in fact there. We might leave that to the department, primarily. Could I ask you: these are intrusive powers—I think we all agree with that—and they are being used against noncitizens. Is there a history of broader powers being used against noncitizens than against citizens in this country?

Mr Gibson—I would thought that this—

Senator MASON—In the context where, as you suggest rightly, you are not dealing with criminal offences.

Mr Gibson—I would have thought that there are new boundaries being created here in terms of noncitizens—not only people who are in the process of being assessed, particularly for refugee status, but also people who, to all intents and purposes, are permanent residents and have not acquired citizenship. I appreciate section 501 and the powers conferred on the minister in relation to cancellation of visa for criminal conduct; that is a different situation entirely. But we are dealing here with reasonable suspicion, engaging these mechanisms, and this, to me, is broadening the current scope of the powers that are available to the department. No-one objects to the department having powers, as they do at certain points, to seek certain information and to make inquiries and investigation in relation to people who are arguably overstayers or are lawful noncitizens. But it is really in terms of fact and degree. Where do we go? We have simply illustrated what we would say are serious flaws, and the most serious flaw is, with respect, the one that seems to preclude assessment of asylum claims and invalidates such a claim where someone simply is unable to produce evidence of identity. That is the one that is probably the most significantly glaring, and we would, with respect, submit that there is no evidence that would require that sort of provision in terms of the degree—the problem of how serious this is. There is an international convention to which this country subscribes, and that particular provision is, with respect, contrary to the spirit of the convention, if not necessarily the strict letter of the convention.

Senator MASON—Just one last question, Madam Chair, if I can.

CHAIR—It had better be, Senator Mason.

Senator MASON—You had an interchange with Senator Ludwig about the Eurodac model. Are there any other nations that adopt a similar approach to Australia in this context?

Mr Gibson—Not that I know of. The department may have further information about that. It seems to me that this occurs in the context of this technological change and trying to adapt these developments to clearly improve the process of identification. UNHCR and the material I have given you clearly consider that is consistent with the convention—to establish, with a degree of certainty, that people are who they say they are.

Senator MASON—Thank you very much.

CHAIR—Thank you. We are running over time for this session, but I had one question flagged from Senator Scullion and then, if we can, I would like to wrap up.

Senator SCULLION—Just briefly, Mr Moran, I thank you for your submission. The premise of the bulk of your submission is effectively that the government has failed to articulate a mischief of some form, and you have identified several, including the identity fraud and the character concerns, which I am sure we will be able to put to the department for more specifics at some stage. But what attracted my attention was the forum shopping. Even for a lay Australian, the evidence is clear from the large influx of asylum seekers originating in Afghanistan and arriving on Australian shores, via a number of countries, particularly Indonesia—where both the IOM and the UNHCR make specific provisions to allow people to make application—that there was in fact substantive forum shopping occurring. What do you say to that?

Mr Moran—I think the appropriate mechanism there is that mentioned by Mr Gibson, which is where you have stopped on your way to Australia for a period of I think seven days in a country where you can make application. I think it is really the appropriate mechanism if you are seeking to stop that track rather than using the personal identifier.

Senator SCULLION—The associated issue in your submission is that you put the premise that it does not seem to be particularly valuable if we have not established the countries where asylum seekers are more likely to originate from. You have cited Iran, Afghanistan, Syria and Jordan. From my perspective, I thought this was just an act of leadership. It is going to be very hard to go to those countries and say, 'Listen, why don't you implement these very useful tools,' notwithstanding the issues of destruction and collection and those sorts of issues which we have to deal with further. Just on the basis that these are tools to monitor what is clearly a global challenge, it is going to be very difficult to go to those countries and say, 'Why don't you do this?' if we have not in fact put those tools in place already. Wouldn't you agree that this is simply an act of leadership to try to put some tools in place to have some controls on global movements of people?

Mr Moran—A point we have made in our submission is that this process will only be useful if the information can be exchanged so that identifications can be confirmed. Our reference to those countries is really because those are the countries from where our clients have originated. I think many of those clients would have extreme concern that information collected in Australia about them which identifies them is given to those countries. I agree that information is only going to be useful if it can actually be used in other countries. I suppose that might answer your question.

Senator SCULLION—I guess that is the catch-22. It is not going to be any use to us if we have to keep it to ourselves are not ask anyone to compare it. I suppose it is the difference in views there. Thank you very much.

CHAIR—Mr Moran, Ms Wiseman, I know it is difficult to participate in a hearing such as this by teleconference, so I appreciate your cooperation in that regard. Are there any additional matters or responses you would like to put forward at this stage before I conclude the session?

Mr Moran—No, there are not, thank you.

CHAIR—Before I conclude, Mr Gibson handed up a number of documents. Is it the wish of the committee to receive as committee documents the papers identified and handed up by Mr Gibson? There being no objection, it is so ordered.

Mr Gibson, I thank you on behalf of the committee for both your written submission and your appearance here this evening. We are very grateful for your assistance and your responses to our queries.

Mr Gibson—I am indebted to the committee for hearing me.

CHAIR—Mr Moran and Ms Wiseman, it is in fact difficult on both sides of the teleconference process in the public hearing environment but we do appreciate your assistance and cooperation and your written submission this evening.

[7.59 p.m.]

HAUGHTON, Ms Janette, Assistant Secretary, Identity Fraud and Biometrics Branch, Department of Immigration and Multicultural and Indigenous Affairs

McMAHON, Mr Vincent, Executive Coordinator, Border Control and Compliance Division, Department of Immigration and Multicultural and Indigenous Affairs

WALKER, Mr Douglas, Assistant Secretary, Visa Framework Branch, Parliamentary and Legal Division, Department of Immigration and Multicultural and Indigenous Affairs

CHAIR—Welcome. Before we begin, may I remind senators that, under the Senate's procedures for the protection of witnesses, departmental representatives should not be asked for opinions on matters of policy and, if necessary, they must also be given the opportunity to refer any such matters to the appropriate minister. Mr McMahon, are you leading for the department?

Mr McMahon—I am indeed.

CHAIR—Do you wish to make an opening statement?

Mr McMahon—I have a relatively short opening statement, if that will help.

CHAIR—Certainly, though I am not sure if it will help, so why don't you give it and we will make that judgment later!

