



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

ESTIMATES

**(Budget Estimates)**

WEDNESDAY, 26 MAY 2010

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE LEGAL AND CONSTITUTIONAL AFFAIRS****LEGISLATION COMMITTEE****Wednesday, 26 May 2010**

**Members:** Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), Senators Feeney, Ludlam, Marshall and Parry

**Participating members:** Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Farrell, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

**Senators in attendance:** Senators Barnett, Bilyk, Crossin, Hanson-Young, Humphries, McLucas and Parry.

**Committee met at 9.01 am**

**IMMIGRATION AND CITIZENSHIP PORTFOLIO****In Attendance**

Senator Evans, Minister for Immigration and Citizenship

**Department of Immigration and Citizenship****Executive**

Mr Andrew Metcalfe, Secretary

Mr Bob Correll PSM, Deputy Secretary

Mr Peter Hughes PSM, Deputy Secretary

Ms Felicity Hand, Deputy Secretary

Mr Peter Vardos PSM, Acting Deputy Secretary

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

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

Ms Jackie Davis, Acting Chief Lawyer, Governance and Legal Division

Ms Marilyn Prothero, First Assistant Secretary, People and Executive Services Division

Mr Nico Padovan, Acting First Assistant Secretary, Business Transformation Services Division

Mr Todd Frew, First Assistant Secretary, Visa and Offshore Services Division

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

Ms Rebecca Irwin, First Assistant Secretary, Policy Innovation, Research and Evaluation Unit

Ms Cian Manton, Acting National Communications Manager

Mr Steve Biddle, Assistant Secretary, Financial Strategy and Budgets Branch

Mr Simon Schiwy, Assistant Secretary, Ministerial and Executive Services Branch

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

**Program 1.1 – Visa and Migration**

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

Mr Peter Speldewinde, Assistant Secretary

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

**Program 2.1 – Refugee and Humanitarian Assistance**

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

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

**Program 3.1 - Border Management**

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

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

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

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

Ms Alison Larkins, First Assistant Secretary, Compliance and Case Resolution Division

Mr Robert Illingworth, Assistant Secretary, Policy Framework Evaluation and Analysis Branch

**Program 4.2 – Onshore Detention Network**

Ms Jackie Wilson, First Assistant Secretary, Community and Detention Services Division

**Program 4.3 – Offshore Asylum Seeker Management**

Ms Jackie Wilson, First Assistant Secretary, Community and Detention Services Division

**Program 4.4 – Illegal Foreign Fishers**

Ms Jackie Wilson, First Assistant Secretary, Community and Detention Services Division

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

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

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

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**Outcome 6 – A cohesive, multicultural Australian society through promotion of cultural diversity and a unifying citizenship, decisions on citizenship status, and multicultural and citizenship policy advice and program design.****Program 6.1 – Multicultural and Citizenship Services**

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

**Migration Review Tribunal and Refugee Review Tribunal**

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

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

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

**Office of the Migration Agents Registration Authority**

Ms Christine Sykes, Chief Executive Officer, Office of the MARA

Mr Stephen Wood, Deputy Chief Executive Officer, Office of the MARA

**CHAIR (Senator Crossin)**—I declare open this public hearing of the Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of certain proposed expenditure in respect of the year ending 30 June 2011 for the Attorney-General's and Immigration and Citizenship portfolios. The committee must report to the Senate on 22 June 2010, and we have set 9 July 2010 as the date by which answers to questions on notice are to be returned. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice.

Officers and senators are familiar with the rules of the Senate governing estimates hearings but, if there are officers here who need a copy of those rules, we have them available with our secretariat. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which will be incorporated into *Hansard*.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
  - (1) If:
    - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
    - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the

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public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

- (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
- (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
- (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
- (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
- (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
- (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
- (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

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

#### **Migration Review Tribunal and Refugee Review Tribunal**

**CHAIR**—We will commence with examination of the Immigration and Citizenship portfolio and begin with the Migration Review Tribunal and the Refugee Review Tribunal. We will then move through subprogram 1.1 of the Department of Immigration and Citizenship and the Office of the Migration Agents Registration Authority, and then go back to the department with cross-portfolio questions and move through the outcomes. It is laid out clearly in our program, with which you will all be familiar by now. We have breaks as specified. I start by welcoming Minister Evans, the Minister for Immigration and Citizenship; officers of the department; and also representatives from the Migration Review Tribunal and the Refugee Review Tribunal. Minister Evans, do you have an opening statement that you want to make?

**Senator Chris Evans**—No thank you. I might have something to say at the start of one of the sections later on, but at this stage no. I thank you for your welcome and look forward to the committee hearing.

**CHAIR**—Thank you. Mr Metcalfe, I understand that you have an opening statement.



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**Mr Metcalfe**—Yes, thank you very much.

**CHAIR**—I invite you to make that statement.

**Mr Metcalfe**—I could do that either now or following the tribunals; I am very much in your hands.

**CHAIR**—I think we will have it now, thank you.

**Mr Metcalfe**—Thank you for the opportunity to deliver an opening statement. I plan to cover issues associated with the department's current high operational tempo, our work to further strengthen our performance and the fact that in July this year we marked the department's 65th anniversary. As you would be aware, the department has been maintaining a high tempo of activity in recent times, particularly in response to the increase in irregular maritime arrivals. This has come on top of a significant program of work in our migration, citizenship and multicultural affairs areas, including the implementation of major policy reforms of temporary and permanent skilled migration. On that aspect, I understand that later today the latest version of our statistical publication *Population flows* is to be published, and I will arrange for copies to be made available to the committee later today.

Every year the department makes millions of decisions relating to its clients, some of which are quite significant and concern their rights to live in Australia, their relationships, and their hopes for the future. Those dealing with irregular maritime arrivals, in particular, require our decision makers to make often difficult assessments about whether Australia has protection obligations in relation to individual claimants.

These assessments have profound implications for the individuals concerned and we take our decision-making responsibility very seriously. The department undertakes extensive policy and operational work both in Australia and overseas to support the government's response to irregular maritime arrivals aimed at preventing irregular arrivals in Australia, but treating fairly and with respect people who do arrive. To this end, the recent federal budget included funding for further initiatives for regional cooperation. Our laws, processes and structures are designed to ensure that those clients who are entitled to Australia's protection, commensurate with our international and domestic legal obligations, receive it and that those who are not entitled to our protection are supported to resume their lives overseas as quickly as possible.

The department is working very closely with a number of other departments and agencies in a strong whole-of-government approach. We are also working very closely with international counterparts, our advisory bodies and stakeholders and with contractors and other service providers. I would like to extend my sincere thanks to those organisations for their ongoing cooperation and support in what is a most complex regional and international challenge. Over the last five years the department has worked persistently to embed its core values of teamwork, service excellence, respect, openness and commitment, which guide us in our work. These guiding values are particularly important in the immigration detention environment.

The department continues to draw on its past experience to ensure that it meets this latest challenge in the best possible way. We are well equipped to do this and we have come a long way over recent years. For example, children are never detained in immigration detention

centres. We have honest, open and respectful and positive relationships with advocates, stakeholders and key advisory groups and we have implemented the detention health framework to articulate the range, level and standard of health care to be provided to people in all detention situations. At the same time, extensive development has occurred to improve our business processes and information systems through the Systems for People program.

With the final imminent release, the program will have delivered major improvements in consistency in our processes and, therefore, decision making; provided a single view of all our dealings with our clients; improved our record keeping; supported the introduction of case management; and enabled us to more effectively manage the risks that we face. Last night I was delighted to hear that the change and communications task force associated with the Systems for People program won the prestigious CeBIT award for ICT Professional of the Year.

The department has been required to rapidly expand accommodation facilities, given the increase in irregular maritime arrivals. So far as the facilities available to us permit, the department is striving to ensure that all its client accommodation meets the immigration detention standards and delivers on our duty of care to our clients in immigration detention and our responsibilities to the wider community. The department has undertaken extensive workforce planning to ensure that it is able to sustainably support the government's response to irregular maritime arrivals, and has invested in significant training across a range of specialised skill sets. This includes training of case managers who are key to ensuring that the department maintains ongoing discussions with its clients about their detention and their status resolution.

I am very pleased that our staff are displaying resilience and a positive attitude to this often challenging and arduous work. I would like to put on the record my thanks and appreciation to all our officers involved in managing the response to irregular maritime arrivals, whether through policy, processing or broader organisational support. Indeed, I would like to take this opportunity to thank all the officers in the department for their ongoing commitment to our important work, and for maintaining such a high level of performance through a very demanding year. A testament to this is that, despite the demands of irregular maritime arrivals, the performance of our service delivery network globally in the last few months has been at an all-time high.

In this regard, I was pleased to announce this week the winners of our Client Service Challenge awards. They recognise the achievements of those teams that are delivering excellent client service within diverse environments. This year I was delighted to recognise the network operations improvement team in national office, the humanitarian settlement officer team in Victoria, our New South Wales compliance client services and our Ottawa Contact Centre. In our offshore network I have highly commended our teams in Suva and Guangzhou and recognised Ms Deepa Srinath, our regional training coordinator in New Delhi, for her excellent client service delivery to our clients in the South Asia region.

Throughout this busy period our departmental officers have maintained a strong personal commitment to the communities in which they work. For example, in 2009, staff in national office alone raised over \$50,000 for a range of charitable causes. Staff across the country have also contributed to a range of other charitable events, including donating blood through the

Australian Red Cross blood service. All these activities are run by staff who volunteer their time and their energy. Given our significant presence on Christmas Island, I have been particularly pleased that 25 of our longer term staff there have established a volunteer program involving a range of projects such as after school programs, working with a youth rock band, undertaking furniture restoration, and volunteering at the opportunity shop, the golf club and the airport kiosk.

On 13 July 2010 the department will celebrate its 65th anniversary and, indeed, 65 years of postwar migration to Australia. In that time we have had 27 portfolio ministers, including Senator Evans, and 12 other ministers and parliamentary secretaries, including the Hon. Laurie Ferguson. Including me, there have been 15 departmental secretaries over those 65 years, and many thousands of officers have served with the department. During this time the department has facilitated more than seven million migrants coming to Australia, as well as the conferral of citizenship upon four million people. As a direct result of this work, Australia today is now a nation of nearly one in two people either born overseas or who has a parent born overseas—one of the most culturally diverse nations in the world.

To mark our 65th year we held the first of our annual addresses on immigration and citizenship at the Museum of Australian Democracy in Old Parliament House on 17 March. The event was held in partnership with the Australian National University and presented by Professor Ian Chubb, the Vice-Chancellor. The address aims to recognise the unique nation-building role of Australia's planned migration and citizenship programs and to encourage discussion about the significance of migration to our nation. It was a memorable occasion that I hope will form the basis of a strong tradition in future years. To that extent I am delighted that the Lieutenant Governor of South Australia, Mr Hieu Van Le, himself a Vietnamese refugee, has agreed to give next year's address.

At the same time that we are reflecting on our history we are actively working on how we can best contribute in the future to helping to continue to build the Australian nation. In my view, our immigration and citizenship department is a key part of our economic, social and national security infrastructure and we must constantly aim for improvements and for excellence. Over the last year, the department has commenced a significant program of change to realise a long-term vision for our organisation, which builds on the reform of the last five years. The transformation aims to ensure that we are financially and operationally sustainable in the long term and is focused on three elements which deliver key government priorities such as being client centric and ensuring effective implementation of policy through integration and service delivery.

These priorities are in absolute alignment with the blueprint for the reform of the Australian government administration recently adopted by the government and with the government's web 2.0 technology agenda. Madam Chair and Senators, we are genuinely excited by the opportunities and benefits that this long-term transformation program will provide to our direct clients and to the Australian community, and I will keep you updated about it in future hearings of this committee. Thank you.

**CHAIR**—Thank you, Mr Metcalfe.

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**Senator Chris Evans**—It is worth noting, Madam Chair that the secretaries outlast ministers for a long period—something of which I have taken note.

**Mr Metcalfe**—Hear, hear!

**Senator Chris Evans**—We come and go, but they stay.

**CHAIR**—We look forward to celebrating the department's 65th birthday.

**Mr Metcalfe**—In July, Madam Chair.

**CHAIR**—That is an amazing achievement. Thank you for outlining those facts and figures. I think it puts the 65 years in context and it is useful for the general public to know about that.

**Mr Metcalfe**—Thank you, Madam Chair.

**CHAIR**—We will move on to our estimates consideration. Mr O'Brien do you have an opening statement.

**Mr O'Brien**—Yes, just a very brief one, Madam Chair. By way of opening, I just wanted to concentrate on two things: first, how we are progressing with our caseload, and, second, I wish to say a couple of brief words about judicial review trends. I refer, first, to caseload and I will focus on the MRT—the Migration Review Tribunal.

I am very pleased to report that, to the end of April, the number of decisions we have made this year is a very pleasing 34 per cent higher than for the same period last year. The actual number to the end of April was 6,426. However, lodgements in the Migration Review Tribunal continue to run at a high level, with the result that we had 6,520 active cases at the end of April, which represents an increase of 11 per cent in the active case load, compared with the active case load at the end of April last year. Through the board of the tribunals I have implemented several strategies to address the growth of the backlog, and one strategy has been to allocate to members batches of cases involving the same visa subclass and the same reason for visa refusal. We found that batching does increase member efficiency by giving members a bundle of cases involving broadly the same issues.

Turning to the RRT, the position there is pretty much steady as she goes, in a sense. To the end of April we had 1,838 applications lodged in the RRT, which is 17 per cent lower than for the same period in 2008-09, and 1,801 cases have been decided—so we are virtually deciding cases as applications come in. At the end of April the percentage of RRT cases decided within 90 days was 68 per cent. By far the largest pool of our applications—34 per cent—continues to come from nationals of the People's Republic of China, although this year we have seen a small decrease in this cohort, down from 39 per cent in 2008-09.

Turning to judicial review, the number and percentage of tribunal decisions taken to judicial review has continued to decrease in comparison with previous years. In particular, the number of new judicial review applications filed in relation to RRT matters has decreased significantly. We have had 496 applications filed to the end of April—that is, with only two months of the year to run—compared to 990 applications for the whole of 2008-09. Similarly, the number of RRT decisions set aside by the courts has declined. We have had 80 so far this year compared with 218 in 2008-09.

Interestingly, in the period from February through to April—that is, the last few months—the number of Migration Review Tribunal decisions set aside by the courts has been running at double the rate of RRT decisions set aside by the courts. The numbers are 30 versus 15. This reflects the much reduced number of active RRT related appeals in the courts. I think that little sketch of how we are going with our case load and how we are going in the area of judicial review is all I wanted to say by way of an opening statement.

**CHAIR**—Thank you very much. Ms MacDonald or Mr Jones, did you have anything that you wanted to add to that opening statement?

**Ms MacDonald**—No thank you, Madam Chair.

**CHAIR**—Let us go to questions. Senator Humphries?

**Senator HUMPHRIES**—Thank you, Madam Chair. I might respond, first, to what Mr Metcalfe had to say about the department's workload and its position after 60 years of work. I think it needs to be put on the record that, notwithstanding the differences of view that we might have about individual immigration policy decisions from time to time—and no doubt that will continue today and tomorrow—we all acknowledge that the Australian immigration experience has been an outstanding success and a great adornment to Australia's role in the world, in particular in the last 60 years. On behalf of the opposition I say thank you for the role that the department has played over that time. We hope to continue the tradition to which you referred of having a higher turnover of ministers than departmental secretaries. We will be adding as much as we can at today's hearing.

**Senator Chris Evans**—I was about to say that we are going to invite you to the birthday party, but you just got yourself knocked off the list.

**Senator HUMPHRIES**—I will make a cake of my own, Minister, and enjoy it by myself. On a slightly less positive note, I need to raise a couple of things at the beginning of proceedings. I think we had 35 answers to questions come in yesterday—questions that were asked at the last estimates hearings. At the previous estimates we asked a large number of questions, the answers to which arrived just before estimates began. I appreciate that the department is operating on a high operational tempo, but it remains difficult to do our work constructively in this context when we are dealing with so many issues at the last moment before we examine officers on this occasion. I again ask you, if it is possible, to give us more information of the kind sought well before estimates begins on each occasion. One of the answers that we received—I am not sure whether it was received just recently or some time before—provided us with figures on the breakdown of the nationalities of those people arriving by boat. I think those figures are accurate as to 3 March. So that we have this for reference in today's and tomorrow's proceedings, is it possible to get an update on those figures as of now?

**Mr Metcalfe**—Yes. When we get to the appropriate area I will have the officers available to give you an update. It probably will not be up to today, but certainly an update from March until May.

**Senator BARNETT**—Mr Metcalfe, in February I asked a question—question No. 49 under program 3.1. I am thankful for the answer, albeit delayed. Frankly, we would appreciate that response as soon as possible so that we do not have to wait until we get to program 3.1.

As soon as the document is prepared could you make it available to the committee? That would be appreciated because it gives a context for the questions that we will be asking during the day and obviously tomorrow.

**Mr Metcalfe**—I will certainly do my best.

**Senator Chris Evans**—You are after the nationality breakdown are you?

**Senator BARNETT**—Yes. It is exactly the same as what you have done to 3 March. Could you extend that through to today if possible?

**Senator Chris Evans**—There has been no change in pattern, Senator, but we will get you the details. It is dominated by Afghanistan. We will get you that information.

**Mr Metcalfe**—Sorry, Senator what was the question number again?

**Senator BARNETT**—It was question No. 49.

**Senator HUMPHRIES**—I turn now to the MRT and the RRT. Thank you for your appearance today. I wanted to ask first of all if the tribunal is still making decisions on individual appeals from Sri Lankan or Afghan applicants?

**Mr O'Brien**—The position at the moment is that we have one Afghan case before us and 20 Sri Lankan cases before us at the moment.

**Senator HUMPHRIES**—Right.

**Mr O'Brien**—But presumably with the freeze on primary decision making we might not see any for a while.

**Senator HUMPHRIES**—So you will still process the ones in front of you, but if there are no decisions on any others for the time being, obviously you will not receive appeals from those people as they have not had a decision?

**Mr O'Brien**—Yes, that is right. But, as I said, Senator, the numbers are very small.

**Senator HUMPHRIES**—Right. Has the tribunal set aside any departmental decisions on Sri Lankan and Afghan cases since the freeze was announced on 9 April?

**Mr O'Brien**—I think I would have to take that one on notice, Senator. I just do not know.

**Senator Chris Evans**—Do you mean cases that were lodged prior to the suspension, Senator?

**Senator HUMPHRIES**—Presumably.

**Senator Chris Evans**—That is all that was considered. I just want to be clear that you want what was in the system that they may have decided on in that time period, but not people affected by the suspension.

**Senator HUMPHRIES**—Yes.

**Mr O'Brien**—I would have to take that on notice. There may have been a couple, but there would not have been many.

**Senator HUMPHRIES**—Okay.

**Senator BARNETT**—Can I ask the Minister what the government's expectation would be? If there was an application or something before the tribunal prior to the freeze then that would be dealt with?

**Senator Chris Evans**—Yes. As I have indicated publicly, we have applied an administrative mechanism for giving effect to the same policy, which is in suspension. As with those offshore, those who had arrived prior to the suspension are still being determined. Since the announcement of the suspension, the department would have made decisions in the hundreds I suspect—officers will be able to take you through that later—from those who had already arrived. So no decision making has ceased and the same would apply to the appeal processes for onshore arrivals. I point out that—this seems to be misunderstood in the newspaper by Mr Bolt and others—that the RRT does not consider appeals from unauthorised arrivals who arrive at excised offshore places. So they are not actually involved in dealing with that case load.

**Senator HUMPHRIES**—There was an article in a different paper recently talking about a go-slow in the department over an industrial issue. Have I misunderstood that and, if there is such an issue with workload and processing, does that affect any of the work of the MRT or RRT?

**Mr Metcalfe**—I am not sure about that article. There is a lot written about us in the papers, but it is not something I am familiar with. As far as I know, there has been absolutely no go-slow by my officers. Indeed, they have been doing an extraordinary amount of work in considering the applications on hand, consistent with the government's announcements of last month that we would not commence considerations of new arrivals after the day of the announcement.