Mr McMahon—The department is very conscious that it plays a significant gateway role in establishing the identity of noncitizens seeking to enter Australia. It is also conscious that many levels of government and the private sector rely on identity in their dealings with the public and that individuals suffer from identity fraud. This is at a time when there is growing concern over identity fraud and there are significant moves internationally to combat it. We know that the cost to the Australian community of identity fraud is measured in billions, not millions. We know that identity fraud systematically tests our programs. It is clear that the Migration Act currently provides for the collection of a substantial range of biometric identifiers. It is also clear that we have not fully drawn down on these provisions.

However, the Migration Act as it stands does not adequately deal with the collection of biometrics. Its powers are inconsistent. It does not explicitly contain protections around the use of identifiers or their disclosure. It does not allow for the use of technologies to facilitate processing at the border, such as facial recognition, nor does it provide for the use of other biometric images that other countries may include in their passports, such as iris scans or fingerprints. The bill accordingly seeks to provide an overarching architecture for the collection and use of biometric identifiers and define what personal identifiers can be collected from noncitizens. For example, it explicitly does not include the collection of identifiers using intimate forensic tests. It seeks to facilitate border processing to provide safeguards, particularly with respect to privacy, including specifying the purposes for which personal identifiers can be collected, used and disclosed. It defines the conditions for collection, access, disclosure, retention and destruction of personal identifiers and other identifying information.

Identity fraud is something the department experiences across its operations. Offshore we frequently see false or altered the passports and other identity documents. People who have been deported have re-entered under different names or passports. This might involve legal processes in other countries, such as changing names. Successful applicants for protection or other visas have used the freedom of information changes in particular provisions to perpetrate fraud in Australia. Applicants for protection visas not infrequently seek to assume new identities to secure greater benefits or to increase their chances of success. People picked up by compliance action are sometimes not possible to identify, at least in the short to medium term. Clearly this bill alone cannot resolve all of these problems. There are practical limits around collection and storage and there are a wide range of people for whom there would be little value in retaining such identifiers. However, the bill should be considered in terms of the layered approach to border integrity.

These are problems Australia is not facing alone. In the US, the Enhanced Border Security and Visa Entry Reform Act 2002 requires that all travel and entry documents, including visas, issued to aliens must include a standard biometric identifier by October 2004. It also requires all aliens admitted as asylum seekers or refugees after November 2002 to be issued employment authorisation documents that contain their fingerprint and photograph. In addition, under the US visits program, it is envisaged that information on the arrival and departure of most foreign nationals, including fingerprints or other identifiers, will be captured at air and sea ports of entry. In the EU, Eurodac was launched on 15 January 2003, establishing the operation of a

centralised and automated system for comparison of fingerprints that allows 14 EU member states plus Norway and Iceland to determine effectively which EU member state is responsible for examining asylum applications. From April 2003, common EU visas include a photograph produced according to high security standards. The inclusion of photographs opens the ways to storage and future visa information systems with search capabilities.

In the UK, the Immigration and Asylum Act provides that fingerprints may be taken from certain noncitizens. The fingerprinting provisions are supplemented by new powers introduced in the Nationality, Immigration and Asylum Act 2002 enabling development of regulations requiring a person applying for visa, entry clearance or leave to enter or remain in the UK to provide external physical characteristics data which can specifically include features of the iris or any part of the eye.

There has been criticism that the bill leaves much to regulations. Such regulations are of course disallowable. However, the bill seeks to set up a framework to allow Australia to respond in an area of great technological change, changes in standards and a range of biometric identifiers. If it would be helpful, I will table a working summary that we have prepared which seeks to identify the key areas of change in the Migration Act featured in the bill.

CHAIR—Any further information would be helpful, thank you.

Mr McMahon—I have a couple of comments arising from statements made by the previous witnesses and I will do so very quickly. There was a lot of talk about the way in which these powers were being extended, but I noticed that no-one really focused at all on the way in which this bill also places limits on the way in which we operate at the moment for which there are no real limits in place. A number of people have made a big point of the potential for us to breach our convention requirements, and I think it is plainly a wrong argument. The fact of the matter is that we have any number of identifiers at the moment—photographs, personal information: all of which are biometric identifiers—and we would not pass them on to other countries. This particular bill does not limit our obligations under international convention, which we take extremely seriously. There were references to MOUs. I notice it was raised for the first time by the Privacy Commissioner. It is not an issue that was given great import earlier, and certainly we would be more than happy to undertake MOUs with other countries. It is really the only way in which we can operate. We could not pass information to other countries without having MOUs in place, and it is simply standard practice.

On the issue of the size of the problem, one of the weaknesses in the way in which the responses have been put forward to date is that every country is currently trying to grapple with the same problems. Most countries now are introducing quite extensive use of biometric identifiers. If someone were to ask what biometric identifiers are in operation in Australia, the answer would be very limited. But as time goes on every country is using those identifiers more extensively. Most countries have put in place legislation recently or are considering biometric identifiers for use at their borders in one form or another.

CHAIR—I am not sure what stage of the debate we are up to in the chamber, but Senator Bartlett has indicated that he has to return to the chamber as soon as the committee stage begins. I might seek the indulgence of my colleagues that he ask an initial question, and then we will come back to the table.

Senator BARTLETT—One thing I am interested in on page 9 of the legislation is section 46(2A)(a)(ii) and (b), from line 6 down to 16. It states:

(2A) An application for a visa is invalid if:

(a) the applicant:

… … …

(ii) has been required by an officer to provide other evidence of identity in relation to the application; and

(b) the applicant has not complied with the requirement.

As you would probably know, there has been some debate about various components of migration regulations and legislation in relation to when applications are automatically deemed to be invalid and, therefore, not having the scope for appeal. Firstly, the application is invalid if the applicant has been required to provide other evidence. What is the scope for other evidence of identity? How wide can that be? In what contexts would it be determined that the applicant has not complied with the requirement? What scope is there for the applicant to come back and say, 'No, I have complied'?

Mr McMahon—Essentially, that is a reference to a personal identifier. The personal identifiers have to be specified in the regulations, and the circumstances in which those personal identifiers have to be collected would also be specified in the regulations.

Senator BARTLETT—That leads me to my second, broader question. This bill seems to be one where we are again giving you a head of power for doing a lot more, and then you are saying, 'We will detail that under the regulations.' Is it appropriate that fairly significant prescriptions about people's personal information are left to regulation? Recently I have been looking at another regulation on a completely separate matter, and those parts of it which I am very unhappy with are proving very difficult to do much about. How far do you think you can keep saying to the parliament or to the Senate, 'You can see the detail under regulations; and if you do not like it, deal with it then,' if you are going to frame regulations in a way that means we cannot deal with it then?

Mr McMahon—As a personal observation, regulations get a pretty heavy running over, certainly in recent times, and that is going to continue. There is considerable power for scrutiny of regulations. The thing I have simply observed from the commentary that is taking place in respect of this bill is that it introduces for the first time a whole range of protections around its use—what can be collected, how it can be collected and its disposal. It may well be that not all people are happy with that specification, but it does put a framework around the collection of information for the first time in the Migration Act.

Senator BARTLETT—It was a personal observation, yes. I will build on that personal observation by saying that it introduces protections, which is very good; it also introduces powers. If you introduce regulations that intertwine those powers and those protections in such a way that the Senate is not able to separate them, which can obviously be done and which in relation to recent regulations—I am sure you know what I am referring to—is clearly intentionally being done, why should we as a parliament or as a Senate provide you with a framework to not only increase your powers but also leave you with the ability to do that via regulation when we all know that we have far less scope to address aspects of concern that may be contained in those regulations?

Mr McMahon—You obviously have formed your view on the balance within this bill. I think the country is facing a serious problem, and a lot of countries are facing very similar problems. We have a particular problem because of the way in which the technology is changing. If we had introduced into the act two or three years ago how to collect identifiers, it may well be that we would have very different views now. For example, it was only in recent times that you could seriously contemplate the use of facial recognition at high volume for processing at an airport as a result of the computer power that sits behind it. It is very difficult to come up with a framework that does not leave some reasonable levels of flexibility and that will address the sorts of problems that face Australia and other countries. At the same time, the act does set out quite a bit of a framework on what we can and cannot do—for example, it excludes intimate personal tests, forensic tests. In a whole range of areas it specifies for the first time how you can collect the material from under-age people or from people who are not competent. These sorts of things do not exist in the current act.

Senator BARTLETT—I do not disagree that we face serious problems. Without suggesting that you are pre-empting my view, I would also indicate that I do not have a set view on this other than I think there are significant grounds for getting clear identifiers in a range of circumstances. The problem I have has been exacerbated by my experience with the recent regulations. I think you know what I am referring to but, if you do not, it is to do with the expansion of temporary protection visas that are put forward in a way that make it impossible for the Senate to address individual components. We are supposed to do the same thing shortly with the sponsorship legislation that this committee has also looked at. Any piece of legislation that relies heavily on future regulation obviously puts us in a position where we are handing over greater power to the executive of the day—whatever executive it may be, I might say. We are dealing with personal identifiers here. It is not abstract stuff; it is very direct and immediate personal information. What is the problem with that sort of detail being put into primary legislation rather than through the delegated legislation mode?

Mr Walker—In the context of the provision that you have referred to, the changes to section 46, at the present time there is a very broad power to prescribe requirements for the making of a valid visa application. Some of those requirements relate to the 80-odd visa subclasses and include requirements for many of them—not quite all of them because of the ETA—to have signatures. A very large number already require photographs to be submitted to make a valid visa application. In fact, this provision adds a degree of specificity, as Mr McMahon mentioned earlier, that is not there at the moment. In some ways it is probably

qualifying that broader provision in respect of the identifiers we can require for the person to be making a valid visa application.

Senator BARTLETT—In some ways, but not in other ways.

Mr Walker—Certainly in the context of personal identifiers but not in the context of other requirements that may be specified. There are already places where visas can be required. In some visa classes there are also requirements for initial qualification assessments and health assessments to be submitted with the application.

Senator BARTLETT—Going back to a narrower initial question about 46(2A)(ii), it says:

An application for a visa is invalid if

(a) the applicant:

… … …

(ii) has been required by an officer to provide other evidence of identity in relation to the application

Is there some way that could apply to protection visa applicants being required to provide evidence of identity?

Mr McMahon—The bottom line is that we have convention requirements in respect of refoulement. We could not return anyone irrespective of what we put in this legislation. The simple fact of the matter is that in all probability—

Senator BOLKUS—But not further than Nauru, by the way.

Mr McMahon—I am sorry, Senator?

Senator BOLKUS—Our formal obligations do not allow us to send people further that Nauru?

Mr McMahon—Those obligations of refoulement apply to Nauru. The Australian government remains in the position that it would not allow the return of the person where they require protection.

CHAIR—It is perhaps easier not to be distracted by Senator Bolkus's interjections at this point, Mr McMahon.

Mr McMahon—Yes, that is a good idea.

CHAIR—He might make them as an aside to me, perhaps.

Mr McMahon—There would be circumstances, for example, where a person's claims would be in serious doubt. In trying to determine the claim, one could reasonably expect that the person would actually identify themselves to allow that to take place and they simply do not cooperate. For example, at the moment we are facing many people claiming to be Afghans who clearly are not Afghans. This is also the view of the Afghan government. You were talking about Nauru; there is a range of people they will not validate as being Afghans. In Australia, over 40 people who have claimed to be Afghans have had their citizenship confirmed as Pakistani. There would be many more, because we had doubts with about 700 people, if it was not for the fact that it is no longer safe and we are unable to get the information from Quetta.

Senator BARTLETT—How does this provision apply to screening out people, airport turnarounds and those sorts of things?

Mr McMahon—Essentially people are required to produce evidence of their identity at the border. If a person at the border made a claim for protection and they engaged Australia's protection obligations, then we have no choice but to consider their claims.

Ms Haughton—There has also been a level of confusion surrounding the provision of documentary evidence to verify an identity in this bill, which is just aiming to collect identity information from people. The fact that someone did not have any evidence of their identity but was claiming asylum is a different issue to what this bill is aiming to address, which is that they would need to provide us with a personal identifier or agree to have their photograph or their fingerprints taken so that we can actually verify the information. The fact that someone does not have documents of identity is not the issue here; it is really whether they are willing to provide a photograph to us so that we can verify their identity.