**Senator HUMPHRIES**—Senator Barnett has reminded me that the article referred to the tribunal not the department.

**Mr O'Brien**—There has certainly been no go-slow in our tribunals.

**Senator HUMPHRIES**—Are you aware of the media that I am referring to?

**Mr O'Brien**—Not that particular article.

**Senator Chris Evans**—I would point you to Mr O'Brien's earlier evidence, which was that the number of cases they have dealt with is up by—

**Mr O'Brien**—Thirty-four per cent in the MRT and we are also keeping pace with lodgements in the RRT.

**Senator Chris Evans**—So it is a very interesting go-slow if it made 34 per cent more decisions. I did not see the article either so I cannot help you.

**Senator HUMPHRIES**—Okay. I take it though that you would be going slower anyway, in the RRT at least, if you have have a period in which no decisions will be made on Sri Lankan or Afghan applicants for some time?

**Mr O'Brien**—As I indicated earlier, they are a very small proportion of our workload. As I said, we have one Afghani case in front of us now that I am aware of and 20 Sri Lankans. We have had more Sri Lankans in Melbourne than in Sydney, but the numbers are quite small.

**Senator Chris Evans**—We can give you numbers. These are onshore applicants. Traditionally the Afghan numbers have been very low and the Sri Lankans have been at a reasonable rate because of the number of Sri Lankans in the country—students and others—who might apply for protection. Mr O’Brien can get the figures, but I thought they were around eight or nine per cent. As he pointed out, the largest category of people onshore are PRC nationals. Then there are a range of other applications.

**Mr O’Brien**—It has been pointed out to me that, in the period from 1 July 2009 to 30 April 2010—so for most of this financial year—Sri Lankan lodgements on the RRT comprised 2.5 per cent of our total case load and Afghani—

**Senator BARNETT**—How many is that? Do you have a figure?

**Mr O’Brien**—Yes. It is 46—24 in New South Wales and Queensland, and 22 in Victoria, South Australia and Western Australia. If you are interested in the Afghani ones as well, from 1 July 2009 to 30 April 2010, Afghani cases comprised 0.1 per cent of our total case load.

**Senator BARNETT**—Which is how many?

**Mr O’Brien**—Two lodgements and we made two decisions.

**Senator Chris Evans**—I figured it would be one or two.

**Senator HUMPHRIES**—Thank you very much for that; you have debunked that. There are other media reports about another issue affecting the RRT. That is the question of the tenor of the decision that its members are expected to make. I am referring, for example, to the article on 7 May in the *Financial Review*. I want to ask you some questions about that. The article refers to the process of interviewing applicants for a position on the RRT, the way in which they are interviewed, questions about what kind of set-aside rate existing members might have had on their record and the extent to which people were led to believe that there were certain expectations about having a set-aside mentality. Mr O’Brien, were you a member of the panel that interviewed applicants for reappointment of sitting members of the RRT?

**Mr O’Brien**—I think I should really defer to the secretary on that one. The selection advisory committee is chaired by the secretary or, in the recent case, the deputy secretary of the department. The process is really a process for the department, so I think I will defer to Mr Metcalfe on that.

**Senator Chris Evans**—We are happy to take those questions now rather than do it twice, Madam Chair. I am very keen to set the record straight and to let the secretary set the record straight. There seem to be unfounded allegations by a former state liberal MP of whom I had never heard until I saw the article. But Mr O’Brien was a member of the panel. The secretary is the best one to take you through those sorts of questions because it is convened by the—

**Mr Metcalfe**—I put on the record that I completely refute the allegations in the *Financial Review* and in the *Herald Sun* of 13 and 14 May—and I think there is another article today in the *Herald Sun*—which went to a general statement that the current recruitment round for members of the MRT and the RRT had been politicised and the process was opaque. That is patently absurd. There have been some comments made about a particular member of the panel which are quite outrageous. I think it is important that I take this opportunity to settle this record quite clearly.



Recruitment of members of tribunals and other statutory appointments occurs in accordance with guidelines set out by the Australian Public Service Commission. In relation to the appointment of statutory officeholders, those procedures have been in place now for at least a couple of years. There is a requirement that positions are advertised and are freely available for application rather than simply people being selected without a proper process. There is a requirement that the secretary of the department, or his or her delegate, chair the process. On this occasion I asked a deputy secretary of the department to chair the process on my behalf. The practice has been that the principal member of the tribunal, a representative appointed by the Public Service Commission—in this case it was in fact the Merit Protection Commissioner herself—and a community member. They were people who comprised the panel.

On the last two or three recruitment rounds for the deputy principal member, senior members and members, we have had several different community members. On this particular occasion, the community member is a person of very high standing in the community who is experienced in immigration legal matters. I believe that anyone who knows him would regard him as quite apolitical and impartial on these issues but able to bring a significant experience and perspective to this very important area of decision making—the appointment of tribunal members who make decisions which go to people’s credibility, their experience in their home country and whether or not Australia has protection obligations in relation to them.

I know that there has been some comment by a former member of the tribunals about the process that led to him not being reappointed. I completely refute any suggestion that he was not reappointed because of his political connections. On that occasion there was a different chair of the panel, another senior member of my department, and I am completely satisfied that the issue of political affiliation was simply not considered relevant.

There has also been some commentary—and I think this has given rise to some of the articles—that as part of the interview process members who were seeking reappointment were asked questions about their set-aside rights. That, in my view, is an entirely legitimate line of questioning. It was relevant where there was a dramatic difference in set-aside rights from the general average for all members. I believe that it is entirely legitimate to try to understand how people go about making decisions to test the quality and suitability of applicants. I believe it has no political overtones whatsoever. It was one consideration amongst many. I point out that the panel comprised four people, including the Merit Protection Commissioner, who is statutorily required to uphold the merit principles in public sector appointments.

**Senator BARNETT**—Can you tell us who they were?

**Mr Metcalfe**—The members of the committee?

**Senator Chris Evans**—Mr Metcalfe made a point that the person who is mentioned in the articles is a person who was not unsuccessful in this round but was unsuccessful in the previous round, as I understand it. Others can confirm that. This round has not been completed, and I understand he was not an applicant in this round. The complaint about his treatment is from an earlier round. I just want to make that clear because there is confusion in the reporting. So he was not part of this assessment.

**Senator HUMPHRIES**—There are a number of people who are reported to have made these complaints, not one person.

**Senator Chris Evans**—There is only one person named.

**Senator HUMPHRIES**—There are two people referred to in an article that was published on 26 May, which is today.

**Senator Chris Evans**—What are the two names?

**Senator HUMPHRIES**—The names are not mentioned. I said there were two other people. I did not say the two names.

**Senator Chris Evans**—There are allegedly two other people.

**Senator HUMPHRIES**—I will read from the article in the *Herald Sun*. It says:

Two more federal officials who check refugee claims have come forward to confirm they are under pressure to let more people in.

That is the first line of the report.

**Senator Chris Evans**—But they are not named.

**Senator HUMPHRIES**—No, they are not named. With respect, that is not surprising. If they felt that way they are not likely—

**Senator Chris Evans**—No. The only one I know of is a gentleman whose name is Mr Katsambanis, who is referred to in one of the articles.

**Senator HUMPHRIES**—According to this article, there are at least three people from the tribunal who are making these claims.

**Mr Metcalfe**—There has been an extraordinarily long connection drawn between what I would regard as a completely proper and legitimate questioning about a person's approach to their decision making and a suggestion that that led to a failure to reappoint that person or even additionally that there was some sort of requirement that people 'go soft'. It is quite the contrary. The tribunal is statutorily required to uphold rigorous decision making. I am sure the principal member can talk at length about the quality assurance processes which he has in place and which have been in place in the tribunals. To suggest that a line of questioning about your own record implies criticism of that record is patently absurd. I think it is quite legitimate to ask people about their background and about how they go about making decisions. Where that decision-making record varies greatly, either in terms of approvals or refusals from a long-term average, there is a reasonable question as to why a person believes that that approach is being taken.

**Senator BARNETT**—Mr Metcalfe, you were about to tell us who was on the selection panel.

**Mr Metcalfe**—I make the point that this line of questioning was simply one of a whole range of areas of trying to ensure that we were attracting and recruiting the best possible people to this important area of decision making. On this latest occasion, the committee was chaired by my deputy secretary, Ms Felicity Hand. It comprised the principal member, Mr O'Brien, and the Merit Protection Commissioner, Ms Annwyn Godwin, and the community

representative on this occasion was Mr John Gibson, the President of the Refugee Council of Australia.

**Senator BARNETT**—What about on the previous occasion?

**Mr Metcalfe**—I would have to check my recollection, but on the previous occasion it was chaired by Mr Jamie Fox, a division head in my department. It also comprised the principal member, a representative from the Public Service Commission, the Merit Protection Commissioner and a community representative.

**Senator Chris Evans**—That wasn't Mr Gibson on that occasion. We will get the name for you.

**Senator BARNETT**—Mr Metcalfe, have you previously been on the selection panel?

**Mr Metcalfe**—I chaired the selection panel for the deputy principal member, which resulted in the current deputy principal member being appointed. On that occasion the principal member was a representative. A deputy secretary from the Department of Prime Minister and Cabinet was the representative of the Public Service Commissioner. I think on that occasion Mr Gibson was a community member.

**Mr O'Brien**—Yes.

**Mr Metcalfe**—On one previous occasion I chaired the panel recruiting senior members. On that occasion we had the principal member, a representative of the Public Service Commissioner and a different community representative.

**Mr O'Brien**—On the last member appointment round the community representative was Mr Joe Schwartz from the Victorian Foundation for the Survivors of Trauma and Torture.

**Senator HUMPHRIES**—Can you be clear about how many times the panel has met to consider applications?

**Mr Metcalfe**—What I have described to you has been a series of rounds for recruitment of positions at various levels since this government came to office. The first, from recollection, was in relation to senior members. I think the next was the round in relation to members which Mr Fox chaired. The next was the round for the deputy principal member, which I chaired. In the most recent round, which was a very significant round, I think there were over 300 applicants for the positions. It was chaired by my deputy secretary, Ms Hand.

**Senator Chris Evans**—Just for the record, this is the first time there has been an open and transparent merit selection for the tribunal. That did not occur under the previous government. This has been an open, transparent—

**Senator HUMPHRIES**—In what sense was it open and transparent?

**Senator Chris Evans**—Because we actually placed advertisements, had an independent selection committee and selected people on merit. I am happy to take you through how the appointments were made under the previous government. But, as I understand it, members seeking to be reappointed were not interviewed—outside applicants were—and the minister made the decisions in terms of who was to be appointed, in consultation with cabinet.

**Senator HUMPHRIES**—Does the minister not make the decisions now?

**Senator Chris Evans**—It is a cabinet decision in terms of the recommendations of the committee.

**Senator HUMPHRIES**—It is still a cabinet decision.

**Senator Chris Evans**—Yes, it is.

**Senator HUMPHRIES**—Has cabinet accepted all the recommendations?

**Senator Chris Evans**—I cannot possibly discuss what happens in cabinet. But I think you will find cabinet's decisions are very much in line with the recommendations. I do not want to embarrass Mr O'Brien, but I understand the process that was employed when he was appointed was not without advertisement either. I do not know how the previous minister did the selection process. I do not mean to embarrass Mr O'Brien, but there was not an independent, transparent merit selection process until this government applied those rules. I will not wear this nonsense from a disgruntled former Liberal state MP about this process or bringing into disrepute the independent officers who have conducted this process without any political interference. I want to make it very clear that these allegations are unfounded and this process is far more professional, merit based and open than any conducted under any previous government.

**Senator HUMPHRIES**—We want to ask questions about that process to explore that issue.

**Senator Chris Evans**—I am happy to take you through all that.

**Senator HUMPHRIES**—So we are talking about a series of interviews where applicants came in each case before a four-person panel.

**Mr Metcalfe**—That is correct. Of course, the tribunals have existed now for close to two decades. But in this most recent experience, where I have been personally involved under the new guidelines, as the chair or where I delegate the authority of the chair—that was never in place previously—I can recall four rounds that have occurred employing the Public Service Commission's process for the appointment of statutory officeholders. That requires advertising of positions.

**Senator HUMPHRIES**—Were a standard set of questions asked of each of the applicants in each of these rounds?

**Mr Metcalfe**—There were different questions between the various rounds for the deputy principal, senior member and member. But for the process that we are talking about here—the most recent process—chaired by Ms Hand—

**Senator HUMPHRIES**—For members?

**Mr Metcalfe**—Yes, for members. There were over 300 applicants, a very large number of interviews and the same questions were asked of each person.

**Senator HUMPHRIES**—If there were standard questions asked, I assume they are written out or printed out. Can we see a copy of those questions?

**Mr Metcalfe**—I can see if I can make them available.

**Senator Chris Evans**—I make the comment at this point that those persons who had not previously been members obviously would not have been asked about their decision record.

**Senator HUMPHRIES**—No.

**Senator Chris Evans**—It is an open selection from those seeking reappointment and those who are new applicants. I do not know how the committee organises it, but clearly you cannot ask a new applicant about their record.

**Senator HUMPHRIES**—Yes. Were the review panel members provided with statistics on the decisions made by those RRT members seeking reappointment? That is, those statistics on their rate of acceptance or rejection of appeals?

**Mr Metcalfe**—It is probably best if I ask Ms Hand to come to the table. She can explain the process that she undertook on my behalf. Can you repeat the question please, Senator?

**Senator HUMPHRIES**—Were members of the review panel provided with statistics on the rate at which applicants who were existing members of the RRT accepted or rejected appeals?

**Ms Hand**—All members of the panel were provided with the performance reviews and statistics for existing members who had applied for this round. Where there were significant discrepancies between the statistics of one member who might be being interviewed by the panel versus the average for all members over a number of years, we would ask questions about that. In many cases, I might say, there were legitimate reasons for the significant discrepancies because of the complexity of the caseload or the nature of the work they were doing as opposed to other members. So, as chair of the panel, I can categorically say—and I personally went through every one of the 91 people who were interviewed to check this—there was not one case where we recommended to the minister that someone be appointed or not reappointed based on their set-aside rates or affirms. I can categorically say that.

**Senator HUMPHRIES**—Based on what?

**Ms Hand**—Their set-aside rates or affirming what the delegate had already said.

**Senator HUMPHRIES**—But the question of set-aside rates was an issue before each of the panel members in statistical form before the person arrived for their interview?

**Ms Hand**—Yes, absolutely. It is actually part of the members' code of conduct and their performance appraisal process that these statistics be looked at in terms of the average. Sometimes a member might be new or might not be considering all the factors in front of them. Mr O'Brien, as the principal member, needs to be satisfied that independent, very objective evidenced based decision-making is occurring.

**Mr O'Brien**—In any review of a member's performance it is obviously important that we establish a general degree of consistency or that we see that there is a general degree of consistency in our administrative decision making. Consistency in administrative decision making is important. So, if you have a member whose set-aside rates are very high—and we have some of them and we have had some in the past—or very low by comparison with their peers, it seems to me that it is a legitimate line of inquiry to ask why. That member may say, 'Look, it is the a nature of this caseload I have had. I have had X, Y and Z countries and they traditionally have been countries where there have been high set-aside rates or low set-aside

rates.’ That is the answer to it. In the interests of ensuring that we as a tribunal apply consistent standards to our decision making, we need to ask questions when we get blips on the statistics.

**Senator HUMPHRIES**—What you are saying is that members with high set-aside rates that otherwise could not be explained by the nature of the country whose applicants they are considering or whatever stood a higher chance of not being reappointed because of that variation from the statistical norm?

**Mr O’Brien**—No, it is just a question of exploring the reasons for that. In performance appraisals of members, it is occasionally the case that we see that a member has set-aside rates that are very high. It may need some investigation in that context to see whether in fact that member has been, for example, properly testing evidence before them in order to reach their decision.

**Senator Chris Evans**—I have to interrupt to make it clear that you know what a set-aside rate is. Do you?

**Senator HUMPHRIES**—Yes.

**Senator Chris Evans**—It is an overturning of a decision by the court. It is actually a decision that says, ‘You did it wrong.’

**Mr O’Brien**—I think in this context we are referring to set-aside of the department’s decision.

**Senator Chris Evans**—It was done by the department.

**Senator BARNETT**—What is the set-aside rate for the RRT and the MRT?

**Mr O’Brien**—It has varied from year to year, and that has do with our—

**Senator BARNETT**—What is it currently?

**Mr O’Brien**—It is running at about 24 per cent at the moment.

**Senator BARNETT**—For RRT and MRT?

**Mr O’Brien**—No, for the RRT it is about 24 per cent. For the MRT, it runs at about 45 per cent. There is a long history and story behind that. But let us focus on the RRT. The set-aside rates can vary from year to year depending entirely on the nature of the claims that come before us.

**Senator BARNETT**—Can you give us the stats over the last three years?

**Mr O’Brien**—Yes. Over the last three years it has varied between about 18 per cent and 24 per cent. If you go back a few years ago, or more than that, the set-aside rate stood at about 30 to 33 per cent.

**Ms Hand**—Can I reiterate what I said earlier? Whilst for all the legitimate reasons Mr O’Brien has outlined, when we asked about set aside or affirm rates, there was not one instance where we have recommended that someone be appointed or not be reappointed based on that line of questioning. This is just one of many things we asked in an interview to explore the member’s performance and suitability for reappointment.

**Senator BARNETT**—But what you are saying is that if they are closer to the mean or the average, they are more likely to be considered positively than if they are further away from the mean and the average.

**Ms Hand**—No, I am not saying that.

**Senator BARNETT**—Otherwise, why on earth would you include the set-aside statistics in the interview and ask questions about them?

**Senator Chris Evans**—They are a key performance indicator as I understand it.

**Ms Hand**—I am not saying that at all. If they had a complex caseload or a time-consuming caseload—that is, specific countries where it was absolutely explicable that they had a dramatically different set-aside rate from the average—we as a panel absolutely accepted that. As I said earlier, I think in all cases that was the case. That said, it is a key performance indicator and it is a legitimate line of questioning. We absolutely would ask about that if there was a significant difference.

**Mr O'Brien**—Set-aside rates are one element of the statistics.

**Senator BARNETT**—It is clearly a very important element, isn't it?

**Mr O'Brien**—I do not think it is any more important than—

**Senator BARNETT**—Why would you include it at the interview? Why would you ask the question at the interview? Why would you bring the statistics into the interview?

**CHAIR**—Senator Barnett, let Mr O'Brien finish.

**Mr O'Brien**—The committee also had before it statistics about complaints made about particular members and statistics about the overall volume of their decision making—are they keeping up to tempo with decisions expected of a decision-maker? They were asked questions, if this was relevant, about their judicial review set-aside rates. That is, where their decisions have been set aside by the courts, and particularly, say, in those cases where they have been set aside for apprehended bias or something like that.

**Senator BARNETT**—Which member of the panel asked the questions about the set-aside rate, or do all members of the panel ask questions about the set-aside rate?

**Mr O'Brien**—Where those questions were asked, a majority or all would have been asked by me.

**Senator BARNETT**—Do you give them the statistics when they walk into the room, and you sit down and conduct the interview?

**Mr O'Brien**—Members have those statistics. They are provided to them regularly.

**Senator BARNETT**—So they know the statistics and they are advised that they will be asked about the statistics before the interview?

**Mr O'Brien**—On a monthly basis members have their ongoing statistics covering every aspect of their decision making.

**Ms Hand**—Can I just add that even though we were not required to do this, with every candidate we asked permission to put their performance reviews with panel members and/or if they had given that to us already—and many did as part of their application—we confirmed

that we had considered it and we would probably ask questions based on their performance reviews. By the way, it is a standard Public Service and statutory appointment process to look at performance reviews and statistics for people for any jobs in the Public Service.

**Mr Metcalfe**—Senator, I would have believed that the committee was not doing its job if it had not looked at this material. Imagine if I was sitting here today and you were asking me, ‘Why did you not inquire into a person’s record as to how he or she went about making decisions where that information is available? What are you saying, Mr Metcalfe? Are you saying that, in fact, the panel did not examine why someone never set a decision aside or someone always set decisions aside?’ I am saying that a normal, proper, thorough, rigorous selection process will, of course, look at how people have done their jobs in the past. Ms Hand is saying that those questions relating to set-aside rates were explained and were the subject, presumably, of an interesting discussion between the applicant and the panel, but on this occasion it did not lead to any people not being recommended for appointment. Mr O’Brien has confirmed that there is a constant and active discussion in the tribunal about performance. That is exactly what the parliament would expect. It is certainly what I expect as the portfolio secretary. People who make decisions must go about it in a rigorous way and must constantly check to establish that what they are doing is in accordance with standards. Where there are variations that must be explored. It must not be a point of criticism but a point of inquiry.