CHAIR—Mr McMahon, you said a little earlier, in response to Senator Bartlett, that you felt that the expression of the government's intent in regulations was open to considerable scrutiny. Senator Bartlett adverted to an issue with which he has had a problem—I am not aware of the details of that. In its last report on matters concerning your department—the provisions of the Migration Legislation Amendment (Sponsorship Measures) Bill 2003—this committee made it quite clear that it has broad and ongoing concerns

about the amount of material intended to be brought forward through regulations by your department. Here again the committee finds itself required to consider and adjudicate on what are extremely serious, and in some cases intrusive—using my colleague Senator Mason's words—steps and required to take what some may describe as more than a leap of faith to do that. The Victorian Bar's submission adverts under item 11 to this issue. In fact, it steps through it quite well, and I would be interested in your comments on it. I know that there has not been a great deal of time to examine the other submissions, but this committee has been asked to also work in a very short period of time by the Senate. Under item 11, the submission of the Victorian Bar states that there is provision:

> ... for the Minister to prescribe who may or may not be required to comply with certain provisions extending to situations where ... invalidity of an application may result. Future regulations will set out the circumstances in which personal identifiers are required and exemptions to these requirements. Where there are "prescribed circumstances" the Minister is allowed an unfettered discretion to decide the circumstances where the new identification scheme does or does not apply and to designate classes of persons who can not be required to provide personal identifiers ...

And so on. This providing by regulation a significant growth in future mechanisms. This committee takes very seriously its role in examining legislation, but what we are presented with in this case—and I would contend in the case before us previously with the bill on sponsorship measures—is not a series of legislative measures at all; it is a fairly hollow package that gives some indication of intent but does not allow us to examine the decisions and the steps that the government is intending to take. That makes it very difficult for this committee to do its job. I am interested in your response as to why and to what end that is, from the department's perspective, a more appropriate manner for this is to be carried rather than in substantive legislation.

Mr McMahon—I guess I will have to repeat a couple of the things I have said already. Obviously they have not satisfied you, but I will nevertheless make the broad comment. Yes, the collection of identifiers is, by some reckoning, intrusive. We already do so. We have a capacity to collect a lot of identifiers and to put those identifiers to use. This was meant to provide a framework which was trying to do both things at the same time. In essence, the act does not deal with this issue very much at all—it deals with it in a very inconsistent manner—and we have tried to set up a framework which does provide a whole range of protections that currently do not exist. The bill actually does specify in lots of areas what identifiers we can take, the circumstances in which we can take them and how we dispose of them. Essentially we are talking about the very particular circumstances in which we may wish to introduce particular identifiers in particular cases.

Again I come back to the broader comment that I made. It is very difficult to specify, for example, that we will take photographs at the border and that photographs will be the only thing taken at the border. Within a relatively short period of time, we may be faced with a situation where we have to deal with the range of biometric identifiers at the border. It may well be that we will have to take iris scans because iris scans are the primary method by which someone can be identified moving through the airport, because that is in their passport. It is extremely difficult in those circumstances. We are in a significant evolutionary stage in respect of the way in which people identify things. For example, UNHCR is now using iris scans in respect of refugees in various parts of the world. We would want to be able to access that. Will they continue to do so? I do not know.

CHAIR—With great respect, you miss the point. The point is not about what is in the bill, because we can examine what is in the bill, we can question you on it, we can seek further information and you can give us responses, whether or not they are responses that satisfy us. The point is about what is not in the bill: how it is apparently not possible for technological reasons—to use the interpretation you have just given—to tell us now who may or may not be required to comply with these provisions. It is not possible to enumerate, apparently, the list of persons to whom they may or may not apply. I fail to understand why the process of amendment of legislation, which is a fairly popular process around this place; it is what we do—

Senator BOLKUS—Especially in relation to immigration.

CHAIR—Especially in relation to immigration, as Senator Bolkus interposes—could not be equally used to address the issues that you have raised.

Mr McMahon—Senator, I do not believe I did miss the point. I clearly did not satisfy you with my answer. I think we need to be clear about one thing: every person coming to Australia has to provide biometric identifiers. The subset of the question is: what biometric identifiers would be taken in particular circumstances? It is very clear from our own operational imperatives that sitting below this will be our capacity to compare with other databases, which are changing. We have to date collected fingerprints from

people in detention, and we know that having a capacity to compel people in circumstances would be very useful. But you are quite right: that detail is not yet in this bill.

CHAIR—Yet the committee is expected to provide an adequate examination of legislation. I think that is a big ask when the material is not before us. In relation to the costs of identity fraud to the Australian community, which you described as being in the billions, not the millions—and I take your point—how much of that is sheeted home to noncitizens?

Mr McMahon—We would not have the break-up of that. In other words, I think there is going to be some reporting about the costs of identity fraud in Australia but it will not go to the point of citizens versus noncitizens.

CHAIR—In the explanatory memorandum, if I read it correctly, we talk about:

> This bill is part of a whole of government approach to tackle the growing incidence of identity fraud worldwide. It seeks to strike a balance between the need for robust identification testing measures in an immigration context and the protection of individual rights.

I would have thought that, if you were going to ask the Senate to pass legislation on that basis, you might be able to tell us what sort of costs to government we were looking at.

Mr McMahon—I would make a couple of comments on that. One of them is that we do know it is large—

Senator BOLKUS—As it relates to noncitizens?

Mr McMahon—Part of the cost of identity fraud is the measures you actually have to put in place to stop it. We know that there is widespread identity fraud taking place. I know our case would be much better made if we had firm statistics that we could put on the table, and I regret that we do not.

Senator LUDWIG—Even some might be helpful.

Mr McMahon—Thank you, Senator. That notwithstanding, we are now moving to develop the collection of fraud data that may stand us in good stead in the future. But I have to say that it is not difficult for us to be aware of the systematic way in which fraud is perpetrated against the programs, and unfortunately once a person is recognised by us, on entry that becomes a gateway for that person's identification across the community. Virtually everything follows from the way in which we operate, so the obligations in respect of us are greater.

CHAIR—Believe me, I do understand and appreciate that. I would like to have other agencies available to the committee to talk about, for example, questions of passport fraud in Australia and matters such as that. Is the department involved in, to use the words in the memorandum and second reading speech, a whole-of-government committee perhaps that is addressing this question, and what role is the department playing? When can we expect a report on that?

Ms Haughton—Yes, there is a whole-of-government process under way at the moment that is looking at a number of areas of identity fraud—areas such as proofs of identity that should be required as primary documents of identity, the possibility of online verification services to check identity so that each agency is not required to go through the same process of trying to establish someone's identity, and also looking at the existing data that we have in our databases and a process of cleansing that data to make sure we have accurate information. There is a whole-of-government process under way.