**Senator HUMPHRIES**—When I was talking earlier about high set-aside rates, the complaint is not that the rate is too high; the complaint is that the rate is too low. The reference to people not having set aside enough decisions of the department is the substance of the allegation.

**Mr Metcalfe**—That people were being encouraged to go soft in some respects?

**Senator HUMPHRIES**—Yes. That is right. The allegation is that the department’s decisions are being accepted.

**Mr Metcalfe**—I think it is patently absurd.

**Senator HUMPHRIES**—I wanted to clarify what the allegation is.

**Senator Chris Evans**—Is that allegation in relation to the MRT or the RRT, or both?

**Senator HUMPHRIES**—I think it is specifically about the RRT.

**Senator Chris Evans**—I think you got the figures earlier from the president. I am sure that he can give you set-aside rates, details and variants over time so that you have the facts before you, if you want to do that. He also indicated to you that the number of RRT decisions had dropped.

**Senator HUMPHRIES**—You made comments earlier about high set-aside rates and people being counselled about that or having those issues discussed. Does that apply also to people who had low set-aside rates?

**Ms Hand**—Absolutely.



**Senator HUMPHRIES**—In the lead-up to the review panel process were members counselled, spoken to or in other ways confronted with discussions about their low set-aside rates?

**Mr O'Brien**—Perhaps I could answer that question. We have a member performance appraisal program in the tribunals and that results in a discussion on an annual basis—formally on an annual basis—between the senior member and the member about their statistics generally, about all aspects of their work on the tribunals. In the course of those discussions there may be discussions about cases that have been set aside on judicial review and why they were set aside, and there may be discussions about complaints that have been made about them and whether or not those complaints were upheld. There may be discussions about a seemingly high set-aside rate by comparison with their peers and that might lead to some discussions about how the member conducts the hearing or the review, or it may be about low set-aside rates. That may have to do with the member's approach to a hearing or it may have to do with the caseload. As I said, those discussions are held on an annual basis with members.

**Senator HUMPHRIES**—When you say there is an annual discussion with them, is this a one-on-one discussion or is it in a forum?

**Mr O'Brien**—It is very much one on one, yes. It is an ordinary performance appraisal.

**Senator HUMPHRIES**—I understand that one of the allegations in the newspaper articles was that you, Mr Gibson, had said, either individually or to people on the panel—

**Senator Chris Evans**—This is Mr O'Brien, the principal member.

**Senator HUMPHRIES**—Sorry, Mr O'Brien, I beg your pardon. I withdraw that. Mr O'Brien, you said that you have discussed this issue with members of the panel and that you have counselled some people about their low set-aside rates—

**Ms Hand**—Can I clarify an issue? Counselling is not part of an interview process. That would be completely inappropriate.

**Senator HUMPHRIES**—I am not suggesting that it is Ms Hand. I am suggesting that it is occurring in another context, the kind that Mr O'Brien was talking about before. You have counselled people or discussed with them the question of their low set-aside rates?

**Mr O'Brien**—Those discussions are normally held between the member and his or her senior member. I see those performance appraisals—they come to me—and occasionally there may be some issues that I need to talk to the member about or talk to the senior member about, together with that member.

**Senator BARNETT**—Including low set-aside rates?

**Mr O'Brien**—I do not think I have had a discussion on that. I do not think it has come to that in recent discussions, no.

**Senator HUMPHRIES**—In the rounds that have been completed—obviously the present round has not been completed but in previous rounds—have members with the lowest set-aside rates, let us say the members of the tribunal with the five lowest rates, been reappointed to the tribunal?

**Mr O'Brien**—As I think Ms Hand indicated, to the extent that there was any discussion about set-aside rates, set-aside rates were not an issue in the report.

**Senator HUMPHRIES**—So you would not expect then that those with the lowest set-aside rates would necessarily be not reappointed?

**Mr O'Brien**—It might be that there are some members with low set-aside rates who might not be reappointed, but that would have nothing to do with low set-aside rates. It might have to do with complaints made about that member, or it might have to do with findings of apprehended bias made by the courts against that member.

**Senator BARNETT**—Can you take that question on notice, Mr O'Brien, and get back to us?

**Mr O'Brien**—What would you like me to take on notice?

**Senator BARNETT**—As Senator Humphries just requested, whether or not members with the five lowest set-aside rates have been reappointed.

**Senator Chris Evans**—He cannot for a start because the current round has not been completed.

**Senator HUMPHRIES**—I was not referring to the current round; I was referring to the previous round.

**Senator Chris Evans**—The previous round?

**Senator HUMPHRIES**—Yes.

**Mr Metcalfe**—You are jumping between the two rounds. I think we need to be clear here.

**Senator BARNETT**—This is an important question.

**Mr Metcalfe**—I am just making the point.

**Senator BARNETT**—It is a very good question.

**Senator Chris Evans**—I do not agree, but I am happy to help you if I can. I am just pointing out that in relation to this selection round, about which the media reports complained, and which I thought was the focus of your questions, there has been no decision—

**Senator HUMPHRIES**—It has been some of the focus.

**Senator Chris Evans**—You have been referring constantly to media reports, which are patently wrong, but I am happy to deal with that here. I am making the point that that round has not been concluded. Senator Barnett was asking a question about this, which I am not sure should be answered—I would want to take that on notice. I am saying to you that appointments have not been made; therefore, the question cannot be answered.

**Senator HUMPHRIES**—That is fine. I repeat the question that I asked Mr O'Brien. You said that people with a low set-aside rate would not necessarily have that factor dominate the consideration of their reappointment. You said that a range of factors might contribute to that. If that were the case you would expect that people with the lowest set-aside rates would have no greater or lesser expectation of being reappointed than anybody else. Can we find out

whether those with the lowest set-aside rates have, indeed, been reappointed in the last round for which decisions have been made?

**Mr Metcalfe**—That, I think, would be the round shared by Mr Fox last year. Minister, I think we should take that question on notice and establish whether it is possible to devise it. In any event, Senator, I think that the point has been made quite strongly by the principal member that that was not a factor.

**Senator HUMPHRIES**—So we would not expect people with the five lowest set-aside rates not to have been reappointed?

**Mr Metcalfe**—If there was—and I am being purely speculative here—what I think the principal member is saying is that there would be other grounds. A variety of selection criteria are required to be considered by the panel, or by any of the panels. They go to a number of issues. They are well mandated, well understood and the process by any measure is extraordinarily objective, given the presence of the Merit Protection Commissioner as a personal representative on this occasion and on earlier occasions. If you were to ask me to think of a fairer process around public sector recruitment appointment, I could not describe one to you. This is as fair as I have ever seen.

**Senator HUMPHRIES**—Okay.

**Ms Hand**—I thought it might be useful to elaborate on the process so you can see all the factors we considered.

**Senator HUMPHRIES**—To be perfectly frank, Ms Hand, we do have a lot to get through today. I would prefer not to. I would be happy for you to put that on a piece of paper and to provide it to us in writing. It is just that we need to get through a lot.

**Ms Hand**—Sure.

**Senator BARNETT**—Through you, Madam Chair, we are still hoping to get a copy of the criteria that we discussed earlier. Could you give us a copy of that?

**Mr Metcalfe**—Yes, we will.

**Ms Hand**—Absolutely.

**Mr Metcalfe**—We are trying to get that brought over.

**Senator BARNETT**—Thank you.

**Senator HUMPHRIES**—So you are saying, Mr Metcalfe, that if the five members with the lowest set-aside rates were not reappointed that is coincidence—there were other factors?

**Mr Metcalfe**—That is on the advice I have heard from the principal member, my own experience, and the advice of others. That would be the case. There would be a range of factors why people were not reappointed. I think we have heard ample evidence here today indicating that in the collective recollection of the very senior officers involved that has not been a factor. It is a legitimate area for questioning and, as I said, I think it would be a cause for concern if wide variations from the overall norm were not pursued so that you could, in fact, identify whether someone was a maverick and was just saying yes to everyone or no to everyone. I have exactly the same issues in relation to decision making in the department. Of

course it is an area to explore. But the advice that we have heard today is that on no occasion in relation to the reappointment or the selection of members has it been a decisive factor.

**Senator HUMPHRIES**—Okay. I accept your assurance about that, but I would like to see the figures to demonstrate that.

**Mr Metcalfe**—If it is possible to produce them. I have taken that question on notice.

**Senator HUMPHRIES**—The allegations have been made, and they are in the public arena. Apparently they have been made—we know in at least one case and apparently in two others—by people who were members of the tribunal.

**Senator Chris Evans**—I just want to clarify this. As I understand, this has been quoted by a former state Liberal member of parliament—

**Senator HUMPHRIES**—Sorry, you do not know who was—

**Senator Chris Evans**—Who was not appointed in the previous round.

**Senator HUMPHRIES**—Okay, that is fine.

**Senator Chris Evans**—Let us be clear. As I understand it, he was not actually involved in this round.

**Senator HUMPHRIES**—I am not prepared to state that because of a person's political affiliations his or her views must be biased—

**Senator Chris Evans**—No, I do not. That is why, since this government has been in power, we have done it on a merit based selection. I am tempted to get one of the Labor senators to take us through the previous rounds, blow by blow. I think your hair might curl at the political interference in the process. If these allegations are continually repeated against senior public servants who have acted in the public good—and you coming from Canberra ought to be a bit for sympathetic about these things—

**Senator HUMPHRIES**—Oh, Minister, for goodness sake!

**Senator Chris Evans**—and the imputation against Mr Gibson's reputation I will take the issue on and I will take you chapter and verse through your selection methodology, Senator, and it is not pretty.

**Senator HUMPHRIES**—I am advised that our selection process was independent and transparent as well.

**Senator Chris Evans**—Tell me about it then. Did you advertise?

**Senator HUMPHRIES**—If you want to debate that issue at another time that is fine. We have—

**Senator Chris Evans**—Did you advertise? Did you interview members who reapplied? My information is that the answer is no.

**Senator HUMPHRIES**—Minister, we have a process to go through.

**CHAIR**—Order! Minister Evans and Senator Humphries! Let us get back to questions.

**Senator HUMPHRIES**—Let me ask about the member of the panel that was not a public servant—Mr Gibson. You would be aware of allegations in the media that there was a conflict

of interest for Mr Gibson. Mr Gibson is the President of the Refugee Council of Australia, an organisation with a very strong publicly stated view that Australia should take many more refugees than it currently does and whose interests on the panel might be expected to be in favour of a more tolerant approach towards the acceptance of refugees. Mr Gibson contributed to how many of the panel meetings, Mr Metcalfe?

**Mr Metcalfe**—Two.

**Senator HUMPHRIES**—In the most recent round?

**Mr Metcalfe**—He was panel member in relation to the most recent round, the one that is not yet completed and that is yet to be considered by ministers and by the Governor-General, and he was a panel member on the process I chaired, from memory, last year in relation to the appointment of the deputy principal member.

**Senator BARNETT**—Is Mr Gibson also a lawyer who acts for asylum seekers when they are turned down by the RRT?

**Mr Metcalfe**—He is a barrister and, just for the record, he has appeared both for and against the department on refugee matters. In other words, he is a barrister who takes briefs and argues them strenuously for his client whether it is the government or whether it is the person.

**Senator BARNETT**—Primarily for refugees or asylum seekers, is that right?

**Mr Metcalfe**—He has a mixed practice I think but he certainly has experience in the refugee area. I am very concerned, Senator. Of course he is a former member of the tribunal and so has considerable experience in refugee matters. As I said before, to suggest that his role as President of the Refugee Council of Australia makes him ineligible to be one of four persons contributing to decision making about the appointment of members I think is an extraordinary leap in logic.

The Refugee Council of Australia is a very reputable organisation that has worked closely with governments over many years. Mr Gibson is a fine person who is committed to ensuring that the rights of refugees are protected. But I am sure that he would be one of the first people to say that people who are not refugees should not avail themselves of the refugee processes. That, in fact, ultimately undermines the plight of refugees. I am clearly aware of the leap of logic by the columnist concerned, but it is nothing more than that—a leap of logic by any objective measure. Mr Gibson is not biased, the line of questioning was legitimate, he was one of four persons on a panel and it was a demonstrably objective process. Indeed, I cannot think of a more objective process that could be undertaken.

**Senator HUMPHRIES**—You have to accept, though, that it is not a question of Mr Gibson's individual behaviour. I have no evidence that Mr Gibson behaved inappropriately in respect of his role. The question is one of a perceived conflict of interest. If anybody more clearly could have had a vested interest—and I do not use that in a personal sense but in an organisational sense—in having members of the panel who were more inclined to favour applications for refugee status, surely that would be the person?

**Mr Metcalfe**—You could run an entirely similar line, which is equally untrue, that because the process was chaired by a departmental officer the department has a vested interest in ensuring that its decisions are not overturned.

**Senator HUMPHRIES**—That is quite a legitimate argument I reckon.

**Mr Metcalfe**—I think it is a completely illegitimate argument. I think that it is ridiculous to suggest that people who are experts and who are working in the field cannot bring objectivity to a process of decision making. It is not as if Mr Gibson was the chair of the committee or the sole person appointing; it is not as if the RCOA is a highly politicised organisation.

It is an umbrella organisation for many, many people working generally for refugees. Mr Gibson, I believe, had no conflict of interest. He was one of four members of a panel where various perspectives were brought to bear, where the Merit Protection Commissioner, a statutory office holder of the Public Service Commission, was there to ensure absolutely that the process was fair. I really think that the articles are taking one and one and coming up with 23.

**Senator HUMPHRIES**—Mr Metcalfe, at the panel meeting that you were chairing and Mr Gibson was at, do you recall Mr Gibson suggesting that those low set-aside rates would or could improve in the future?

**Mr Metcalfe**—No.

**Senator HUMPHRIES**—You do not recall it or it did not happen?

**Mr Metcalfe**—I do not recall it.

**Senator HUMPHRIES**—There are reports that Mr Gibson questioned applicants fairly extensively about their low set-aside rates. Do you recall whether that took place at the meeting?

**Mr Metcalfe**—In the previous process I was involved in I think we only interviewed six people. It was for the deputy's job; it was not for a job that went to decision making. There certainly was exploration in relation to the decision-making record where there had been judicial criticism of one applicant. That applicant explained the way they had gone about making the decision, defended the approach and rejected the court's criticism. It was an interesting discussion. It ultimately had no bearing whatsoever on the appointment that we made.

**Senator HUMPHRIES**—Ms Hand, I think you were at the other meeting that Mr Gibson was at. Do you recall whether there were questions by Mr Gibson of applicants about their low set-aside rates?

**Ms Hand**—Yes. Mr Gibson did ask those questions but the majority, as Mr O'Brien said earlier, were asked by Mr O'Brien in fact. Can I just add, it was a four-member panel. I was the chair. Remember that we used very objective criteria and ranking. I can categorically say that, if there was one member of the panel who might have a divergent view from the others, we would sit and discuss and we would unanimously agree in favour of the majority. That is not to suggest in any—

**Senator HUMPHRIES**—Sorry, can you just repeat that, Ms Hand? You would unanimously agree in favour of the majority.

**Ms Hand**—We would look at the objective criteria, and the way an applicant had performed and responded versus those criteria, as well as looking at performance reviews, reference checks, et cetera—a raft of material—and then the panel would make a decision about whether to recommend someone as suitable or not. Bear in mind that this was a highly competitive field with 91 people interviewed. It was very rare but, if a particular member of the panel disagreed with the others, in all cases it ended up that the majority decision was made because that was the right decision. I can think of only three instances where a member of the panel disagreed with the other three. At the end of the day, based on the facts in front of that particular member or members, they came to the same view that the other three had. We should not be thinking that one member of the panel influenced the decisions of the whole panel. That would just be ridiculous.

**Senator BARNETT**—So it is always a unanimous decision, is it?

**Ms Hand**—Yes.

**Senator BARNETT**—You never have a majority decision?

**Ms Hand**—No, it was unanimous. Mr O'Brien was there and can attest to that.

**Senator BARNETT**—But is that always the case?

**Ms Hand**—On the panel that I chaired, that was the case.

**Senator BARNETT**—What about past experience?

**Mr Metcalfe**—The role of the chair is to very much ensure that it is a fair process. Naturally, with four panel members, there are going to be differences of perspective and views. The role that Ms Hand has described, the role that I have occupied previously, has been to talk, to test and to ultimately debate the merits. I am not surprised to hear that ultimately four intelligent people came to a common view, having robustly worked through the issues. That is completely unsurprising.

**Senator BARNETT**—Thank you, Mr Metcalfe. We have a lot of questions and we want to get through them. I appreciate you giving us a bit of background. Mr O'Brien, has that always been the case as far as you are aware?

**Mr O'Brien**—On the selection advisory committees that I have sat on, yes. The four members sit and discuss each of the applicants and, although we may have formed some different impressions, through a process of discussion we end up coming out with a write-up that we can all agree with.

**Senator HUMPHRIES**—Have members with high set-aside rates had similar discussions with you, Mr O'Brien?

**Mr O'Brien**—There have been discussions more often with their senior members.

**Senator HUMPHRIES**—Between the senior members and?

**Mr O'Brien**—And the member.

**Senator HUMPHRIES**—Again, could I ask you to take on notice the question of the returning members or members applying for reappointment. Have those with the five highest set-aside rates been reappointed?

**Mr O'Brien**—The current round is still going on.

**Senator HUMPHRIES**—I am talking again about the previous round—the same round that I am asking about with the low set-aside rates.

**Mr O'Brien**—I could take it on notice. I think you will find that there is a big variation between highs and lows in the sense that that are some members who have not been reappointed who had higher set-aside rates and some members who have not been reappointed who had lower set-aside rates. There would have been a range of factors.

**Senator HUMPHRIES**—I understand what you are saying but I would still like to see the figures as to exactly what happened to those with the five lowest and the five highest set-aside rates.

**Mr O'Brien**—I will take that question on notice.

**Senator HUMPHRIES**—What stage has the latest round reached? Have you made a recommendation to the minister yet?

**Mr Metcalfe**—Yes, we have, and it is awaiting consideration by cabinet and then the executive council.

**Senator Chris Evans**—The appointments are from 1 July, so a decision is not far away.

**Senator HUMPHRIES**—That is good.

**Senator BARNETT**—Can I just clarify. You make recommendations to the minister?

**Mr Metcalfe**—The chair of the panel makes a recommendation, as my delegate, to the minister. That is provided for under the guidelines.

**Senator BARNETT**—How many are on the list of recommendations? How many do you recommend—the exact number or an additional number?

**Ms Hand**—There were 43 positions to be filled. I think it would be inappropriate to talk about specifics, given that it is to be considered by cabinet at the moment.

**Senator BARNETT**—But you provide a number in addition to that 43 so that the minister can choose?

**Ms Hand**—No.

**Mr Metcalfe**—No, we provide 43.

**Ms Hand**—We have recommended 43.

**Senator BARNETT**—That is what I am just clarifying. Thank you.

**Senator HUMPHRIES**—The report in the *Financial Review* that I referred to before claims that one senior RRT manager has allegedly advised members to 'adopt a set-aside mindset'.

**Mr O'Brien**—I could comment on that. With my senior management team we have scratched our heads about that. None of us can think of an incident where that could possibly



have arisen. In the recollection of any of us it is just not something that has happened. Where that comes from I have no idea whatsoever.

**Senator HUMPHRIES**—I specifically ask you, Ms MacDonald, if there is some suggestion that you might have made a comment to that effect. You have not made such a comment?

**Ms MacDonald**—No, never.

**Senator HUMPHRIES**—There is also a report—I think it is the one in the *Herald Sun*—

**Senator Chris Evans**—Could I just point out, Senator, I think Ms MacDonald has only been with us for a short time. This is the first time I have met her, so she has not been with us long.

**Ms MacDonald**—I have actually been with the tribunal since 2001, so I am an experienced member and senior member—

**Senator Chris Evans**—Yes, a senior member.

**Ms MacDonald**—but this is the first time I have been at Senate estimates as the deputy principal member of both tribunals.

**Senator Chris Evans**—I was referring to her appointment as deputy principal member. That was earlier this year?

**Ms MacDonald**—On 1 April.

**Senator Chris Evans**—I was just trying to make the point that she was not in a position to have talked about her activities in that role for very long.