CHAIR—Who convenes that?

Ms Haughton—The Attorney-General's Department is taking the lead in that regard. There are a number of subcommittees set up underneath that, looking at specific issues, and they will be reporting to government within the next few months.

CHAIR—What is it called, Ms Haughton?

Ms Haughton—There is a proof of identity reference group, which is chaired by the Attorney-General's Department, and three subcommittees set up underneath that—working groups looking at particular issues of identity fraud.

CHAIR—I should give my colleagues the opportunity to ask questions, but I did want to ask one other question in relation to section 46(2A)(a)(ii), about 'other evidence of identity', that pertains to the case where an individual is not able to comply and that person will then not be eligible to apply for refugee status. It is a matter that was discussed earlier. Can I seek some clarification from the department on that point?

Mr McMahon—The point I made earlier is that, if they engage our protection, the application process does not even have to take place. Under the international convention we must afford protection for people for whom protection is owed. However, this would often go to a case where a person is deliberately concealing their identity, and as a consequence you would not be able to satisfy yourself about their claims in any case.

CHAIR—I think we need some more clarification here. Perhaps you could step us through, chronologically, what the department envisages would happen in this circumstance? What is it that an individual will not comply with that will mean they cannot seek to engage protection?

Mr McMahon—It may well be the case—as is the case now—that if people do not provide identifiers then their application is invalid. For example, if a person applies for a visa, the general expectation would be that they would provide a photograph. If they do not provide a photograph then it probably is not a valid application. If someone submits an application, we would normally have to satisfy ourselves who we were dealing with, for a start.

CHAIR—Yes, I understand that.

Mr McMahon—This, in many respects, no more than reflects the current circumstances. For example, if we had a person before us making claims about which we had serious doubts because of their identity, and we asked them to participate in a reasonable manner in the establishment of their identity and they refused, in almost all circumstances the application would be refused in any case. This is simply about the minister's power under the current act to prescribe what constitutes a valid application. If people do not supply the information there is no valid application in current circumstances.

CHAIR—So, Mr McMahon, to clarify this in relation to the interpretation that has been put on it in some of the submissions: that interpretation is—and this is my word—inflated? What you are saying is: 'If you refuse to tell us who you are, or to at least give us some capacity to find that out, we cannot help you engage protection'?

Mr McMahon—That is correct. Certainly, if a person clearly engaged our protection, despite the fact that they did not provide an identifier, we would not be able to return them to a place where their protection would be in question. But in all probability we would not be able to be satisfied that we owed protection to a person who did not provide an identifier.

CHAIR—I understand that we are unhappy about people who destroy documents and things like that, but if they do not have an identifier and they are prepared to say 'My name is Vince McMahon and I am from Australia—

Mr McMahon—And require protection—from the committee!

CHAIR—You may say that, Mr McMahon; I couldn't possibly comment! That would not preclude them from engaging—

Mr McMahon—Absolutely not.

CHAIR—Thank you.

Mr McMahon—People could destroy documents—not have any documents—and that is totally irrelevant to the operation of this provision. This is about a person who says, 'I want to engage your protection requirements'—or some other application—and we say, 'Okay, why not take a photograph of you' and they say no.

CHAIR—I understand.

Mr Walker—It is very much a dilemma for us in the sense that we are after some means of being able to verify or check their claims, if at all possible. In many respects, notwithstanding that they may consent to providing a photograph, fingerprint, signature or whatever—as I think other witnesses have mentioned—in many of the countries from which they are claiming protection there is no means by which we could go back to that country anyway, prior to checking their claims.

CHAIR—I think that was Senator Ludwig's point.

Mr Walker—We are probably going to check—and we have had instances over the last 10 years, in my experience—persons from European countries, who have protection in a European country, coming to Australia without any documents claiming they have come directly from their original country and who are making claims here. They already have protection in a European country; in some respects they have citizenship. The issue then becomes one of taking that identifier and checking against the European country's

database to ascertain whether in fact the person has residency or citizenship. It does happen from time to time with particular groups. That is the primary purpose.

CHAIR—I appreciate the clarification; it was certainly a point that I was confused on.

Senator LUDWIG—You mentioned 'some other application'. If a person were a tourist, does that mean you can ask them for a photograph, a fingerprint, a video and a signature, and if they refuse all of the above then you can say no?

Mr Walker—It is not a valid application.

Senator LUDWIG—Wouldn't you think it is a bit obsessive when you start to get to that level—and there is no limit to that?

Mr Walker—We have 80 subclasses of visa. The one that probably has the least personal identifiers is the electronic travel authority. While that is generated by a passport number being put into a system, we do not actually require anything on paper or a photograph per se for a valid application to be made. The other extreme is probably the permanent residency application, where photographs and signatures are certainly required at the moment. Some of the tourist visas do in fact require photographs and signatures at the moment. There are none that I am aware of that we require fingerprints for.

Senator LUDWIG—I will pose this to you: the as yet unseen regulation may require a photograph, a video and a fingerprint. You are not in a position to say that is not the case, are you?

Mr McMahon—It is not all that long ago that we required a—

Senator LUDWIG—Can you just answer the question, to begin with.

Mr McMahon—The regulation can be put forward; if you are unhappy with it you can reject it. I would make the point that until a while ago we had a photograph with every application. Many countries still require an application with a photograph attached; it is standard practice in respect to a visa application. You could say that Australia has moved away from that, to some degree, through its electronic travel authority. The electronic travel authority is based on a risk profile—that is, overall we believe that the risk is sufficiently small for us to not require that.

Senator LUDWIG—You have not answered my question. I can ask it again, but I think you understood it. Do you intend to answer it or not?

Mr McMahon—Perhaps you could put the question to me again, because I thought I did answer it.

Senator LUDWIG—Can you say that the regulation, as yet unseen, will not require a tourist visa to have a fingerprint, a photo, a video and a signature?

Mr McMahon—It is not possible for us to comment on regulations which have not been put through.

Senator LUDWIG—You cannot rule it out, can you?

Mr McMahon—That is self-evident. You are simply asking the question: would it be possible to construct a regulation that specified a whole range of identifiers? The answer is that I cannot rule that out. Whether or not it is probable, likely or sensible is an entirely different matter.

Senator LUDWIG—But isn't the difficulty we have that we cannot assess the sense of your bill, because we cannot examine the regulations? How far away are the regulations from being drafted?

Mr McMahon—They are some time away, actually. We do need to get this legislation through. Other than in the areas that have been signalled, I would not expect any significant changes to take place. It is just that in being able to collect this data we can then do what we need to do, which is to start to establish some databases around what we are collecting. For example, if we are going to collect fingerprints from detainees, we can now go forward with confidence to develop both the regulations and the database so we can actually have some meaningful data matching.

Senator BOLKUS—You cannot take fingerprints now?

Mr McMahon—We do take fingerprints but not without consent. There are limitations. We regard ourselves as having limitations on the period that we can take them and the uses to which they can be put. Before going away and spending a lot of money to set up basic systems, you do have to have some level of confidence about the way in which you can collect and organise that material.

Senator BOLKUS—We are prepared to let you deal with the issue, but I have to say I am a bit distressed about my previous confidence in the integrity of the migration system. It was not all that long ago that I was

getting briefs from the department saying the system had high integrity, yet now you are telling us it is riddled with identity fraud and the country is at risk because of it. What has happened in the last seven years? How has it collapsed so much?

Mr McMahon—I think we do have one of the best immigration systems in the world, and obviously you have made a contribution to that.

Senator BOLKUS—So have you.

Mr McMahon—Thank you. We have a layered approach to border integrity. We have made huge gains in recent years by building on some of the technologies that were in the incipient stages when you were minister. We do have very high levels of border integrity, but the fact of the matter is that technology is changing. The level of capacity to perpetrate identity fraud has grown, and it is a question of having an appropriate flexibility to respond to it.

Senator BOLKUS—Let us acknowledge that there is a problem there to be dealt with. I have enormous difficulties with endorsing legislation which is indefinite, uncertain and vague in respect to the identifiers—how they are used, by whom, how they are kept, how they are destroyed, what is destroyed and on whom they are kept. To me, that is an enormous range of blank cheques that makes this, I must say, one of the most dangerous and lazy exercises I have seen before the parliament. All those aspects I just mentioned are, in one way or another, open to regulation, definition or certification of what is an authorised person and so on.

Some of the protections in this legislation, I believe, are a bit less than what currently exists in migration legislation. The consequences depend also on the definition and interpretation of some vague terms. As I say, I think you, as a department, are being extremely lazy about bowling up this sort of legislation, uncertain as it is, before the parliament and expecting us to support it. I do see it as very dangerous, and I do not see any real problem in the department spending a bit more time identifying in certain terms in the legislation some of those areas I mentioned and then asking parliament to endorse what you see as a problem.

As we have said before, Immigration does not have any real problem getting legislation through this parliament at short notice, and sometimes it has been well deserved. I can go through the list again and we can spend hours going through all those issues I have mentioned, but the fact is there is an enormous lack of certainty and there are dangers arising. Even when you talk about noncitizens, someone who is reasonably suspected of being a noncitizen may include someone who is in fact a citizen.

Mr McMahon—As happens under the current Migration Act.

Senator BOLKUS—But the consequences here are enormous. Who you share information with internationally, how you share it, what protection there is in terms of how they use it—all those aspects have got to be of concern to any parliament and any legislation to be assessed in a democratic framework, as we should be assessing ours.

Mr McMahon—Senator, clearly you have heard what I said, but I would say that you seem to be taking a not much greater level of comfort from the current Migration Act. The openness of that, the lack of specificity, the unevenness between various sections of the act and the lack of protections within the act—this bill actually goes a long way towards addressing some of those issues around the current Migration Act.

Senator BOLKUS—With respect to minors, there is relaxation. With respect to the destruction of fingerprints, there is relaxation. When you talk about international obligations, this legislation would override for domestic purposes pre-existing obligations that might be reflected in legislation. I know you have said some things that I do not agree with, and you may not agree with me, but there are issues there that the parliament has got to consider.

Mr McMahon—I agree that the parliament does need to consider it. I think you are right: I cannot agree with a number of statements that you have made.

Senator BOLKUS—As I said, I could go on for hours, but Senator Ludwig might have some questions.

Senator LUDWIG—I have a couple of short ones. The Deputy Privacy Commissioner wrote to DIMIA on 3 June 2003 outlining the office's remaining concerns. Can you make available to the committee what that correspondence was or what those concerns were?

Mr McMahon—The concerns are specified in the submission which the Privacy Commissioner has put forward. I have to say that, on the Privacy Commission comments, we were at a bit of a loss to see for the first time some additional concerns which had been articulated after the full clearance—subject to the qualifications which had been made—

CHAIR—Which are those that you were surprised to see, Mr McMahon?

Senator LUDWIG—If you would provide the correspondence—

Mr McMahon—There is actually a range of them. For example, he raised the issue about protection. That had not been raised before. There is the introduction of privacy assessment statements. We would have been quite comfortable to have introduced those, but they have not been raised before. At various times their provisions—even some of the ones which were identified—had been cleared and they were subsequently turned over. I am not trying to be overly critical, because we actually did a lot of work with them and I think we satisfied the Privacy Commissioner in respect of a whole range of areas. It is just that it becomes a little bit difficult within government when you read for the first time concerns after a consultation process in a submission which has been brought before the parliament.

CHAIR—Might I just say that the Privacy Commissioner would be here this evening were it not for the fact that the office is hosting in excess of 350 Australian and international delegates to the 25th International Conference of Data Collection and Privacy Commissioners, which is coincidentally occurring this week. No matter how important one regards the operation of the Senate committee, it was not appropriate to demand the Privacy Commissioner's presence. Sorry to interrupt, Mr McMahon, but I thought it was important to put that on the record.

Mr McMahon—There are a number of issues, some of which I think we could have easily dealt with, such as the MOU, the privacy assessment statement, the implications of people claiming protection and those sorts of things. Those are not issues which I think are particularly difficult for us to address with the Privacy Commissioner.

Senator LUDWIG—Are you able to provide that correspondence that I have asked for?

Mr McMahon—The only reason I am hesitating is that it is not normal for agencies to provide the correspondence of other agencies, particularly ones who provided a submission.

Senator LUDWIG—I am sure you could check with them.

Mr McMahon—If they do not have any problems with that—we will take it on notice; I think that is the best idea.

Senator LUDWIG—Alternatively, if we ask the Privacy Commissioner, do you approve of them making it available to us? If we asked the Privacy Commissioner to provide it, are you okay with that?