**Senator HUMPHRIES**—Yes. You should get around and meet more members of the tribunal, obviously, Minister, shouldn't you?

**Senator Chris Evans**—Then you would accuse me of political interference, Senator.

**Senator HUMPHRIES**—I probably would.

**Senator Chris Evans**—I actually keep them at arm's length for a purpose.

**Senator HUMPHRIES**—Are you aware of newspaper reports—the one in the *Herald Sun*—that a former member said, 'It was made very clear by management that long-term career prospects would not be enhanced.' I assume that is a reference to a low set-aside rate.

**Mr O'Brien**—Again, I am aware of that report. I am completely mystified by it. The fact is that we have a duty to make independent decisions. I am proud to say that all my members do that. We make decisions on the facts as they are before us and apply the law to those facts. It is as simple as that.

**Senator HUMPHRIES**—If the RRT maintains statistics on the set-aside rates of members and uses them as a criterion in making decisions—and presumably it is based on publicly available information, because the decisions are all public; they are not concealed—is it possible for you to table the information that was used by the panel?

**Mr O'Brien**—We do not normally make public individual set-aside rates for the reason that I indicated earlier—that there could be a range of reasons explaining a particular

member's set-aside rates. It might cause great embarrassment if something were put out to the public domain that set the hares running for no good reason. As I said, these things are generally explained by the nature of the particular caseload the member has, so individual set-aside rates and affirm rates are not things that we publish for good reason.

**Senator Chris Evans**—I have encouraged the principal member, after a concern was expressed to me about publication of decisions, to publish decisions on the website. We now publish how many?

**Mr O'Brien**—More than 40 per cent of our decisions are published on the website.

**Senator Chris Evans**—They actually go up on the website for people to be able to read the decisions, so it is much more transparent than it used to be.

**Senator HUMPHRIES**—So people could do the research themselves and discover what the set-aside rates were for members?

**Mr O'Brien**—Yes, that is right.

**Senator HUMPHRIES**—It is a bit like publishing school league tables, I suppose.

**Senator Chris Evans**—This is about publishing judgments. I encourage them to publish as many as possible. I would hope that at some stage we got to a position where we published 100 per cent of judgments. Then you would have total transparency of decision making. But the tribunal has made efforts to increase the numbers to be put on the site.

**Mr O'Brien**—As the minister understands, it is a huge volume. We will make 8,000-odd decisions this year. That is a lot of decisions.

**Senator HUMPHRIES**—Yes. I turn to a slightly different aspect of the tribunals' work—that is, the country information service that you provide through the internet.

**Mr O'Brien**—The Country Information Service is a service that is provided to our members to assist them as to the conditions in a particular country or to answer questions that a member may have about circumstances that may appear in a Migration Review Tribunal application or a Refugee Review Tribunal application. We do now publish on the website selected—and a growing number—of our country advices so that the community is generally aware of the information that members have in front of them.

**Senator HUMPHRIES**—It has been put to me that the material provided by that service does not appear to support the position that the government has taken—that the situation in Afghanistan appears to have stabilised to the extent that generally the case for asylum for applicants originally from Afghanistan is a strong case. Would you accept that criticism as fair?

**Mr O'Brien**—No, I do not. I am not sure what we have up there on the website about Afghanistan. You could have a look at it yourself to see what is there. I do not know what is there.

**Senator HUMPHRIES**—So you think—

**Mr O'Brien**—I am not aware that we are doing anything contrary—

**Senator HUMPHRIES**—You would have information published about Afghanistan on your website, wouldn't you?

**Senator Chris Evans**—I point out that you were earlier advised that there are two current applications before the tribunal from Afghanistan. So you will understand why the principal member probably has not focused on it. It is not actually a big part of their work.

**Senator HUMPHRIES**—I understand that, but I also—

**Senator Chris Evans**—I know it is a more general question; I am just making the point.

**Senator HUMPHRIES**—would hope you would know what was on your website.

**Mr O'Brien**—Indeed, it may well be that there is very little up there on Afghanistan for the reason the minister mentioned. In getting country information up on the website we have tended to concentrate on the countries that are the main source of our applications. It is possible there is not a lot there on Afghanistan.

**Senator HUMPHRIES**—I am told that there is and that it is not consistent with what the government has been saying. But I will go and check that myself.

**Senator Chris Evans**—You have to be careful repeating allegations given to you, Senator, as you found out this morning.

**Senator HUMPHRIES**—With respect—

**CHAIR**—Before we go to the next—

**Senator HUMPHRIES**—With respect—

**Senator Chris Evans**—You have slurred up four people today and I do not like it.

**Senator HUMPHRIES**—We have asked questions and we are entitled to answers.

**Senator Chris Evans**—You have slurred them up.

**Senator HUMPHRIES**—That is not true.

**Senator Chris Evans**—You ought to have a bit more respect.

**Senator HUMPHRIES**—We have asked questions that are in the public domain. That is the job of an estimates committee—to explore these issues.

**Senator Chris Evans**—You have an obligation not to try and besmirch people's reputations as you go about it.

**Senator HUMPHRIES**—I do not think I have done that to anybody.

**CHAIR**—Gentlemen, it is 10.30. That is time for our morning break. How timely.

**Proceedings suspended from 10.30 am to 10.49 am**

**CHAIR**—Let us continue our consideration of estimates. We have the Migration Review Tribunal and the Refugee Review Tribunal with us.

**Mr O'Brien**—Perhaps I can answer a question that Senator Humphries asked just before the break about the country information on our website. As I indicated, the tribunals have only one active Afghan case before us at the moment. We have had two lodgements from Afghan nationals during the year to date. We have made two decisions, one an affirm and one a set-

aside. I am told that the latest information we have on our website concerning Afghanistan was put there in December 2008. There is nothing more recent there. The reason why perhaps there is nothing more recent is, as I think I indicated earlier, that a majority of the information we concentrate on putting up there reflects our current caseload. Afghanistan presents very low numbers and we have not had the need to update the advice.

**Senator HUMPHRIES**—So your information on the web is essentially a reflection of the information that the tribunal receives through the applications and not an assessment of what is going on in the country?

**Mr O'Brien**—It is where members request advice from our country advice service—if they have particular questions they need answers on to decide the cases before them. In terms of what we put up on the website, we concentrate, for the benefit of the community, on those cases that are more numerous before us rather than cases where we are only getting one or two applications.

**Mr Jones**—We also have basic information packages available on our website. I think there is one that is more recent than December 2008. But that does not go to the substantive issues in terms of the security situation in Afghanistan. The last substantive advice that we have that was provided to a member I think goes back to December 2008.

**Senator HUMPHRIES**—I will look at the website myself and have a reconnoitre. Minister, I think we asked you before whether you had taken recommendations to cabinet and whether the recommendations were the same as the ones that had been given to you by the panel, and you declined to answer that—quite properly. Has it been the case that either with this round or the previous rounds that you have discussed the recommendations with the chair of the panel or somebody else who was on the panel before they were formulated for submission to cabinet?

**Senator Chris Evans**—No. I will double check, but my understanding is that they came up as part of a submission—as the recommendation and report of the committee. They then go forward to cabinet.

**Senator HUMPHRIES**—So you have signed the submission and forwarded it to cabinet?

**Senator Chris Evans**—I receive the submission and I make a submission to cabinet about the appointments. I will be clear about the process. I get a submission that says that this is the report of the committee or whatever and then I take a submission to cabinet.

**Mr Metcalfe**—I can confirm that I have never had any discussions with the minister in relation to appointments. He has never expressed any views to me in relation to his preferences. I would be surprised if he had any idea who applied, to be honest, apart from expecting quite a few existing members would reapply. That is as I would expect.

**Senator Chris Evans**—That is not true. A close mate of mine applied and whinged to me they did not get appointed. I told them to write to you.

**Mr Metcalfe**—I do not recall that. The procedure is that the department provides a standard departmental submission, which would have been signed on this most recent occasion by Ms Hand. It went to the minister and it proposed that he then write to the Prime

Minister seeking that the issue be raised in cabinet. That is the standard process around appointments for cabinet.

**Senator HUMPHRIES**—I think we asked before for a table of the general set-aside rates by the tribunals over the last three years. It might be useful to have a slightly longer projection if we could for, say, the last five years.

**Mr O'Brien**—Yes. We can take that on notice and provide those figures to you.

**Senator Chris Evans**—I am told they are in the annual report. But we can get them for you.

**Senator BARNETT**—We have talked about your country information service regarding Afghanistan. What is the situation regarding Sri Lanka? Would you say that is consistent with the government's position vis-a-vis Sri Lanka on your website?

**Mr O'Brien**—I just do not know.

**Senator BARNETT**—You cannot recall?

**Mr O'Brien**—No.

**Senator BARNETT**—Could you check that and advise the committee accordingly if you believe it is consistent or inconsistent with the government's position relating to Sri Lanka?

**Senator Chris Evans**—Senator, can I make the obvious point? What do you mean by the government's position? The department can tell you about what it uses, which is not government, as in me, the cabinet or what have you providing advice. No doubt when we get to that section you will ask the department about its advice in relation to those matters. I just make the point that Mr O'Brien would be unable to compare it with government views. He could compare it or ask Mr Metcalfe to compare the information that the department provides to its decision makers.

**Mr O'Brien**—I suppose that all I could really provide you with is what is there.

**Senator BARNETT**—When was it last updated, Mr O'Brien?

**Mr O'Brien**—I might ask the acting registrar. You probably would not know?

**Mr Jones**—I do not have that with me.

**Mr O'Brien**—You cannot recall?

**Mr Jones**—I cannot recall.

**Senator BARNETT**—So you can let us know?

**Mr O'Brien**—Yes, I can certainly let you know.

**Senator BARNETT**—I have a few questions regarding your opening remarks and some of your figures. You indicated that the active case load had increased markedly.

**Mr O'Brien**—Yes.

**Senator BARNETT**—I think you said by some 34 per cent in your opening remarks?

**Mr O'Brien**—That is the number of our decisions made this year. We are 34 per cent ahead of where we were last year on the MRT.

**Senator BARNETT**—You also said that you have an active case load which has increased markedly.

**Mr O'Brien**—It has increased by 11 per cent compared with the active case load as at 30 April last year.

**Senator BARNETT**—You also said that there was a growth in the backlog.

**Mr O'Brien**—Yes.

**Senator BARNETT**—Can you give us details of that? I am interested to know why there is this increase and why there is an increase in the growth in the backlog.

**Mr O'Brien**—We have had a 10 per cent increase in lodgements this year over last year.

**Senator BARNETT**—Is that for the MRT?

**Mr O'Brien**—I am just focusing on the MRT. That is added to what we had there before the start of this year. That is why, despite the lift in our decision rate, we are not eating into that backlog significantly. We are gradually eating into it but it is taking us some time.

**Senator BARNETT**—Tell us why there has been this 11 per cent increase? What is behind the figures? Where is it coming from?

**Mr O'Brien**—The increases have come in. If you look at lodgements you will see that student refusal lodgements are higher, skill-linked refusal lodgements are higher, but partner refusals have dropped. So the increase has really come from the student area and from the skill linked area.

**Senator BARNETT**—Do you have a percentage increase on students this year?

**Mr O'Brien**—The increase is—

**Senator Chris Evans**—While Mr O'Brien is getting that, I make the obvious point that the work of the tribunal tends to reflect what has happened to visa grants in the year or two prior. We had a huge increase in 457s before the global financial crisis and, as you know, since 2005 we have had a huge increase in the number of students. Therefore, the workload out of those visa classes follows on as visas are cancelled or new applications are made. If you like there, is a lag factor that follows the growth or reduction in visa grants in particular areas.

**Mr O'Brien**—I do not have the details in front of me. I will have to take that on notice the increase over the last year in those categories. But I know that those two have increased.

**Senator BARNETT**—That is fine; I appreciate that. I refer to the average time to decide. I think you gave us the figures for the RRT, but I do not have figures for the MRT.

**Mr O'Brien**—The importance of the figures there, of course, is that we have a statutory duty to decide cases within 90 days, which we try to comply with. To the extent that in an individual case we do not meet that time limit, I am required to report, through the minister, to the parliament, as you are aware. The time to decide on Migration Review Tribunal cases varies a bit depending on the particular cohort of cases. But perhaps the registrar might be able to give better figures on that.

**Mr Jones**—The overall average time so far this year is 277 days. Just breaking that down a little bit: for bridging visa detention cases, it is seven working days; for visa cancellation cases it is 118 days; and for other MRT cases it is 306 days.

**Senator BARNETT**—Do you have a maximum legislative requirement to respond within a certain period or is there a key performance indicator?

**Mr O'Brien**—Yes, we do. The time standard for bridging visa detention cases is seven working days from lodgement, which is legislatively prescribed for us. Visa cancellations are 150 calendar days from lodgement, which is our own standard. We have our own standard of 350 calendar days from lodgement for all other MRT cases.

**Mr Jones**—Those are the standards that are set out in the PBS.

**Senator BARNETT**—Thank you for that. Finally, this is my third effort to get a copy of the criteria. It is 11.00 am. We have had the morning tea break. Do we have it?

**Ms Hand**—I have been told that it has just arrived. You will receive it as soon as it is here. I also point out, of course, that the criteria are public—they are advertised on the website as part of the recruitment process. But, of course, we will give it to you as soon as it arrives.

**Senator BARNETT**—All right. Are we talking about the same document? I would like to know the standard questions that you put to the applicants during the review panel interview.

**Ms Hand**—The selection criteria are different from the questions, obviously. The questions are the standard questions that we ask in any interview. Of course, if there is a particular area about which we are concerned we will delve into it and ask questions.

**Senator BARNETT**—So we have the criteria, which is fine. It is a public document and we will get a copy of that very shortly. Do you have a copy of the standard questions that you put to the applicants?

**Ms Hand**—I believe that they are coming with the information that I have requested, so you will get them.

**Senator BARNETT**—All right, thank you. It is just that we are just wrapping up with tribunal members. I cannot make that happen any quicker, so thank you. I look forward to having a look at that.

**Ms Hand**—Good.

**CHAIR**—No other questions? Mr O'Brien and your colleagues, thank you very much for your time and attendance this morning.

**Mr O'Brien**—Thank you, Madam Chair.

**CHAIR**—We will move on to the department but we will deal in the first instance with the Office of MARA—the Migration Agents Registration Authority.

[11.02 am]

#### **Office of the Migration Agents Registration Authority**

**CHAIR**—I welcome officers from the Migration Agents Registration Authority, Ms Sykes and Mr Wood. Good morning. Ms Sykes, do you have an opening statement to make to the committee?

**Ms Sykes**—Thank you, Madam Chair. I do. The Office of the MARA, the Migration Agents Registration Authority, has been operating now for over 10 months. I would like to take this opportunity to update you on progress. At the end of March 2010 there were 4,476 registered migration agents, compared to 4,097 on 1 July 2009. This is an increase of over nine per cent. About one-quarter, or 1,167 registered migration agents, are Australian legal practitioners and 237 are non-commercial migration agents.

In the nine months to March, 3,487 registration applications were received. Of those, 692 were new applications and 2,795 were for repeat registration. A total of 339 complaints against registered migration agents were received in the same period and disciplinary action was taken against five agents. Two agents were suspended for one year and three years respectively, one agent was suspended until he or she met certain conditions and two former agents were barred from reregistering for five years.

At the end of March there were 671 approved continuing professional development activities which were provided through 43 providers. Most of these—401—were seminars, conferences, workshops and lectures. As I think I mentioned last time, for re-registration agents have to complete 10 points of CPD, which in most cases is the equivalent of 15 hours tuition.

Since 1 January 2010, people seeking to register for the first time as migration agents are required to demonstrate a higher standard of English proficiency. This change was introduced to raise the overall standard of migration advice and informal feedback has been positive. The new English language policy is being administered fairly and flexibly, and applicants are given opportunities to provide evidence of their English language proficiency. To date, no application has been refused due to an inability to meet the English language requirement, although several have either provided evidence of meeting the English language standard or have been asked to provide that evidence.

I would also like to take this opportunity to express my appreciation for the work of the advisory board. The chairman, Rob Cornell AO, has led the advisory board in establishing productive communications and a clear direction for the office of the MARA. The advisory board has proved to be of great assistance, and has provided valuable counsel on policy matters. I am happy to answer questions from members of the committee.

**CHAIR**—Thank you Ms Sykes.

**Senator HUMPHRIES**—I only have a few questions. Thank you Ms Sykes for your opening statement. You said that there had been a nine per cent increase in the number of registered agents or applications for registration?

**Ms Sykes**—I was talking about the increase in the number of registered agents.

**Senator HUMPHRIES**—To what do you attribute that increase?

**Ms Sykes**—We do not have any clear information on that. In some ways, some people in the sector say it is a bit of an anomaly because every time the entry requirements have been increased they have expected a decrease in the number of applications, and in fact it has gone the other way. Whether or not that is the case we do not know. But we are certainly monitoring it very closely to see whether that trend does continue.



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**Senator HUMPHRIES**—Is there an organisation representing migration agents?

**Ms Sykes**—There are three professional associations of which registered migration agents can be members. There are, of course, the various law societies where practising lawyers would probably be members, and they are represented nationally by the Law Council of Australia. There is the Migration Institute of Australia and there is also the Migration Alliance.

**Senator HUMPHRIES**—What has been the reaction of those organisations to the current registration requirements and the changes that were made recently?

**Ms Sykes**—Certainly the Migration Institute of Australia was very supportive of the increase in the English language standard, and had in fact already agreed that that should occur. So we were putting in place something that it already thought was a good idea.

**Senator HUMPHRIES**—And the other organisations? Did they have any particular qualms?

**Ms Sykes**—The Law Council of Australia is very supportive of anything that increases the standard of migration agents. I have not had a specific discussion with the Migration Alliance on that particular measure.

**Senator Chris Evans**—You might explain, Ms Sykes, where the recommendation to do this came from, and the history of it.

**Ms Sykes**—The increase in the English language standard was a recommendation of the review that was done that was led by John Hodges—the 2007-08 review of the migration agent industry. We have put in place that recommendation.

**Senator Chris Evans**—And migration agents were represented on that inquiry set up by the former minister.

**Senator HUMPHRIES**—Okay.

**Ms Sykes**—That move was also very much supported by our advisory board, which also has some registered migration agents on it who represent particular parts of the sector.

**Senator HUMPHRIES**—Of the 331 complaints made last financial year, is it possible to characterise what kinds of agents tend to predominate? Do we find, for example, that the non-lawyer agents tend to attract more complaints than the lawyer agents?

**Ms Sykes**—We have had a look at this, and the complaints do seem to follow pretty much the pattern of the number of registered migration agents that there are. So there do not seem to be any particular trends in that.

**Senator HUMPHRIES**—What are the most common types of complaints?

**Ms Sykes**—The most common complaint is about standards of professional conduct, and that is about 61 per cent of complaints. The next largest is duties of agents to employers, which is 11 per cent.

**Senator HUMPHRIES**—Can you break down the complaints about standards of professional conduct? Specifically, what do most people complain about?

**Ms Sykes**—The kinds of things that would come under professional conduct would be dealing with clients competently, diligently and fairly; demonstrating a sound working knowledge of the relevant legislation; acting in accordance with instructions and keeping the client informed; submitting complete applications; and integrity. I do not have a percentage breakdown of those.

**Senator HUMPHRIES**—That is all right. Are there many complaints about fees being inaccurately estimated or stated before the onset of assistance?

**Ms Sykes**—There are complaints about setting a fee that is reasonable in the circumstances, and not providing an estimate of fees at the time of service.

**Senator HUMPHRIES**—But that is not a dominating factor in the complaints that you receive?

**Ms Sykes**—Fees and charges attract about 5 per cent of complaints.

**Senator HUMPHRIES**—Okay. How has MARA's budget been affected in this most recently published budget? Has your bottom line changed?

**Ms Sykes**—No. I am not quite sure—are you asking about the budget for this financial year?

**Senator HUMPHRIES**—For the 2010-11 financial year?

**Ms Sykes**—My understanding is that the budget is pretty much in line with what the estimates were.

**Senator HUMPHRIES**—Is it much the same as it was for the present financial year?

**Ms Sykes**—No, it is not. Additional funds were put into the budget for this year to cover transition costs.

**Senator Chris Evans**—It was established this year, so there were establishment costs. As I understand it, it has gone back to its operating budget.

**Senator HUMPHRIES**—Thank you.

**Senator BARNETT**—I have some follow-up questions. I refer, first, to the website. I want this confirmed on the record, because we had a discussion about this in February. I want to confirm that the security and privacy issues have been dealt with and are now under control. I understand it was a \$170,000 cost to upgrade and enhance the new website, rather than the \$100,000 as initially advised. I would like an update on that figure and if that is accurate. I would also like to know whether the security and privacy concerns have been addressed.

**Ms Sykes**—I am advised that as at 5 May, which is the last bill that we had, the cost was approximately \$165,000. To be exact, I can tell you that it was \$164,656.

**Senator BARNETT**—Don't you think it sounds as though it has gone down since February? You told me it was \$170,000.

**Ms Sykes**—That is right—it was an estimate in February.

**Senator BARNETT**—And the security and privacy issues?

**Ms Sykes**—Security and privacy issues have been addressed, yes.

**Senator BARNETT**—So you have not had any complaints or concerns expressed about the website since it restarted?

**Ms Sykes**—We have not had any complaints about the website since it started.

**Senator BARNETT**—Very good. Can I ask about the dispute with the former CEO? I think Mr Vardos provided some information in February. Can you give us an update on that, Mr Vardos, and the funds that were outstanding, vis-a-vis the redundancy?

**Mr Vardos**—There is no longer a dispute as such, as the amount that the MIA board has indicated it intends to pay to the CEO appears at face value to us to be acceptable. We are asking for the documentation to validate that figure. But at face value the figure itself is not out of the realms of the acceptable.

**Senator BARNETT**—And you would prefer not to release that figure today?

**Mr Vardos**—With your indulgence, Senator.

**Senator BARNETT**—I understand and accept that. I think you provided evidence in February of a figure between X and Y dollars, which is on the record. Is it still consistent with that?

**Mr Vardos**—It is still in that range. It is at the lower end of the range. I just want to emphasise that what we are seeking at this point in time is validation of the calculation, because the figure itself looks acceptable at face value.

**Senator BARNETT**—I refer to the trust fund in which I think there was about \$4 million?

**Mr Vardos**—I can confirm that the total amount that has been handed over to the Commonwealth, to consolidated revenue to be precise, is \$4,275,291.73. I would like to be able to tell you that there are no amounts still in dispute, but that is not the case. There is an amount of the order of \$290,000 and we are still in dispute with the MIA over the figure. That relates to both the community perception survey, which I have mentioned in previous estimates, and the fidelity fund study, plus what I would describe as certain professional services that were provided.

The issue boils down to whether those costs were properly incurred by the MARA or the MIA. Our view is that those activities were MIA activities, and MARA funds should not have been used to fund them. That is the point of dispute. We are going through a process and we are continuing to go through a process. I indicated at the last estimates that I was hoping to wrap this issue up by 30 June this financial year. I cannot predict whether or not that will be the case. We are still in very heated discussions with the MIA essentially over those two issues with, as I have said, certain professional services added to that.

**Senator BARNETT**—I think in February you indicated that there were two separate issues that you were working through with the MIA. What has happened? Are those the issues you are talking about?

**Mr Vardos**—Essentially, those are the core issues—the cost of the community perception survey, the cost of the fidelity fund, and certain legal and accounting and other services that were provided. Are they costs that should properly have been charged to the MARA as it existed at the time, or should they be costs that are borne by the MIA? That is the

differentiating issue. The government's view is that those costs were properly MIA issues and should not have been charged to MARA funds, and that is the point of difference between us.

**Senator BARNETT**—When do you expect a resolution?

**Mr Vardos**—Given what I said in the last estimates, I do not think I would like to predict at this point. We have gone through a process where we have exchanged statements of facts and contentions, putting our case to them, and they have responded. We do not have agreement at this point. Failing a negotiated outcome, the only avenue left to the Commonwealth is to pursue litigation, but we have not yet reached that point. However, I think we are pretty close to it.

**Senator BARNETT**—How would you describe the relationship between the department and the MIA at the moment?

**Mr Vardos**—We continue to have a very regular, frank and robust dialogue. That has not stopped.

**Mr Metcalfe**—I think that there are two aspects to the relationship. There is a normal working relationship—a stakeholder and a group of people interested in immigration issues. We continue to work effectively with the MIA on this particular aspect. I think Mr Vardos is being polite. Basically we are at the stage of believing that we must take more aggressive action to pursue the return of taxpayers' funds to the Commonwealth. We are prepared to engage in litigation, if necessary. We are making that quite clear to the board of directors of the MIA.

**Senator BARNETT**—Have you written to them or expressed that view?

**Mr Metcalfe**—We are on the point of doing that. Mr Vardos said that we have not quite reached that decision but I think we believe that we have gone through an exhaustive process of seeking to come to an agreement. But in the absence of that we are now happy to consider taking more aggressive action to ensure that taxpayers' funds are returned to the Commonwealth.

**Senator BARNETT**—All right. The community perceptions and fidelity fund study, when were they undertaken?

**Mr Vardos**—I cannot recall the exact date. My colleague may have the dates. What I can say is that it was well before the transition of the MARA into the Office of the MARA. They were undertaken under the previous arrangements where the MIA managed the MARA.

**Senator BARNETT**—You are saying that that was rightly a cost to the MIA rather than the Office of the MARA?

**Mr Vardos**—Correct. We are not disputing the activities themselves.

**Senator BARNETT**—No.

**Mr Vardos**—It is a question of whether they were rightly charged to MARA funds or whether they should they have been the responsibility of the MIA to pay.

**Senator BARNETT**—I can understand that. Thank you for that. Just to wrap up on this \$4.2 million that has gone from this trust fund into consolidated revenue, could you confirm on the record that you have had concerns expressed about that, which was previously with the

office of the MARA or under MARA's funds. We had a discussion about this in February as to whether it was rightly the agents' money or rightly the taxpayers' money. It has now gone into consolidated revenue. That is a fact; it is now history. But in terms of concerns expressed or views having been put from the profession and agents more generally, have you had feedback with respect to the use of those funds going where they have?

**Mr Vardos**—I can say that representations or concerns have not been expressed to me directly, so I cannot respond. But at a working level, agents may well have expressed those views either to my colleagues in the national office or at the MARA. For me personally, the answer is no.

**Senator BARNETT**—Finally, I go back to the complaints, if I could—339 I think you said for this financial year, which is a pretty big increase on the figure for last year. The figure you gave us in February was 215. Is that right, Ms Sykes? Can you clarify that? What is the reason for such an increase?

**Ms Sykes**—I do not have exactly the figure I gave you last time, but we did compare the nine months.

**Senator BARNETT**—I have. I have the *Hansard* in front of me. It was 215.

**Ms Sykes**—We did a comparison of the nine months in 2008-09 to the nine months in 2009-10, to the end of March. The number of complaints received by the former MARA was 234 in those nine months, and the number of complaints received by the Office of the MARA was 339 in those nine months. So there is an increase in that period. We are looking at why that increase occurred. Again, it is difficult to see a real pattern with complaints because from year to year they vary considerably, and because in some cases we will get several complaints about a particular registered migration agent. So if somebody has really upset a lot of people you might get a lot more complaints about that one agent. The patterns are a bit difficult to tell a lot from at this stage. The other thing we need to look at is to ensure that we are comparing like with like. I think that we are probably recording some more complaints now than were recorded as complaints previously.

**Senator BARNETT**—Was that because of the changing system?

**Ms Sykes**—A combination of the changing system, and we have slightly changed our approach so that we are now more consistently recording complaints that we get from the department. I understand the former MARA did not record all those complaints; it recorded only those complaints that then went on to an investigation.

**Senator BARNETT**—It is 26 May today. This is a pretty significant increase on the figure for the past year. I would have thought that you would want to know the reasons why that is the case. It is substantial. All I can do is draw it to your attention and see whether you can get to the bottom of it so that those concerns can be addressed.

**Senator Chris Evans**—Senator, I just make the point that, of course, this is the first year of operation of the new Office of MARA. It was differently configured when the MIA was administering it. So obviously there would be changes of procedures and perhaps policy. To be fair to the Office of MARA, it is not comparing like with like in a sense in relation to its experience. I think the office has made it clear there have been variants over the years. We

could give those figures to you. The problem is that this organisation is only 10 months old, so this is its first year of dealing with these complaints.

**Senator BARNETT**—Ms Sykes, do you have the resources available to deal with the workload that you have?

**Ms Sykes**—I believe that we do have the resources available. As you are aware, however, we did go through a very big process of reappointing staff, so we have been doing a lot of recruitment, training, and getting staff up to speed in terms of their proficiency.

**Senator BARNETT**—I think the staffing issue was an issue in November and in February. I think Mr Vardos advised that you had a transitional process.

**Ms Sykes**—That is correct.

**Senator BARNETT**—How many have transferred over from the old MARA to the new and how many have not?

**Ms Sykes**—I think as we previously informed you when we commenced operations on 1 July, we had 18 MARA staff. We have gone through an independent selection process and currently we have three MARA staff.

**Senator BARNETT**—You have three—out of?

**Ms Sykes**—Out of the 18.

**Senator BARNETT**—Out of the?

**Ms Sykes**—Eighteen.

**Senator BARNETT**—Only three out of the 18?

**Ms Sykes**—Yes.

**Senator BARNETT**—Why is that?

**Ms Sykes**—A range of reasons—

**Senator BARNETT**—That is a huge drop.

**Ms Sykes**—As I said, we did a selection process, which was independent. Eight of the staff were not successful in that selection process, four staff resigned prior to that selection process in order to take up other opportunities, two were offered a position but did not accept it and one person who did not get a permanent position has continued with us in a non-ongoing way.

**Senator BARNETT**—Can I go to the code of conduct and how that is operating with migration agents. My understanding from last estimates is that that is in place. Is that correct and is it operating effectively?

**Ms Sykes**—That is correct. There has been a code of conduct in place for quite a long time. In my view, the code of conduct is operating quite well and we are currently looking at it. It provides us with quite a good basis to consider complaints and to sanction agents.

**Senator BARNETT**—It is voluntary or mandatory?

**Ms Sykes**—It is mandatory.

**Senator BARNETT**—So on the basis of that code complaints are made?

**Ms Sykes**—That is correct.

**Senator BARNETT**—And you assess levels of quality performance and key performance indicators; is that right?

**Ms Sykes**—That is right—on the basis of the code. The sanctions are set out in the code.

**Senator BARNETT**—Thank you for that. I appreciate the feedback.

**CHAIR**—Thank you for your attendance this morning. We are now going to cross-portfolio questions with officers of the department. Mr Correll and Mr Hughes, welcome to you both.

**Senator HUMPHRIES**—I want to ask for a few details about the staffing position as a result of the budget. Can you give us an idea of what the 2010-11 budget means for the overall staffing establishment of the department?

**Mr Metcalfe**—I will get Mr Correll and Ms Prothero to go through it in more detail. I will paint you a picture very briefly. In broad terms, the department has a small reduction in its overall budget through the forward estimates. That is largely because of a range of efficiency measures and reviews such as the Gershon review in relation to technology, the finalisation of the very large Systems for People technology project, the ending of some of the funds that we were provided with following the Palmer report into Cornelia Rau to strengthen the organisation. In broad terms, our budget is decreasing. But given that it is a \$2 billion portfolio budget, the sums are not all that significant.

I think you are aware from our earlier discussions on other occasions that a significant proportion of our funding actually relates to activity levels, so it is measured depending on the size of the migration program, the number of tourists coming to Australia, compliance activity and all those sorts of issues.

Given the significant increase in irregular maritime arrivals in the last year, that aspect of our funding has obviously increased significantly because of the requirement to process and to accommodate people. In budget terms, that aspect of the department's work has grown significantly and indeed our staffing and other costs in that area have grown significantly.

So we are seeing slight reductions in what I would describe ordinary budget programs because of a whole range of measures. But in the area of irregular maritime arrivals, the rate has meant that we have had a significant increase in funding.

**Senator HUMPHRIES**—Can you quantify that a little more in terms of staff? What extra staff are now dedicated as opposed to two years ago? How many more staff are dedicated in the coming financial year? How many are dedicated to those extra irregular maritime arrivals that were not occurring two years ago?

**Mr Correll**—The movement in numbers in the portfolio budget statements from 2009-10 levels to 2010-11 levels is in fact a reduction in average staffing level by two.

**Senator HUMPHRIES**—This is across the board?

**Mr Correll**—Yes—across the board there is a reduction by two.

**Mr Metcalfe**—Hopefully not you and me, Bob.

**Senator Chris Evans**—A decision on that is pending. Performance at estimates is a key performance indicator.

**Mr Correll**—Reduction in staffing levels is occurring across outcomes one, two, three, five and six in the portfolio budget statements. The overall reduction there is a figure of 64 ASL. That is almost entirely offset by an increase of 62 ASL in outcome 4. That is virtually fully attributable to the increase in irregular maritime arrival workload. Essentially, the average staffing level in the department is remaining relatively flat. However, there is quite a significant shift occurring towards resourcing in the IMA workload to the tune of a little over 60-odd staff.

**Senator HUMPHRIES**—That is the position as of the end of this coming financial year?

**Mr Metcalfe**—30 June.

**Senator HUMPHRIES**—You answered a question from Senator Barnett previously about the departmental staff on Christmas Island. That number had grown from four on 30 June 2008 to 47 on 30 June 2009. As at 31 January 2010 the figure is 72. Do you know what the figure is likely to be by the end of this coming financial year?

**Mr Correll**—I can quote the current figure. As at 19 May there were 85 staff on Christmas Island.

**Senator HUMPHRIES**—With an expectation of a continuing upward progression? Is that reasonable?

**Mr Correll**—Not necessarily. I think we are probably reaching a plateau point in our staffing of Christmas Island.

**Senator BARNETT**—Because they do not fit?

**Mr Correll**—No. Accommodation levels on Christmas Island are certainly nearing full capacity and that is why I suggest we would be reaching a plateau point with staffing.

**Senator Chris Evans**—I point that we are not the major workforce there, either. There are contractors and a whole range of other providers. We are actually quite a small part of the total workforce.

**Mr Correll**—The total workforce, including contractors, is in the order of 400-odd people.

**Senator HUMPHRIES**—As of 31 January 2010, there were 284 contract staff on the island, as you said in your answer to the question. Do you know what the figure is as of 19 May?

**Mr Correll**—Yes, we would have that figure. We just need to delve into some statistics to pull it out, and I will suggest to my colleagues that they do that in the background and we will have it in a moment.

**Senator HUMPHRIES**—As of that date, how many inmates are there? What do we call them?

**Senator Chris Evans**—Clients.

**Mr Metcalfe**—We certainly do not use the term ‘inmate’.

**Senator Chris Evans**—And have not done for many years.



**Mr Correll**—The total number of staff across all providers, including DIAC, on the island as at 19 May was 412.

**Senator HUMPHRIES**—Can you break that down? Departmental staff are obviously 85, so that means the remainder is contract staff. Is that correct?

**Mr Correll**—Yes. That is broken down into Serco, 143; the health services provider, IHMS, 38; interpreters, 58; facilities management, 22; Life Without Barriers, Red Cross and teachers, 11; immigration advice and assistance scheme, 12; independent reviewers, two; the employee assistance program that provides assistance to staff members on the island, one; and the Christmas Island maintenance service involves 40.

**Senator HUMPHRIES**—That is about 327 contract staff.

**Mr Correll**—In that order, yes.

**Senator HUMPHRIES**—How many clients did you have as of 19 May?

**Senator Chris Evans**—A number of those would be locally engaged staff. There were over 100 engaged through the contractors. Is that right, Bob?

**Mr Correll**—Yes, there would be a very significant number of locally engaged staff. Indeed, I can give that figure. Out of the 412, 124 are locally engaged staff.

**Mr Metcalfe**—Senator, you asked about clients. I think that is probably an issue we should cover when we get to the particular program of offshore detention management. We are certainly happy to answer questions about the number of clients we have on Christmas Island, but it really falls under the specific program 4.3.

**Senator BARNETT**—What are you saying?

**Mr Metcalfe**—Senator Humphries asked us about the number of clients on Christmas Island. I can see where the question is going—how many staff are dealing with how many clients. We are getting fairly close to the issues that are covered specifically under program 4.3, offshore asylum seeker management as opposed to the more general cross-departmental issue where staffing would come in.

**Senator HUMPHRIES**—You have updated me on two of the three sets of statistics in that question taken on notice. I am asking for the third set if you have them there. I will not ask any further questions about that until we get to outcome four.

**Mr Correll**—I have just gone for my lifeline: my folder relating to outcome four. Just give me a moment and I will pull together the statistics. As at 19 May, there were 2,295 people on Christmas Island.

**Mr Metcalfe**—Clients or people?

**Mr Correll**—Clients.

**Mr Metcalfe**—Clients of the department.

**Mr Correll**—That includes irregular maritime arrival passengers and 14 crew.

**Senator HUMPHRIES**—This comes back to a cross-portfolio question. The 85 staff are departmental staff now on the island. Given the fact that they have effectively been taken from other outcomes within the department, what sort of areas have they been drawn from?

Presumably you would say there is greater efficiency elsewhere in the department to free up 85 people to go to Christmas Island.

**Mr Correll**—The 85 staff that we have on Christmas Island at the moment would include people in two different types of categories. One would be longer-term placements—in other words, a core group providing core services on Christmas Island. The second component would be teams of people who come onto the island for relatively short periods of time to do processing—entry-level interview processing, refugee status assessment type processing. Those teams tend to get drawn from different parts. The refugee status assessment processing will come generally from specialist refugee status assessment areas within the department's normal business operation. The teams are set up in our Sydney and, I think, Melbourne offices, and staff move from those office in teams to Christmas Island. The core group that is on the island is drawn from quite a range of different areas—certainly from our usual community and detention services areas but also from a range of other areas of the department. What you see on the island at the moment absolutely mirrors the comments I made earlier about the shift in resourcing. There is a shift in our resourcing base at the moment from some of those core outcome areas across into irregular maritime arrival work. That is reflected by what you see on the island at the present stage.

**Senator HUMPHRIES**—Are you saying that those 85 are not FTE; they are 85 bodies who happen to be on the island at the moment but they could be back on the mainland?

**Mr Correll**—Every single week there are movements on and off the island because of the fact that the departmental staff on the island is a combination of core longer-term placements running detention operations on the island, contract management of Serco's operations on the island and longer-term case management services provided on the island, and the constant flow of staff who are processing teams and who are on the island perhaps for one to two weeks.

**Senator Chris Evans**—They effectively go on, do the interviews, bring their work back and write up their decisions, records et cetera. They go on for a period and come off, and they continue their work back on the mainland.

**Senator HUMPHRIES**—So they are not spending a lot of time away from their desks in Canberra or wherever, but obviously the workload generated by the number of irregular maritime arrivals must be significant. It has been suggested to me that other visa applications are being dealt with more slowly because the department is absorbed with dedicating resources to issues associated with IMAs.

**Mr Metcalfe**—I think it is something that is properly raised. In my opening statement I made the comment that, notwithstanding the very significant impact that the IMAs issue is having on the department—it is a significant workload across several areas of the department both in Australia and overseas—we are very pleased that we have been able to significantly improve services in other aspects like visa processing and consideration of applications across a range of areas. I am sure Ms Hand can talk about that.

We have certainly seen some of our staff working on Christmas Island for longer-term postings of six months or so. Our manager there, the assistant secretary, is there on a 12-month placement which is coming to an end fairly soon. Other staff go there for the periods of

days or weeks, depending on their interviewing and other tasks. I take this opportunity to say that I am very proud of the work that those staff do. We ask a lot of them, particularly if there are people arriving and leaving, processing and other issues. They have shown extraordinary commitment. I think Australia should be very proud of the work that our staff and staff from other departments are doing there.

On the issue of whether this is impacting on other services of the department, both the deputy secretaries and I are very concerned that we are focusing on the complete work of the department as well as the services we provide to other clients, whether they are clients who are visa applicants or whether they are clients who prefer not to see us, such as compliance clients. We are happy to talk about that particular area if you wish but, again, it might be something that we cover under the particular program areas.

**Senator HUMPHRIES**—I take what you are saying on board. But I do not think you answered the question about what impact these extra efforts are having on other areas of departmental activity.