Mr McMahon—I do not think they would ask our permission. We would take it on notice in the normal course of events—I am quite relaxed about it.

Senator LUDWIG—So if we ask the Privacy Commissioner if we can have a copy of the correspondence then you are fine with that?

Mr McMahon—I would take that on notice.

Senator LUDWIG—What is the secrecy about it?

Mr McMahon—I am not suggesting that there is any secrecy about it. I would go through the formality of clearance processes as they normally take place.

Senator LUDWIG—Do you have a view about the Privacy Commissioner's submission that a privacy impact assessment should be conducted in respect of this bill?

Mr McMahon—I have not had an opportunity to discuss that with the minister, but I saw no particular difficulties with it.

Senator LUDWIG—So why didn't you do it?

Mr McMahon—Because we were not asked. This is the first time, as I recall, that it has actually been raised.

Senator LUDWIG—That is the difficulty: I do not know what has or has not been raised because I do not have the correspondence. It is a bit like the regulations, isn't it?

Mr McMahon—No, it is nothing like the regulations.

CHAIR—No, we can actually find the correspondence.

Senator LUDWIG—We can track it, I guess, if they provide it. If they do not provide it, I am in trouble again. In terms of the models that you followed in constructing this bill, is there a model that you used, for

argument's sake? We have heard from one submitter about the Eurodac model. I take it that that is not the model you followed in constructing this bill.

Mr McMahon—The answer to your first question is that, no, we did not use a model per se. Each country is developing its own legislation. Eurodac is a very narrow database which is the collective output of 13 or so countries trying to get together. It is hard enough getting 13 states or 13 departments together to create something; getting 13 countries together makes it extremely difficult. I do not know whether I would necessarily use that as a model.

Senator LUDWIG—I had not asked you whether you would use it as a model, but I guess I can now. Would you use it as a model?

Mr McMahon—I think it is extremely limited in the way that it operates. Its effectiveness would be very limited. For example, I believe they destroy data immediately someone is approved for refugee status. That does not stop that person coming back and re-applying again. In Australia people who have residence have actually come back and applied for refugee protection. Why have they done so? Because there are differential benefits in many of the states. That is why we get the rebirth of protection claimants in Australia.

Ms Haughton—Essentially Eurodac is just a mechanism to help them determine which of the member states is the one that should be responsible for processing an asylum claim. It matches fingerprints against the centralised and automated database. So it will ask, 'Has someone else already seen this fingerprint in another country?' If that is the case then in fact it becomes that first country's responsibility to process the person. So the reasons for setting up Eurodac are much narrower than the general collection of personal identifiers.

CHAIR—On Eurodac—before we go off it and if I may interpose on Senator Ludwig's question—it is described as having certain protections built in for safety and reliability of data for comparison, storage, retention and destruction in a 10-year time frame and so on. Even if it has a narrow focus because of the reasons for which it is designed, they are really principle issues particularly flowing out of the application of the information privacy principles agreed internationally, which the European Union in particular is concerned about seeing the application of world wide. Is there a reason why we would not take up those aspects of Eurodac?

Mr McMahon—I think we need to design a process that meets the requirements of Australia and not necessarily be driven by the difficult politics around the EU.

CHAIR—I would love to agree with you but as the application of the information privacy principles goes and as trading with the European Union—for example; just one example—has fallen out in recent times, countries that do not comply with the IPPs in the construction of their privacy arrangements cannot trade with the European Union—certainly not in goods and services that include the movement of personal information. It is not so much about designing an application that works for the Australian environment. I do not disagree with you but these are the internationally accepted information privacy principles.

Ms Haughton—The requirements of our own privacy legislation in Australia are consistent with those privacy principles so we would not be setting up something that contradicted our privacy principles on the use of that information.

CHAIR—You would hope not, certainly.

Senator LUDWIG—One minor issue that was raised with another witness earlier that I was alerted to was in the definitions: the meaning of 'personal identifier' in 5A(1)(d) other than in a video recording under section 261AJ. If you turn to section 261AJ, it says:

An authorised officer may video record the carrying out of the identification test.

How do you deal with the storage and eventual destruction of that video record?

Mr McMahon—If I understand the question correctly, it would be destroyed.

Senator LUDWIG—How?

Mr McMahon—Essentially—

Senator LUDWIG—No: how? Can you take me to the provision in the bill where it would be stored and then subsequently destroyed when it is not defined as a personal identifier?

Mr McMahon—The video image itself? If a video image was taken as an identifier—

Senator LUDWIG—No.

Mr McMahon—it would then have all—

Senator LUDWIG—I understand that. I am not talking about that. I am talking about where—and I quote:

An authorised officer may video record the carrying out of the identification test.

Mr McMahon—We would have no authority to hold it. It would be destroyed.

Senator LUDWIG—Where does it say it would be?

Mr McMahon—It does not say.

Senator LUDWIG—Where does it say you do not have any authority? What if the regulation says you do?

Mr Walker—There is no capacity for regulations to be made.

Senator LUDWIG—I am going to take issue with this. You say you cannot. But how do I know that? How can I subject it to any scrutiny at all when I do not have the regulation and I do not know what will be in your mind when you come to write it? It does not seem to have been written yet.

Mr Walker—With respect, there is no regulation power that allows the retaining of these particular video recordings. The provisions that relate to retention or destruction really flow from the Archives Act, as they do now generally with the records the department keeps.

Senator LUDWIG—So your short answer is that you would keep that in accordance with the Archives Act?

Mr Walker—That is right. Or it would be destroyed in accordance with the Archives Act.

CHAIR—Can you tell us what the Archives Act specifically says about this method of recording?

Mr Walker—I would have to take that on notice, I am sorry. I could not tell you now.

CHAIR—Also in relation to destruction?

Mr McMahon—Yes. But the point stands. The one I was going to make is that there is no head of power for a regulation to be made about the use of that material. We have no authority and could have no authority to retain it.

CHAIR—You can understand the concern that the committee raises. We are under 261AJ, it refers to an authorised officer video recording the carrying out of the ID test but there is no further reference to what is done with that video.

Mr McMahon—I understand the concern. It is not one that had occurred to us, simply because that provision was inserted to provide protection around the way in which it was taken to the individual. In other words, it was basically there to validate the process or whatever, rather than as a recording in itself.

CHAIR—I would have thought it would be protection of the individual and the authorised officer, given that you are granting the authorised officer the capacity to use reasonable force.