**Mr Metcalfe**—It is having an impact in a couple of ways. Clearly, in some areas we are increasing resourcing levels or backfilling jobs. More experienced staff are the ones identified to undertake this sort of work. So there is a requirement for their job, whether it is in Sydney, Melbourne, Perth, Canberra wherever, to be backfilled. We have certainly increased our training efforts and have been preparing more and more staff to take on these sorts of jobs. Workforce planning has been a critical element of our response to this issue. That is one aspect of how we have responded in ensuring that the work continues to get done. At the same time, this just happens to coincide with a very determined effort to increase our efficiency levels across the department. I think that we can show in a range of areas that we are actually providing better services in a more timely and with higher levels of integrity of decision-making than we may have previously. It would have happened anyway, it just happens to coincide with the fact that we also have a high tempo of work associated with IMAs. Ms Hand might be able to give you a couple of examples if that would assist as to where we are actually seeking and achieving more efficient and better outcomes.

**Senator HUMPHRIES**—I am not asking for that; I am asking for details of the impact on the rest of the department's work. For example, can you tell me whether visa processing times are deteriorating in other areas?

**Ms Hand**—In the past 12 months with the concerted effort we are putting into performance—and I am very happy to elaborate on that if you would like in terms of what we are doing—our visa processing performance across the board improved to 92 per cent finalised within the service standard. Last year it was 90 per cent. When you break that down by the program lines, that has been a dramatic improvement. For instance, for onshore visitor visas, the figure is 98.5 per cent finalised within service standards. When you look at economic migration, there was a huge increase from 48 per cent last year to 81 per cent this year. There are other areas where we have been giving a lot of focus because we were not doing well enough. For instance, our processing of FOI applications was not up to scratch. It has risen from 67 per cent of requests finalised within 30 days last financial year to 90 per cent as of April this year. Our service centre performance—that is, our contact centres or call centres—is at an all-time high. For the last three months we have been above service standard

for the grade of service and call handling times in the service centres. That is as a result of a concerted effort to have specialists who know the service centre industry run that business.

We are in the midst of putting in place for every business or service line in the department what we call global managers. That is leading to huge productivity gains which would have happened irrespective of the IMA operation, but, frankly, it is very useful in a period of high tempo. What do I mean by that? A global manager is responsible for particular lines of business globally. One of the things they do is look at the performance of that business line globally. Is the integrity of the program being achieved? Are client service standards being achieved? Do we have a consistent client experience across the program? Rather than running a particular state or a particular post overseas, with all services run by one manager who obviously may have differences from region to region or post to post, we now have very senior experienced global managers looking at the performance of particular lines of business. That was a strategy we had anyway, but it has allowed us both to improve client service but also efficiency so that we can free up our people through business process reform to either assist in the IMA operation or in other areas of our business and our service delivery that are under pressure.

**Senator HUMPHRIES**—I will see how that drilled down into individual processing time outcomes for individual visa classes.

**Ms Hand**—We can give you that.

**Senator HUMPHRIES**—And how has it improved, say, on the previous financial year?

**Ms Hand**—We can do that.

**Senator HUMPHRIES**—Good.

**Senator BARNETT**—Ms Hand, with the sort of performance that you are delivering, maybe we could have another 1,000-odd people cut from the department and it would not make any difference.

**Ms Hand**—One of the deliberate strategies that that we have as part of the transformation that the secretary talked about earlier is to free up our people in the service delivery network from low-risk manual processing, do a lot more of that electronically or through contact centres or service centres such that we can free up our people for higher risk activity or activity that requires a face-to-face interaction with a client, compliance and those sorts of activities. Part of the strategy will absolutely see us reduce the workforce in particular areas of service deliver that can be done electronically.

**Senator BARNETT**—Which areas?

**Ms Hand**—As I said, if we have high volume, low risk caseloads in visa processing in particular but citizenship too, over a number of years we want to move that into—

**Senator BARNETT**—What cuts are you going to make in staff in the next 12 months?

**Ms Hand**—In the next 12 months we will not actually be cutting anyone from the network because we need them for other activities like IMA operations or activities where we are under pressure. But we will absolutely as a result of some work placement decisions

announced recently be moving people to some of those activities as we progressively centralise and make much more use of online delivery.

**Senator BARNETT**—Do you have any figures for the second year or the third year?

**Ms Hand**—No, we are working on validating the data now. But the strategy is absolutely as I said—to migrate low risk, high volume processing to electronic and self-help or service centre—

**Senator BARNETT**—Have you done any modelling?

**Ms Hand**—Yes, we are in the midst of that.

**Senator BARNETT**—Have you got the modelling?

**Ms Hand**—No, I do not. We are in the midst of validating. I would hate to table data that is still in the midst of being validated.

**Mr Metcalfe**—In my opening statement I talked about this longer term transformation about building a stronger department. We did a lot of work last year and have commenced what I regard as a four-, five- or six-year project. A lot of the building blocks are now in place. There has been a major reorganisation of the department in national office. The concept that Ms Hand has talked about in looking at our business from a global perspective and appointing global managers to run a consistent global approach across certain visa lines or product lines is part of that. The ability to use the technology framework that has been put in place for the assistance of people and to extend that, all of these mean that we are quite confident that we can run a more efficient, better quality immigration service in the years to come.

**Senator BARNETT**—With a lot less staff?

**Mr Metcalfe**—Not with a lot less staff.

**Senator BARNETT**—How many less staff?

**Mr Metcalfe**—I would not want to put a figure on that for the same reason that Ms Hand mentioned, that we are still doing some modelling. What I do know is that my forward estimates show that we will be reducing income in some areas, noting that we are activity-based and that we are always going to need to respond to changes in application rates and the complexity of applications—

**Senator BARNETT**—Reducing income in some areas, you said.

**Mr Metcalfe**—No, I am saying that the forward estimates show that for the department, apart from IMA, our income from the budget is reducing. We were obviously planning for that. The fact that the IMA issue is a significant aspect of activity means that we are not reducing staff numbers; we are simply redeploying them from one area to another area. But over time we expect that we can run a more efficient, more effective immigration service with better outcomes for clients, better integrity of decision-making and, frankly, better efficiencies for government.

**Senator BARNETT**—It beggars belief. You are reducing your income over time. That is what you have said and that is what is in the budget papers. But you have not been able to categorise exactly how many or provide even an estimate of how many staff will be cut. You

simply say that you are moving them from one area to another. The fact is that there will be a significant reduction in staff. I am asking how many and over what period of time. You are saying you cannot answer that. Yet the figures are going down like that. How do you come up with those budget figures?

**Mr Metcalfe**—What I have also said is that department's staffing and its budget allocations are highly dependent upon activity levels and it is not possible to forecast well into the future what those activity levels might be.

**Senator BARNETT**—But it is in the budget.

**Mr Metcalfe**—It is an estimate.

**Senator BARNETT**—They are in the budget; they are estimates. Based on those estimates, how many people will be reduced? You must have those figures with you.

**Mr Metcalfe**—Sorry, I have not explained myself properly. I have indicated that the department, apart from IMAs, has a modest reduction into the forward estimates. Our chief financial officer can take you through that if need be. The incident of irregular maritime arrivals has led to a significant increase in the department's budget in that particular area. Those measures have offset each other. As a result, no staffing reduction is occurring—or, as Mr Correll indicated, we expect a staffing reduction of two next year. I cannot predict with any certainty as to decisions of the future, the size of migration programs, the number of tourists coming to Australia, or the number of boat people coming to Australia. While there are estimates in the budget, it has always been the case that the department's budget will vary year to year, and our staffing requirements will vary year to year, depending upon activities.

**Senator BARNETT**—I appreciate what you are saying. You have explained it to the best of your ability. But it is quite obvious on any objective assessment. If there is a reduction in funding for the department over a period—

**Senator Chris Evans**—But there is not a reduction.

**Senator BARNETT**—You would have a considered estimate in terms of the reduction of staff over that same period.

**Senator Chris Evans**—I think the point you are missing is that there is not a reduction in the total budget of the department. He is saying that, because of the increased activity with unauthorised arrivals, the other reductions have been offset by increased expenditure. Ms Prothero or Ms Hand might take you through this but the actual total budget is not reducing. We have growth in one area and reduction in another.

**Senator BARNETT**—I know. This is the point that Senator Humphries has been pursuing. But we do not have an answer about which areas of your department are directly affected by staff cuts over a period. We have hit a brick wall.

**Mr Correll**—Let me reiterate the key points. The department's business is divided into various outputs, as defined in the PBS. Each of those outputs has ASL figures attributed to them. Outputs 1, 2, 3, 5 and 6 are reducing their average staffing level by a factor of 64 during 2010-11. But as I was saying earlier, that is being offset. So those areas—the broad other parts of the department—are going down by 64 average staffing level. That is being offset by an increase of an average staffing level of 62 in the irregular maritime arrival area.

The way the irregular maritime arrival area works is that an absolute quarantined budget applies to that area. That means, if any individual staff member of the department is engaged on irregular maritime arrival work, their costs are immediately charged to that separate budget, which enables the line area to be able to backfill for that individual, if that is necessary. That is why, when you asked what was the knock-on effect of moving these people across into irregular maritime arrivals, the answer was, as Ms Hand outlined, that there is no major knock-on effect, because we have the ability to backfill in that area because that individual is being charged against a different budget.

**Senator HUMPHRIES**—And how do you backfill? If you need staff in a particular area, do you go outside the department to find those staff?

**Mr Correll**—The backfilling can occur in two ways and it will depend on the business area involved. If it is a business area that clearly has a long-term substantial workload in front of it, the backfilling would be via ongoing employment. If it was not, it would be by non-ongoing employment. Those judgments are made every single day in the department.

**Senator HUMPHRIES**—What you are saying is that the 64 fewer staff that you have on paper in the budget will be replaced by either ongoing staff or consultants, depending on the nature of the task in individual areas?

**Mr Correll**—Yes. It would be ongoing staff. I would not say consultants, as they would not be engaged in these sorts of areas. There would be other staff coming in. Also, some of the direct requirements for irregular maritime arrival we source outside the department. For example, we canvass other agencies for specialist skills such as case managers, who will also come into the organisation.

**Senator HUMPHRIES**—When you say that there will be 64 fewer staff in outcomes 1, 2, 3, 5 and 6 of the department, do you mean that there will be 64 fewer FTEs in those areas or that the baseline establishment of those areas will be 64 fewer but in fact they will be filled by other people as the need arises for people to be transferred into outcome 4?

**Mr Correll**—The average staffing level is, of course, a measure of a series of point in time headcounts averaged across the year. Essentially, that is saying that from the start of the financial year to the end of the financial year there would be a progressive lowering of the headcount in those areas. And when you total that across the year, the impact on average staffing level usage across the year would be the figure of around 64. That is from a budgetary planning point of view. The actual might vary around that. But that is what the intent would be at the present stage.

**Senator HUMPHRIES**—I still do not understand how it works. If you expect them to be backfilled, if they are moving into the area of dealing with the issues associated with IMAs, do you expect to see at the end of the year a reduction of anything like 64 in other areas of the department?

**Mr Correll**—Let us assume for a moment that there is an absolute straight line reduction occurring through the course of the financial year. To reach a figure of 64 fewer ASL at the end of the year you would have a reduced figure of 128 at the end of the year. That is just on straight reduction, because that is the way in which average staffing level works. But the reality of it is that the world does not work in beautiful straight lines. We will be working on

what actually happens in terms of irregular maritime arrivals. Our response to that will need to reflect the changing and highly volatile position with irregular maritime arrivals.

**Senator Chris Evans**—I think the question that Senator Humphries is getting at, and I am now supporting him in getting an answer to, is whether we effectively have 64 fewer people working under those program areas across the year. Do we have fewer bodies in those program areas as a result of the reduction in the establishment?

**Mr Correll**—Yes. But the answer is not necessarily precisely 64 bodies, because that is not the way average staffing level is calculated.

**Senator Chris Evans**—No. You are backfilling but you also have a 64 reduction?

**Mr Correll**—Yes.

**Senator Chris Evans**—I think there was confusion because we are backfilling but, in addition to that, there will be 64 fewer bodies, given all the qualifications that have been put on them.

**Senator HUMPHRIES**—If that is the case, I come back to the basic question. You have to rob Peter somewhere to pay Paul, haven't you? You have to reduce other areas in the department.

**Mr Metcalfe**—In a straight line situation. I think the important thing is that there are an enormous number of moving parts. In a straight line situation, we need to be more efficient in those areas. I think we have shown that we are being more efficient in those areas. But, as you know, a huge number of aspects make up our budget, make up our bottom line.

**Senator BARNETT**—We appreciate your explanation but Senator Humphries and I are trying to be specific and we are trying to be particular. We are hoping to get responses that are relevant directly to the question. I know that Senator Humphries is trying to find out exactly where those 64 people come from.

**Mr Metcalfe**—If nothing happened in the world apart from this, we would expect to see 64 fewer staff across those programs, and we would expect to see 62 more staff in the IMA area.

**Senator Chris Evans**—Which I think is the answer that you were after.

**Mr Metcalfe**—That is the answer to your question. But with respect, Senator, that is a relatively meaningless point to debate because we are seeking efficiencies and we are having constantly to adjust and respond to changing circumstances.

**Senator BARNETT**—We hear that.

**Senator HUMPHRIES**—Can you break down between the other five programs where you would expect the 64 bodies to come from?

**Ms Prothero**—We would expect 39 to fall in relation to outcome 1, five to fall in relation to outcome 2, a drop of nine in relation to outcome 3, a drop of four in relation to outcome 5, and a drop of seven in relation to outcome 6. One thing I would say about the ASL numbers though is that they also include an allocation of the overhead services. It is not just the staff delivering those services but also savings in things such as financial processing, HR processing and those sorts of things.



**Senator HUMPHRIES**—You would not make many savings when you are getting drops of only five, four or nine people though, would you? They are very marginal costs. Do you have the figures for the number of people presently in the establishment of each of those five programs from which you are subtracting the 39, the five, the nine and so forth?

**Ms Prothero**—No, sorry, not on that split. We can get that for you.

**Senator HUMPHRIES**—If you could take that question on notice it would be useful. With 39 people coming out of what presumably is a relatively large area of the department—outcome 1—what do you expect to be doing differently or more efficiently or less of in outcome 1 to accommodate that kind of reduction in staffing?

**Mr Correll**—It is not just a question of how we are looking at efficiencies—and we are always looking at efficiencies—in those areas; it is also a direct function of changing workloads in those areas. Indeed, those numbers are driven as much as anything by changing workload patterns across each of those outcome areas.

**Senator HUMPHRIES**—But you would not expect a lower workload in outcome 1, would you?

**Mr Metcalfe**—For example, we know that the migration program will be about the same size.

**Senator HUMPHRIES**—That is right.

**Mr Metcalfe**—But there are slightly different compositions within that program. We know that we have seen a significant fall in the number of applications for student visas, so that clearly will impact on how we make resource decisions—

**Senator HUMPHRIES**—But you are going to have more skilled migrants, so presumably that will offset that.

**Mr Metcalfe**—Again, it is not apples and apples.

**Senator Chris Evans**—Just to be clear, in the permanent program the total numbers are about the same. There is a bit of a difference. I think Mr Metcalfe was referring to the temporary migration programs, which are more volatile. The integrity crackdown plus the value of the Australian dollar and other things have seen quite a significant reduction in student applications. For instance, our student branch will be processing a lot fewer applications than it was processing at the same time last year.

**Mr Metcalfe**—But looking more carefully at some areas.

**Senator HUMPHRIES**—I understand that but, as I said—

**Senator Chris Evans**—It may increase, in which case we might have to put more resources into that.

**Senator HUMPHRIES**—You already said in the budget that you want to have 5,700 more skilled migrants

**Mr Metcalfe**—That is correct.

**Senator HUMPHRIES**—Are you anticipating a lower workload for outcome 1 than in the previous financial year?

**Mr Metcalfe**—On the forecast the answer is yes across all those visa categories. I again make the plea that this is heavily dependent upon factors, some of which are within our control but some of which are not, such as the actual number of people who decide to come and study in Australia or the number of companies seeking temporary foreign workers in Australia. Our budget is, in fact, designed under arrangements that have been in place with the Department of Finance and Deregulation for years to adjust as necessary. What the budget states is the best estimate at a point in time in mid-April 2010 but what really happens will be the subject of very close management across the year as we shift resources and as we experience different workload approaches.

The expectation when the budget is settled mid-April is that we will have a smaller number—fewer staff—working across all of outcome 1. Many hundreds of staff work across that program but what happens in reality will depend upon a whole range of situations. I do not want to be unhelpful but, because there are so many moving parts, it is impossible to give a single straight answer in relation to some of the questions that you are asking us.

**Senator HUMPHRIES**—Earlier you or the minister referred to efficiency measures. What sorts of efficiency measures?

**Mr Metcalfe**—I think Ms Hand was the one who talked about it. We can certainly give you more details.

**Ms Hand**—One of the major things we have been doing this year is looking at the business procedure to process an application or whatever the product or service might be. As a result, we have been able, in a number of business lines, to reduce the time that it takes to process an application for instance, such that we have been able, as a result of cuts to our budget, to redeploy some of our budget to other pressure areas by sheer business process reform.

Something that is front of mind for all my global managers is that we must be looking at continual efficiencies to ensure that it is a rigorous decision-making and application process but, at the same time, is streamlined to the extent that it can be without obviously compromising integrity, as that is paramount. That is one of the things.

One of the other things we are seeking to do, as I said before, is to use our electronics, our web, our online lodgement channels and our service or contact centres more for the lower-risk, high-volume work. So, again, as our budget has been cut through progressive years of efficiency dividends and the like, we can redeploy our resources to the higher-risk or more complex areas and not have people doing low-risk work that can be automated through online lodgment, for instance.

**Senator HUMPHRIES**—I can see the philosophy behind that but I am not clear about what has changed. You say that you want to reduce the time that it takes to process some applications.

**Ms Hand**—Yes.

**Senator HUMPHRIES**—That does not save any money unless you also take something out of the process or somehow streamline the process so as to use fewer human resources or man hours, if you like, in the actual processing of the application. What have you done to reduce the cost of that individual application process?

**Ms Hand**—It does save you money in as much as it does not cost you as much to process an application; therefore, the money that you save—

**Senator HUMPHRIES**—Why does it cost you less to process an application?

**Ms Hand**—Because you cut down the number of minutes that it takes to process an application.

**Senator HUMPHRIES**—How do you cut down the number of minutes? What are you doing now that you were not doing before with respect to each application?

**Ms Hand**—Looking at the end-to-end process. I am sorry that it is very down in the weeds, but the steps that an officer is going through are to look at an application, to decide whether all the evidence and the data are there, and then to make a decision on whether or not the application gets granted. By looking at the end-to-end process that we use globally, there are some instances where we might have had to do things in the past because we did not have sophisticated technology to help us in our decision making or whatever where we can actually reduce the amount of time in some offices. When you do that you free up either people or money.

**Senator HUMPHRIES**—I understand how you get a saving if you reduce the amount of time that you spend on an application. But what I do not understand is what you are doing to reduce the amount of time on the application. You have a person who makes a 457 visa application with various forms to fill in. Have you reduced the amount of information that has to be processed by the officer?

**Ms Hand**—That varies by product line.

**Senator HUMPHRIES**—Give an example of a product where you have reduced the information and, therefore, you are spending less time on processing?

**Ms Hand**—For instance, I will give you a classic. In the student line in the past we did not necessarily manage the student peak as well as we could have. By looking at the number of people we have around managing student applications we have been able to say, ‘We probably do not need as many people in the off period but in this peak time we will profile our processing people far better so that we use the resources better and we do not have people not necessarily occupied at a particular point in time.’

**Senator HUMPHRIES**—That is a different process to the one that you just described.

**Ms Hand**—Yes.

**Senator HUMPHRIES**—You said that you reduced the amount of time that an individual officer needs to spend on an application.

**Ms Hand**—Yes.

**Senator HUMPHRIES**—How do you do that? You have a certain amount of information that has to be provided, presumably under statute, to the department to satisfy an application. How do you arrive at a situation where the officer needs to spend less time processing that application? What has been changed about that?

**Ms Hand**—It varies by product line. We look at: is there might be information that we are asking people for that we do not need and that the legislation does not require? Regulations might have changed in recent years. It varies.

**Senator HUMPHRIES**—What sorts of things do you no longer have to ask?

**Ms Hand**—In the past we might have asked people for huge, voluminous attachments or things about their families that perhaps in low-risk caseloads we do not need. But, rather than go through each individual one now, I would prefer to come back to you with some specifics for each of the lines. It is quite complex and varies dramatically from business line to business line.

**Mr Correll**—There are a couple of areas we can specifically point to in relation to technology aspects. For example, one thing which has been introduced under the assistance for people program has been an enterprise correspondence service which has significantly streamlined the processing of correspondence within the department. That has been measured. You can see the difference in time and it produces a tangible efficiency saving right across the organisation. That is one of the examples.

We are also introducing in our business support areas what we call a shared services arrangement that is geared to reducing multiplicity of decentralised support services across the organisation into a shared services business model. Where that has been undertaken in the private sector and other public sector organisations, it has yielded significant efficiencies. We are in the midst of implementing that model at present. Those are some of the examples of the things we are looking to do, including using modern risk management practices in the way we apply our processing. So we stream applications into different levels of risk to assist in determining the level of intensity of assessment. There are many of those areas.

**Senator HUMPHRIES**—You will be doing very well if you can remove 64 bodies from other areas where demand may or may not be changing, plus get higher turnaround times, which is what you indicated before, Ms Hand. If you can do that, that is great. It is not clear to me how that is going to happen.

**Senator Chris Evans**—Senator, you do know the size of the department is probably about 7,000.

**Mr Metcalfe**—About 7,000 in Australia and 1,000 overseas.

**Senator Chris Evans**—Because of the size of this department, 64 is not a large number.

**Senator HUMPHRIES**—There are a lot fewer people dealing with those applications than the 7,000.

**Mr Metcalfe**—The picture we have been trying to paint is that we have a very active program to look at how we can process applications more efficiently and how we can use staff in more productive ways. For example I think—and Ms Hand will correct me—that about 10 per cent of our client service officers' time is spent keying in data on application forms. We have a long-term objective to obtain more and more applications through electronic methods, either directly from applicants or from trusted third parties, reducing by 10 per cent our time spent on something that someone else can do. That type of efficiency measure then allows us to focus in on the real task for immigration officers, which is trying to work out whether a

person meets the rules or whether a person will not abide by the rules. That is the high-end capability that obviously we are seeking to do our job effectively. We do it pretty well compared to other countries, but this is where we are going to be looking for those efficiencies.

Secondly, as Mr Correll says, we are moving the department from being basically a series of standalone officers in each state and territory and overseas with their own personnel, financial and support areas to where we provide shared services for the whole department out of centres of expertise, which might be based in Canberra or elsewhere. We believe that there will be significant efficiencies in that, in terms of fewer staff doing the work and better services. Those are the sorts of initiatives that we are seeking to pursue to manage the budget changes that are occurring.

**Ms Hand**—There is one very good live example that I should have mentioned earlier that I will talk to now. We have a process in the department where, if someone wants a visa evidenced, they come into our department to our counters, and one of my officers has to check that the visa is valid and all those sorts of things, because an employer might require that or whatever. The fact of the matter is, though, that we also have an online facility called VEVO, which allows people with a visa or an employer to go online when they have gone through an accreditation process so we know that they are who they say they are—they use a PIN and all that sort of stuff—and they can check that a person does have a visa that is valid and that they can be employed. That is a great efficiency for the department.

This is an approximate figure, but by pursuing this strategy in the next 12 months, which we have been doing aggressively in the last 12 months too, we think we can take another \$2 million out of the cost of the network. That is great for the client and the employer—it is much quicker—but it is also great from a number of other points of view. Integrity-wise, on occasion you get people with forged documents or trying to forge documents. If you go online into our systems through a secure process, the employer has a guarantee that the person in front of him or her has a valid visa. But it also costs us less and it means that our people at the counters are doing much higher value and more important work other than just evidencing the visa.

**Senator BARNETT**—I appreciate your feedback and some of the important areas of work which the department is undertaking, which we do not doubt. I have two very specific questions. You have provided us with a figure of 64 staff for 2010-11.

**Mr Correll**—Correct.

**Senator BARNETT**—Thank you for that. Can you please provide the exact same figures for 2008-09 and 2009-10?

**Ms Hand**—I will defer to Marilyn for the department as a whole but, as I think I said at the last Senate estimates, we had a number of voluntary redundancies in the service delivery network in the two years that you have mentioned. In the last two financial years we have taken nearly 300 people out of the service delivery network as a result of that program.

**Ms Prothero**—In relation to the question of actual movements in ASL by outcome by financial year, we will have to take that on notice. I do not have that with me at the moment.

**Senator BARNETT**—We would like it today, if you could, and as soon as possible.

**Ms Prothero**—I also point out, however, that the outcome has changed over that period. We can certainly get last year's on this basis, but my colleague the chief finance officer may need a little more time to calculate the actuals.

**Senator BARNETT**—Thank you.

**Mr Correll**—However, I can give you a straight headcount numbers. We need to understand average staffing level is a different figure from headcount. But headcounts give you a snapshot of how many staff are in the department on a particular day.

**Senator BARNETT**—On a particular outcome.

**Mr Correll**—No, this is total across the department.

**Senator BARNETT**—That would be useful, Mr Correll, thank you very much. But we would like it with respect to each outcome.

**Mr Correll**—We will have to take that question on notice.

**Senator BARNETT**—With respect to this financial year, can you be more specific as to where, for example, the 39 in outcome 1 will be coming from?

**Mr Correll**—We would need to take that question on notice.

**Senator BARNETT**—Likewise, could you do that, on notice, with respect to the figures for this year and then the past two financial years?

**Mr Correll**—Yes.

**Senator BARNETT**—Outcome 1 is a huge outcome. We would like to know exactly where these people have come from. Is that okay, on notice?

**Mr Correll**—Yes, that is fine. We will look to extract that information. The reality is that it will be a series of pluses and minuses across a whole range of areas.

**Senator BARNETT**—Ms Hand, you indicated in your remarks that the FOI process in the past was not up to scratch. Can you advise where it was not up to scratch and provide those details to us?

**Ms Hand**—This varied from office to office. What we did was look at some of the best practice in the network and try to replicate that across the whole freedom of information program. It was basic things. The application would come in and people would say, 'There is a privacy requirement; we have to get permission for this,' and that is not required at all. There was a range of things that people were considering or taking too long to do. It is quite a scientific process of analysing the way people deal with an application under FOI and you look at whether you really need to ask that question or can you just give this information to this person immediately because it is their information. They do not have to get permission to ask for it.

**Senator BARNETT**—So you are being a bit bureaucratic in terms of process?

**Ms Hand**—Yes, in some instances I think we have probably been a little process—

**Senator BARNETT**—The department caused delays.

**Ms Hand**—Yes, it did.

**Senator BARNETT**—Have you got any figures on the delays that were caused.

**Senator Chris Evans**—I can certainly tell you that when I became minister there was a massive backlog of FOI requests, which we have spent a lot of resources cleaning up.

**Senator BARNETT**—I appreciate that.

**CHAIR**—Just let the minister finish.

**Senator Chris Evans**—I do not know whether you do appreciate it. I tell you that there was an enormous backlog of FOI applications. We put a taskforce on it and our rates have improved enormously. I can certainly get you those figures.

**Ms Hand**—As I said, we are now routinely, for the past three months, achieving over 95 per cent of FOI requests within the 30-day period. That has increased from 67 per cent last year. There were months where it was way below 47 per cent. It was a huge taskforce, a huge process of looking at the end-to-end process and getting rid of unnecessary process without jeopardising risk.

**CHAIR**—Are you managing that process?

**Ms Hand**—People under me in Sydney and Melbourne run the FOI processing.

**CHAIR**—Very impressive.

**Senator BARNETT**—Do you have the figures? You said you have the figures for the previous 12 months in terms of the delays in the FOI process.

**Ms Hand**—I may have them here. I will ask people listening to get them for me. We were taking way over the 30 days. In some months last financial year—and this is not good—we were only up at around 30 per cent of service standards. The average for last first financial year was 67 per cent within 30 days. Now I am really pleased to say, and the secretary sent a note, that in Sydney in one week at the beginning of May we were 100 per cent to service standard and Melbourne was 98 per cent.

**Senator BARNETT**—That is encouraging, but I am interested in the last 12 months. I have had questions on notice about FOI and I have had answers to them. I will have to correlate your feedback with those answers. I am sure there is a reason for that. But I would like to note the details in terms of delays and why there were delays over that 12 months.

**Ms Hand**—I am very happy to provide that. Most of the delays were because of business processes that we have been able to get rid of.

**Senator BARNETT**—Bureaucratic bungling.

**Ms Hand**—No.

**Senator BARNETT**—Or administrative pressure.

**CHAIR**—I think we have just proved that the bureaucratic handling is impressive.

**Mr Metcalfe**—I mentioned briefly, but I did not go into detail in my opening statement, that we had a really good look last year at how the department was organised and how we could provide serious focus in our key areas of activity: our policy capability, our client

service, and our business services. We reorganised the department and we now clearly have a deputy secretary responsible for each of those areas. Mr Correll is taking the lead on business services, Mr Hughes on policy service, Ms Hand on client services. This is starting to show the fact that we are really focusing very hard on our performance. We are exhaustively looking through what the department does to improve. I would not want to say that what we have done in the last 65 years has been bureaucratic bungling. But we believe that we can continue to find efficiencies and improve service without a loss of quality. That is what Ms Hand described.

**Senator BARNETT**—When you take that on notice, could you provide those figures for the last two years?

**Ms Hand**—Sure.

**CHAIR**—Thank you. We will adjourn for lunch.

**Proceedings suspended from 12.29 pm to 1.37 pm**

**Mr Metcalfe**—Chair, regarding some questions this morning, I will get Ms Hand to cover some of the issues we were discussing about the RRT selection process.

**Ms Hand**—Chair, there are three documents that Mr Sheehan will pass across in a minute. One outlines in quite some detail the process that we went through for this year's MRT-RRT round, which I will not talk to now. I would be happy to speak now, if Senator Barnett and Senator Humphries would like, on some material that we will give you which contains the questions that we asked in this round. If you do not want me to go through that now, we intend to table it so that you can read it. We will go whichever way you would like.

**Senator HUMPHRIES**—Perhaps we could see the document and work out whether we need any more information.

**Ms Hand**—One thing I would say is that, as with any selection process, there are obviously a set number of questions that you ask all applicants. For this round and for previous rounds, as with any selection process, if we looked at a person's performance assessment or comments that had come from referees, or whatever, and there was an area where we felt we needed to delve more, then we would obviously ask more specific questions around those areas. For instance, set-aside rates would be one of those. Sometimes it was productivity rates or complaints that had been made about a member. There were six to seven set questions, which you will see within the document, plus those where we delved. That is what we will give you now.

**Senator HUMPHRIES**—Great. Were there two other issues you were going to give us some answers on? I thought you said there were three issues.

**Mr Metcalfe**—No. I think it was those three documents.

**Ms Hand**—I am sorry. The third is the questions for the previous round, so we have also got those.

**Senator HUMPHRIES**—Great.

**CHAIR**—We are still looking at cross-portfolio questions, as I understand it. Senator Humphries, we will keep going, thanks.



**Senator HUMPHRIES**—Chair, I do not have much more in this area, but I know Senator Barnett has. This is for use later on in the day and tomorrow. In that break-up of staff, you mentioned that there are about 85 departmental staff on Christmas Island. I want to get a picture of how many people are involved in processing of offshore entry people at different locations.

**Mr Metcalfe**—Yes.

**Senator HUMPHRIES**—I assume that you already have some people at Curtin and I assume at Berrimah, Darwin. Those figures would be good to have as of 19 May, or today.

**Mr Metcalfe**—Senator, yes, we can provide that to you, but just so that we are quite clear, you are interested in staff involved in any aspect of the department's work associated with IMAs after their arrival?

**Senator HUMPHRIES**—No. I am interested in people processing IMAs.

**Mr Metcalfe**—Right. We will have a number of staff who are involved in what we call entry processing, which are the initial interviews, and some staff in refugee status determination activity. Just to be clear, that will not be the complete picture of our staff.

**Senator HUMPHRIES**—No, of course not.

**Mr Metcalfe**—We will have staff involved in managing the detention centre contract arrangements, for example. Part of those 85 would include a number of staff on Christmas Island who are helping to run the centre and the overall arrangements, as opposed to processing applications. Of course we also have staff overseas, who are involved in countering people-smuggling activities and that sort of thing. But if we are simply interested in processing IMAs at any location, we will find that number for you.

**Senator HUMPHRIES**—Great, thank you. They are all the cross-portfolio questions that I have, Chair.

**Senator BARNETT**—I just want to go to the list of Christmas Island staff, contract staff, and clients on Christmas Island, which is in answer to a question on notice that you have provided. We were asking questions about that this morning. As of 19 May, we have 85 departmental staff, 412 contract staff, and 2,295 clients, which includes 14 crew.

**Mr Correll**—I will make a correction there. The 412 is inclusive of the 85 departmental staff.

**Senator BARNETT**—Okay. Then 2,295, including crew, in terms of clients. Is that correct?

**Mr Correll**—Yes.

**Senator BARNETT**—Do you have the resident population of Christmas Island? What is the number of residents?

**Mr Metcalfe**—Of Christmas Islanders, so to speak, Senator?

**Mr Correll**—I do not have the specific census, but my understanding is that it is in the order of about 1,000 people, which is the normal population of the island. I will correct that if it is wrong. It would be approximately that number.

**Senator BARNETT**—All right. In an estimates hearing yesterday I asked the Attorney-General's Department in regard to these matters. They gave us some figures which differ a little bit from yours. I want to find out the reasons. Yours are as of 19 May? Is that correct?

**Mr Correll**—Yes, remembering there is precision with the information I have given you there: except for the broader island population.

**Senator BARNETT**—Yes. Their figures were relevant to 21 May. All that is in the *Hansard*. I will alert you to what they indicated: In terms of departmental staff and contract staff, they said between 400 and 600. Overall, they said approaching 4,500.

**Mr Metcalfe**—What, people on the island?

**Senator BARNETT**—Yes.

**Senator Chris Evans**—I am sorry, Senator. I just want to be clear. This is people on the island as in clients, staff and residents?

**Senator BARNETT**—It is the total.

**Senator Chris Evans**—That is not being consistent.

**Senator BARNETT**—No. I am just getting to it.

**Senator Chris Evans**—I am sorry.

**Senator BARNETT**—The total is 4,500. Their figure for clients was 2,437 and your figure is 2,295. I calculate that to be a difference of 142 over a two-day period between 19 May and 21 May this year. Does that sound right? If so, what is the reason for that difference?

**Mr Correll**—I would probably want to validate with our colleagues in Attorney-General's the client numbers because the only source they would have for those client numbers would be ourselves in DIAC. But it would not be unusual for a difference in numbers.

**Senator Chris Evans**—Excuse me, but it could have been that we had that last group arrive on the island.

**Mr Correll**—Boat arrivals.

**Senator Chris Evans**—We have had an arrival of a group. That could explain the figure. We are happy to be definitive about the number of clients because that is our job. In terms of running the island, that is their job. So if they tell you there are 4,500 on the island, I will defer to them.

**Mr Correll**—That is right.

**Senator Chris Evans**—I would expect that they would defer to us as to how many people there are in detention.

**Mr Correll**—Absolutely.

**Senator BARNETT**—As a Senate committee, we would like to know. We have two departments and we have different numbers. We would like to know which are the accurate numbers.

**Senator Chris Evans**—Senator, as you conceded—

**Senator BARNETT**—There is a difference of 142. If you can provide the reason, that is what we appreciate.

**Senator Chris Evans**—But you conceded that they are two different days.

**Senator BARNETT**—I know they are two different days, or two days different.

**Senator Chris Evans**—Yes. We can check it.

**Mr Correll**—We will check it.

**Senator Chris Evans**—But, as I say, in terms of clients in detention, we would say we are the authoritative source. We will obtain an answer for you and see if we can explain the difference over those two days by some movements of persons.

**Senator BARNETT**—All right. They have relied on ABS 2006 statistics of 1,347 residents. I do not what statistics you rely on when you calculate the number of residents. What do you rely on?

**Mr Metcalfe**—We rely on them for that number, Senator.

**Senator BARNETT**—You rely on?

**Mr Metcalfe**—We rely on the Attorney-General's Department for the number of residents, and they rely on us for the number of detainees.

**Senator BARNETT**—I think they are relying on the ABS 2006 data, which was done four years ago.

**Senator Chris Evans**—We are saying that they manage the island, Senator. We would not argue with their figures. We said a rough estimate of 1,000. People on the island tell you that the numbers dropped as the mine shed employees. They also tell me the numbers vary greatly between seasons when people come on and go off the island. But we cannot help you with definitive figures on that because we just do not keep them.

**Senator BARNETT**—I hope you think it is a fair question to know the number of residents on Christmas Island.

**Mr Correll**—Yes.

**Senator BARNETT**—They provide a figure which they say is based on an ABS figure dated 2006. It is now mid-2010. I am asking you, as a department, if you are aware of the updated, most recent statistics regarding the number of residents on the island.

**Mr Metcalfe**—The answer is no, Senator.

**Senator BARNETT**—You are not aware.

**Mr Metcalfe**—As the minister has explained, we do not have any independent capability of surveying the numbers on the island. We rely upon the territory's part of the Attorney-General's Department for that.

**Senator BARNETT**—All right. So what you are confident of is the number of clients, the contract staff and the departmental staff.

**Mr Metcalfe**—That is correct.

**Senator BARNETT**—Thank you for that. In the answer to a question on notice, for which I thank you, for 30 June 2008, 30 June 2009 and then 31 January 2010 I would like to know where the increase in departmental staff has come from—the section of the department from which they come—to Christmas Island. Over the two-year period it has increased from four to 85, an increase of 81. They have come from somewhere. I would like to know whence they came. I realise you will not have that right now, but could you provide that information?

**Mr Correll**—It is a tricky question. We would need to take that on notice.

**Mr Metcalfe**—As we explained earlier, some of them are staff who work in the community and detention services division and are responsible for the overall management of the centre. We appointed an assistant secretary position there some time ago, given the scaling up of activity. Some of those staff would be staff associated with entry interviewing and some with refugee status. It would quite a complex task to trace each one to ascertain where they had come from because that 85 is not a constant number. It is a point in time number. I suspect that on each day, people would come from different parts of the department.

Primarily, our refugee status staff are being drawn from our specialised units in Melbourne and Sydney. Our entry interviewing staff would come from a range of areas across the department. Our detention management staff would have originally come from other areas but are now employed by that area. But to the extent to which we can give you a sensible answer, we will take that on notice and give you more detail.

**Senator BARNETT**—Thank you. Ms Hand, do you have any further information regarding the FOI information that we were discussing before lunch?

**Ms Hand**—I have asked for that but it has not arrived yet. We will have that later.

**Senator BARNETT**—Thank you.

**Senator HUMPHRIES**—I do not have any particular questions based on the interview questions you have provided, Ms Hand. If I have any other things following from that, I will place them on notice.

**Ms Hand**—Thank you.

**Senator HUMPHRIES**—Thank you for providing this.

**CHAIR**—That completes the cross-portfolio area.

**Senator HUMPHRIES**—There is just one question I was going to ask. I am not sure whether it is best asked here or in outcome 4. It is simply a question for information about what I am told was an outbreak of human hand, foot and mouth disease on Christmas Island.

**Mr Metcalfe**—I think we are probably getting close to the areas relating to 4.3, Senator. But if there is any detail that you have that allows us to prepare to respond at that point and anything more you can tell us, we can make sure we are ready to speak when we come to that item later.

**Senator HUMPHRIES**—I am seeking information generally whether there was any identified source of that outbreak; how many people were affected by it and so on.

**Mr Metcalfe**—I am sorry, the disease was?

**Senator HUMPHRIES**—Human hand, foot and mouth disease. I understand there was an outbreak fairly recently.

**Mr Metcalfe**—We will check and be able to talk later.

**Senator HUMPHRIES**—Thank you.

**CHAIR**—Senator Barnett, is this still on cross-portfolio?

**Senator BARNETT**—Yes, one final question. I wonder if the department could respond to clarify and to clear the air with respect to the story in today's *Australian* under the heading 'Boatpeople to be shipped to the Western Australian desert.' It states:

Up to 90 asylum-seekers, mainly women and children, may be sent from a packed detention centre to a disused mining camp in remote Western Australia ...