Mr McMahon—Indeed, yes.

CHAIR—So would an individual whose identification test had been made with the use of reasonable force—which I understand you are allowing for in the bill—be able to have access to the video for perhaps the pursuit of future legal matters?

Mr Walker—Yes, they would.

CHAIR—If it had not been destroyed.

Mr McMahon—Indeed.

Senator BOLKUS—Is a video identifying information?

Mr Walker—Not this particular video. This provision is primarily for recording—for example, if we were using force to take a fingerprint and so forth. So it is actually a safeguard for all parties involved to ensure—

Senator BOLKUS—In that case, it would be destroyed.

Mr Walker—that the power is used appropriately.

Senator BOLKUS—What would you define as activities that are disruptive to Australian communities?

Ms Haughton—Is this the reference to character?

Senator BOLKUS—It does not matter what it is; I just want an interpretation of that definition. It is in respect of characters of—

Mr McMahon—I think it is otherwise defined within the Migration Act. This actually picks itself up from the existing section 501 definitions within the Migration Act. They are repeated here.

Senator BOLKUS—All of them?

Mr McMahon—We could actually supply you with something on that. I think that would be the fastest way of doing that.

Senator BOLKUS—And the definition 'significant risk of engaging in criminal conduct or inciting discord'?

Mr McMahon—That would be the ordinary meaning of that.

Senator BOLKUS—If you can give us the source of those, if they are already in the Migration Act, we would appreciate it.

Mr Walker—They are in subsection 6, section 501 of the Migration Act.

Senator BOLKUS—All of them?

Mr Walker—I think all of them are. That section sets out the character test. So it is aligning the person of character concern as being a person who has the same characteristics as a person who would fail the character test.

Senator LUDWIG—I have a question with regard to constructing the regulations. There is a regulation—and I would have to check which one it is—that has been tabled which extends TPVs, as I understand it. It is a recent regulation. That regulation also includes a provision which effectively means that it is very difficult to separate out one part or other parts of it if you do not like it. It includes a provision—and correct me if I am reading it wrongly—that makes it very difficult to separate it out into its constituent parts. So if you wanted to strike down part of the regulation, you would find it hard to do that with respect to that regulation because, due to the way it has been written, it becomes a whole regulation. What is to prevent you doing that in respect of these regulations—in other words, using the same mechanism?

If there were regulations that came forward, you say the gross measure that we can use is to strike them down or disallow them. If, by and large, we agreed with the majority of the regulation but found some offensive, and you had used the same procedure, it would make it difficult to separate those out. It is almost a circumvention of the power that we might otherwise have and you create a position where it is very difficult to then agree with you that a disallowance motion is an effective means to deal with regulations that we have not yet seen in respect of this bill.

Mr Walker—It is certainly a mechanism that was used in the regulations that you mention. The circumstances relating to those regulations did cause a lot of effort to go into the drafting. I do not believe that it would be possible to construct a regulation that would cover the whole range of circumstances across every visa class, particularly as there would be differential requirements.

Senator LUDWIG—I appreciate that. It is the mechanism that I am interested in, in that it is one that you have obviously used. I do not think it is one that I have seen before, but I am open to correction.

Mr Walker—I think it is fair to say it has not been used before.

Senator LUDWIG—As I understand it, it is effectively designed to prevent the Senate disallowing a part of it.

Mr Walker—I cannot comment on that.

Senator LUDWIG—That is what it seems to do. You can agree or disagree with me, but I suspect that will not answer—

Mr McMahon—I think we will do neither.

Senator LUDWIG—That is what it seems to do. What is to prevent you or other mechanisms similar to that in regulations I have not seen doing that?

Mr Walker—All I can say is what I said a moment ago. We have 80 visa subclasses with differing requirements. I do not believe that it would be possible to draft one regulation that would cover the requirements of 80 different visa subclasses in that manner.

Senator LUDWIG—But it would be if you brought in amended regulations just like that one on an individual basis in the future, wouldn't it? It is certainly open to you to do it—if not draft them for 80, then draft them for one or two that you want.

Mr Walker—I would not like to express a view. What may or may not be done in the drafting depends on the circumstances of the particular requirements.

Senator LUDWIG—I understand. The difficulty is we end up in a circular argument. We have not seen the regulations, and you do not know what they look like and you are not sure what you may or may not do to ensure their passage.

CHAIR—On behalf of the committee, I thank you for your assistance with the committee's deliberations this evening. In the course of the last hour and a bit you have indicated you may seek further information on a number of issues for us. In effect, you have taken some questions on notice. The committee has a current reporting date of 11 September. I agree it is not a happy situation for either of us. Your assistance in responding as soon as possible on those issues would be gratefully received. Hopefully we can get you the *Hansard* transcript as a matter of urgency. If there are any further specific and easily answered questions that we wish to seek responses from you on, we will come back to you as a matter of priority. Are there any other matters you wish to raise with the committee?

Mr McMahon—In normal circumstances we try to help the committee by trying to respond to the issues which have been raised and draw attention to certain things. I do not know what we can do within the time frame, but I will certainly try to discuss with the minister's office whether we might try to give you in writing answers to some of the questions—but obviously the timing is extremely tight.

CHAIR—We will keep in touch on those. There are the issues raised, for example, by the Privacy Commissioner's submission and your responses on that. They were not apparent on the face of the Privacy Commissioner's submission, and your clarification of that situation would be gratefully received. We will seek the permission of the Privacy Commissioner to obtain that correspondence, and anything that you can give us from your consultations with the commissioner would also be gratefully received. In terms of the other key submissions and the major issues raised by them, we have dealt in brief with some of them, but I do not think by any means we have canvassed them comprehensively. There may be some standout issues on which you can give the committee some words to consider, and we would be grateful for those as well.

Mr McMahon—We will certainly look to do something.

CHAIR—Thank you. I appreciate that cooperation. You have handed to the committee this evening a table, which is your work in comparison between the current and proposed new provisions. Obviously, none of us has had a chance to look at that, but we are grateful for that, and I thank you for providing it. Is it the wish of the committee to receive as a committee document those papers identified and handed up by Mr McMahon? There being no objection, it is so ordered. Thank you very much for that. I thank all of those witnesses who have assisted the committee this evening—particularly on the short notice that was given by the Senate—and all those who have made written submissions.

Committee adjourned at 9.16 p.m.