It refers to the UN High Commission for Refugees yesterday attacking the Rudd Government over a detention bottleneck. There is mention that the immigration department confirmed that it was looking into obtaining accommodation in that town.

**Mr Metcalfe**—We are certainly happy to talk about it, Senator, but I suggest it fits quite squarely inside program four.

**Senator BARNETT**—Can you confirm on the record that that advice is accurate?

**Mr Metcalfe**—I am happy for us to talk about it but I think that takes us into quite a specific program area.

**Senator BARNETT**—You are not denying those facts.

**Senator Chris Evans**—Senator, we are happy to deal with it in the program. The story is partly accurate. We will have to take some time to go through it. As with most press reports, some of it is true and some of it is not.

[1.52 pm]

**CHAIR**—And that will be outcome 4.2. We will leave it until then. Are there any other cross-portfolio questions? Let us finish with that area and move on to outcome 1: Managed migration through visas granted for permanent settlement, work, study, tourism, working holidays or other specialised activities in Australia, regulation, research and migration policy advice and program design, program 1.1—Visa and Migration.

**CHAIR**—Senator Humphries, are you going to start questions?

**Senator HUMPHRIES**—Yes, thank you, Chair. I notice in the budget statements that there has been a decrease of almost \$32 million in administrative revenues for the 2009-10 financial year which has been put down to a result of eligibility changes to visa revenue. Could you outline what that means?

**Mr Metcalfe**—I am just checking whether we have the right person at the table. I will ask someone from our financial area to come and explain that. We will have to wait a few minutes while I get the right officer. If you have any other questions we will come back to that.

**Senator HUMPHRIES**—I was also going to ask about the decrease in the budget papers of \$103 million in administrative revenue for the 2010-11 financial year; out-year reductions

of around \$60 million in the following year, 2010-11; and between \$30 million and \$35 million in the out years after that.

**Senator Chris Evans**—Senator, the officers are just coming, so perhaps we will take a pause of 30 seconds and we will be able to proceed.

**Senator HUMPHRIES**—That sounds good.

**Mr Metcalfe**—Senator, Mr Stephen Sheehan is our new chief financial officer. He is quite new to the department, so he may defer to Mr Biddle, who is an assistant secretary in that area and who was involved in the preparation of the budget material.

**Mr Sheehan**—Senator, I would appreciate it if you could repeat the question.

**Senator HUMPHRIES**—Certainly. The budget for 2010-11 demonstrates a decrease of almost \$32 million in administered revenues for the 2009-10 financial year as a result of eligibility changes to visa revenue. Can you explain how that comes about please?

**Mr Sheehan**—Senator, I am advised that it is related to a reduction in activity and changes in the MODL.

**Mr Metcalfe**—Changes in the migration occupations in demand list.

**Senator HUMPHRIES**—It is a decrease of \$32 million out of—what is the total expenditure?

**Mr Kukoc**—This particular change reflects the reforms that the minister announced on 8 February—the scrapping of MODL and the new skills occupation list. The reforms were aimed at strengthening the integrity of our general skilled migration program. What was happening before that was that Finance and Treasury would incorporate the trends in application based on the recent history into the revenue forecast into the budget. This flow into the budget from the recent trends in applications was largely becoming unsustainable, given the limited places in the general skilled migration program. The reforms have just ensured that the flow-in of applications reflects the future places in the general skilled migration program. That was the reason that revenue estimates needed to be adjusted in the budget.

**Senator HUMPHRIES**—What proportion of the revenue from that source is the figure of \$32 million represented by?

**Mr Kukoc**—Could you repeat the question?

**Senator HUMPHRIES**—There is a decrease of \$32 million in revenue from that source. What proportion of the total budget of revenue from that source is represented by that \$32 million figure?

**Mr Metcalfe**—What is the total of our visa application fee revenue?

**Senator HUMPHRIES**—That would answer the question as well.

**Mr Kukoc**—I need to defer this to our colleagues from the financial services division.

**Mr Sheehan**—I think we had better take that on notice and come back to you.

**Mr Metcalfe**—Senator, we will be able to answer that shortly. My recollection is that the department or the consolidated revenue received something like \$800 million from visa

application fees, so it is something in that order. But I suspect my finance colleagues will have a more precise answer.

**Mr Sheehan**—It is about three per cent, but I would like to get you the exact answer.

**Senator BARNETT**—Mr Sheehan, when you do that, could you provide a breakdown of that revenue with visa types in both the money and the percentage when you provide that on notice?

**Mr Metcalfe**—We will take it on notice. We will seek to provide the overall amount of revenue received from visa applications and then break it down by visa subclass to the extent that we can.

**Mr Sheehan**—I have the totals at a higher level, but if you want it at subclass level, we will take it on notice.

**Mr Metcalfe**—We could give you some information now, if you wish, but it is probably at a slightly higher level than you asked for. Why not try this and see if it helps?

**Mr Sheehan**—For the financial year 2009-10, Senator—is that what you are asking for—or is it 2010-11?

**Senator HUMPHRIES**—2009-10.

**Senator BARNETT**—Mr Sheehan, is that something you could table? If you have both years there and the breakdown, that would be most useful.

**Mr Sheehan**—Yes, but I will just give you an indication of the level of detail.

**Senator BARNETT**—Sure.

**Mr Sheehan**—Application for migration to Australia, the estimates that were in are \$136.319 million; applications for permanent visas onshore is \$150,097,000; applications for resident return visas is \$20,827,000; applications for student visas is \$157,577,000; applications for temporary resident visas is \$73,613,000; applications for visitor visas is \$96,274,000; miscellaneous revenue is \$3,150,000; the second instalment visa application charges is \$274,897,000.

**Senator BARNETT**—I am sorry, how does that last one work?

**Mr Metcalfe**—With some visa categories, there is a first instalment payable and then, if a person is prima facie eligible, before finalising their application they are asked for the second instalment. I think I am correct in saying that that is possibly parent visas.

**Senator Chris Evans**—That is the big one at about \$35,000 per person.

**Mr Metcalfe**—You will recall that for the parent contributory visa there is an initial application fee, but then there is a very significant fee associated with the approval of the person to come to Australia because it is seen as in lieu of a contribution over a lifetime to income tax because of access to health benefits and others. As the minister says, that is a figure of \$35,000. It is a very high level.

**Senator BARNETT**—Perhaps on notice, you could give us a breakdown of that \$274 million.

**Mr Metcalfe**—We can give you some more detail on that.

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**Mr Sheehan**—Do you want me to continue with the last two, Senator?

**Senator HUMPHRIES**—Yes.

**Mr Sheehan**—Sponsorship fees for applications under the employer nomination scheme, \$5,995,000; and sponsorship fees for temporary residents, \$9,317,000. That brings you to a total of \$928,067,000.

**Senator HUMPHRIES**—They are the figures for 2009-10.

**Mr Sheehan**—Yes.

**Senator HUMPHRIES**—Do you have postulated figures in the budget for 2010-11?

**Mr Sheehan**—We do. Do you want me to go through those, Senator?

**Senator HUMPHRIES**—Forget about what is after the decimal point and just give us the round figure.

**Mr Sheehan**—By the same categories?

**Senator HUMPHRIES**—By the same categories, yes.

**Mr Sheehan**—Applications for migration to Australia in 2010-11 is \$101,145,000; applications for permanent visas onshore is \$119,811,000; applications for resident return visas is \$20,663,000; applications for student visas is \$170,400,000; applications for temporary resident visas is \$74,989,000; applications for visitor visas is \$100,158,000; miscellaneous revenue is \$3,420,000; the second instalment visa application charge is \$303,908,000; sponsorship fees under the employer nomination scheme are \$6,743,000; and sponsorship fees for temporary residents is \$8,274,000, bringing it to a total of \$909,511,000.

**Senator HUMPHRIES**—Student visa revenue is fairly substantially up, not down, for the next financial year.

**Mr Sheehan**—It is up by just under \$13 million.

**Senator HUMPHRIES**—I thought we were saying before that we are expecting fewer student visa applications as a result of the changes that had recently been made. Have we put the price up of each visa application?

**Senator Chris Evans**—We usually try to. I will get one of the officers to answer that for you. It is probably best coming from the students branch. One of the factors is that we have seen a reduction in offshore applications but an increase in onshore applications at the moment because of students changing courses and extending.

**Mr Kukoc**—We have not increased the visa application charge. What this reflects is a large number of applications onshore where people are extending their student visas or adjusting courses. We are predicting and projecting a significant drop in student visa applications offshore, but the onshore are transferred to another visa and maintain the pace.

**Senator HUMPHRIES**—So there are fewer offshore applications, but more onshore applications.

**Mr Kukoc**—Yes.



**Senator HUMPHRIES**—Do you have a projection of how many fewer onshore and how many more offshore? No, it is the other way round: how many fewer offshore, but how many more onshore?

**Mr Kukoc**—I do not have the projections with me. The projections were done in the financial and services division. I would need to take the question on notice.

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

**Senator Chris Evans**—Senator, I would just note that in terms of student projections, while the integrity measures have resulted in a reduction in applications and certainly visa approvals in a range of markets where we had concerns about visa integrity, as you know there is a complex set of factors applying in the student market at the moment, including the value of the Australian dollar and the issues regarding whether the violence against international students may have played a part in people's attitudes.

It is quite a complex picture at the moment. Whatever we have done in terms of financial estimates, I think it is fair to say that the industry itself is a bit uncertain at the moment about how all this will play out. But some of the higher education application numbers are not too bad. In the VET ed sector, we have seen quite a large drop-off in applications from offshore. The financial officers may be able to give you the underpinning assumptions.

**Mr Sheehan**—I do not have that with me, but I will take it on notice.

**Senator HUMPHRIES**—With the \$32 million figure for this financial year, how many fewer visas does that represent?

**Mr Metcalfe**—We will have to take that on notice, because I suspect that will be a calculation of the projection against all of those different visa classes. The visa application fees vary significantly. I do not think we will be able to answer that here this afternoon, but we can come back to you with advice on how that figure was made up.

**Senator Chris Evans**—Individually they would vary from a couple of hundred dollars to \$40,000.

**Mr Metcalfe**—That is correct.

**Senator HUMPHRIES**—Do you anticipate that a substantial proportion of that would be offshore student visa applications?

**Mr Metcalfe**—That is a reasonable assumption.

**Senator HUMPHRIES**—If you can get us those figures, that will be great. I want to ask you some questions about the permanent skilled migration program. As the minister announced at the time of the budget, there is to be an increase of 5,750 places in the skilled stream to bring it to a total of 113,850 places. The department has also announced that it will not accept any applications for the skilled program between early May and the end of June this year. What has been the total number of visas granted in the skilled stream year to date in each of the categories?

**Mr Kukoc**—As at 30 April 2010, the migration program was \$147,388 or 4.8 per cent above pro rata. The trend shows that the migration program is on track to meet the planning level at the end of June.

**Senator HUMPHRIES**—Please repeat that last sentence, I am sorry.

**Mr Kukoc**—The trend shows that the migration program is on track to meet the planning level at the end of June. This is made up of a family stream outcome of 51,530, a skilled stream outcome of 95,447 and a special eligibility outcome of 411.

**Senator HUMPHRIES**—That 51,000 figure was family reunion, did you say?

**Mr Kukoc**—That was the total family stream outcome, which incorporates spouses, children and parents.

**Senator HUMPHRIES**—How do those outcomes compare with each of the last three years?

**Senator Chris Evans**—Senator, they are the figures based on last year's program target. Each of the previous years will have come in at the previous year's target.

**Senator HUMPHRIES**—I thought Mr Kukoc was saying that that was the expected outcome for this financial year.

**Senator Chris Evans**—Yes, but based on the previous budget's announcement of the figures, basically saying that the migration program is going to come in as planned and as announced, and that the previous year's pretty much came in as planned and announced as well. But the figures from each year have varied. I am not sure what information you are after.

**Mr Metcalfe**—The annual reports for each year would have those outcomes, or the figures you are seeking. We can provide them to you but they would be publicly available already.

**Senator HUMPHRIES**—Okay.

**Mr Metcalfe**—Essentially, the government each year announces a program and the department delivers it to within a few visas. It is something that we have done for 65 years.

**Senator HUMPHRIES**—We shall have a look for it there. How many outstanding applications under the skilled stream are presently with the department?

**Mr Vardos**—I do not think we have the figure with us in terms of how many unfinalised applications there may be in the pipeline. We will have it, but we just do not have it in this summary.

**Mr Kukoc**—Overall the pipeline is around 147,000 across all skilled categories.

**Senator HUMPHRIES**—That is how many applications you get in a year in the skilled stream?

**Mr Metcalfe**—No, that is the size of the accumulated pipeline.

**Mr Kukoc**—This is an accumulated pipeline of 147,000. Until recently, when the reforms were announced, we were getting between 9,000 and 10,000 applications per month.

**Senator HUMPHRIES**—Okay. Is that backlog especially large by historical standards?

**Mr Kukoc**—It is, Senator, and it is the result of the settings that were in place prior to the announcement of reforms on 8 February and 17 May.

**Senator HUMPHRIES**—Those announcements in the skilled occupations category account for that backlog and it is not other factors that essentially account for that backlog.

**Senator Chris Evans**—No, Senator. The program will be met, so all the ones that we can process under the cap the government has set will be processed. We set the cap at 165,000. What is the total skilled?

**Mr Kukoc**—It is 168,700.

**Senator Chris Evans**—They will deliver 168,000, give or take two or three, but in the pipeline we have another 140,000 applications. They are queued, if you like. The queue has been growing in recent years. One of the reasons we have sought to tighten up on eligibility and targeting of occupations is that we have been taking applicants in the queue who may not have the skill set we most need in Australia. We are trying to get to a more sophisticated model rather than just accepting who is in the queue.

When I became the minister, I was shocked to find that we were processing—I do not want to keep picking them—hairdressers or landscape gardeners in front of doctors whom we desperately needed because the doctors were behind them in the queue. We have been trying to reshape and retarget the whole program. But that is the number of people who have applied and who have not yet been processed. We were getting 9,000 or 10,000 more applications each month—which is a good thing, in that people are still desirous of coming to Australia—but managing that pipeline is important to make sure that we get the best of the applicants, not just who is in the queue. That is what the changes are about.

**Senator HUMPHRIES**—I take all those points, but I am not sure it answers my question. You said that the present number of applications in the pipeline was larger than historically usual. Is the bump or the spike represented by the changes in the skilled occupation category and the freezing of applications between May and June?

**Mr Metcalfe**—No, It is more the reverse. I think what we have been trying to explain is that we have been receiving more applications for migration than there have been places available. Therefore, the policy changes that have been announced earlier this year are designed to effectively reduce a number of applications which are eligible for priority processing. The suspension which was announced earlier was also about stopping the number of applications from growing. Because of the effect of the MODL on the very high number of occupations on the MODL, there was a great deal of interest in migration to Australia, more than we were prepared to accommodate. That led to the large pipeline growing. The measures that the minister has announced over the last few months have been designed to ensure that we deliver the numbers that the government has set each year, that we deliver high-quality migrants through that particular process and that we reduce the level of interest in migration from people with lower skill levels.

**Senator Chris Evans**—One of the drivers, Senator Humphries, is the onshore student population, with the explosion in the numbers following the 2001 and the 2005 changes. We have a cohort of people seeking general skilled migration who have trained in Australia. They have added to the pool, if you like, of those who are qualified.

**Senator HUMPHRIES**—I am trying to marry these comments with the ones Ms Hand made earlier about how we are now more efficient at processing visa applications. We are more efficient but we have still got a greater backlog than usual.

**Senator Chris Evans**—That is because we choose how many we take each year and we have more applications than there are places. You could say that is a good thing, in a sense, as long as we get to select rather than be supply driven. But I think there is some confusion about the short-term suspension. I think one of the officers should explain that because I think that is getting confused in the discussion. Mr Kukoc might explain the purpose of the short-term suspension.

**Senator HUMPHRIES**—I understand the suspension was to allow you to put new rules in place and not take any more applications under the old rules while they were being superseded. I understand how that works, but what effect has it had on the backlog? Are you still processing those people who applied before 8 May?

**Mr Vardos**—Senator, I think describing it as a backlog is perhaps confusing the argument. ‘Backlog’ implies inefficiencies and not being able to keep up, or that we do not have enough resources to process them. The point is, as the minister has indicated, there are a finite number of places and always more people applying for visas than are available. You will always have a pipeline. Although the pipeline at the moment is larger than it has been in recent years, it is a good thing to have a pipeline so that you start each program year with a stock of applications to kick off the program, rather than starting from a zero base on 1 July every year.

**Senator HUMPHRIES**—But 147,000? Is that a good thing?

**Mr Vardos**—As the minister said, that is largely driven by the spike in onshore student applications over the past few years and some of the measures that have been put in place to address that. But, as Mr Kukoc has indicated, the current pipeline figure is lower than has been the historical norm, but that is being addressed through policy changes.

**Mr Kukoc**—There have not been any recent spikes in the pipeline. We are talking about the cumulative effect over a number of years following the changes in early and mid-2005 that opened up all sorts of pathways and led to our system practically being forced to accept valid applications without being able to find sufficient places in the migration program. That led to disparity between what we were getting as inflow and what we could put in future migration programs as outcomes.

That is clearly linked to the adjustment of revenue estimates that we were talking about earlier. The revenue estimates were done on the basis of a trend in applications, without taking into account the capacity of the migration program to accommodate all these applications.

**Senator Chris Evans**—Fewer people will be eligible to apply, and we will get less revenue because we have struck out a group of people who could otherwise have applied.

**Mr Metcalfe**—You averted to Ms Hand’s comment. I think there is a distinction where quite a few of our programs are uncapped and essentially demand driven. There are no caps on the number of students or the number off 457 visa holders or the number of tourists, for example. Therefore, we have processing standards where we try to deal with those applications swiftly and with quality. Of course, the migration program is a capped program. There is a limit on the numbers in each category and therefore while we of course seek to give our clients good service, it is going to change because there are only so many places available regardless of the number of applicants who show an interest in applying.

**Senator HUMPHRIES**—Will that decision to halt applications or the processing of applications from 8 May onwards have an impact on the waiting time for those who have applied for skilled migration?

**Mr Kukoc**—The instrument was put in place to prevent sudden spikes in applications in anticipation of the new changes that will be implemented on 1 July.

**Senator HUMPHRIES**—Will it have an impact on waiting times?

**Senator Chris Evans**—Effectively it stops a certain cohort of people applying who would have got in under the old rules, which end on 30 June. Effectively in the period between the announcement and the new SOL applying, there were people who could have got into the pipeline who we would not want to take after 1 July. The suspension basically said you cannot get into the pipeline because we do not want more people in the pipeline who do not meet the new rules. They are not going to be waiting; they are going to be getting the message that they are not eligible to apply.

**Senator HUMPHRIES**—What you are saying is that it does not have any impact on waiting times?

**Senator Chris Evans**—It tells them no.

**Mr Metcalfe**—Traditionally, over the years we have seen that applications tended to surge prior to changes in the rules, whether it is for a visa category or citizenship eligibility. This particular rule, which prevents applications from being made, was an attempt to stop that surge from occurring. Otherwise we would have had a whole lot more applications on hand from people who were not going to be eligible and it would have impacted on waiting times for them. This is simply preventing that surge, which I am sure would have occurred otherwise.

**Senator HUMPHRIES**—I want to ask about 457 visas. The government has made some substantial changes to this type of visa in recent legislation and regulations. Have all of the 457 visa changes now been implemented or are there areas that are yet to be put in place?

**Mr Vardos**—Unless the government wants to pursue different avenues, all current measures that were in plan have been implemented. The program as it stands reflects the government's new approach to the 457 visa program.

**Senator Chris Evans**—The last changes came on 1 January, or was there something after that?

**Mr Kukoc**—1 January was the final deadline for all employers to implement market rates, even those who were given some grace period from 14 September to 1 January. There were also two measures that the government is still considering—that is, the regional employment authorities and accreditation.

**Senator HUMPHRIES**—I do not need to know about those. I am interested in those that have been enacted by parliament. What has been the impact on the application numbers for 457 visas as a result of the changes?

**Senator Chris Evans**—Mr Kukoc will answer the question more specifically, but I think you would be hard pressed to disaggregate the impact from the changes from other impacts

that are occurring in terms of economic activity. One of the reasons Mr Kukoc is very happy with the world is that he can argue that economic theory matches the behaviour of the applications. Effectively it is supposed to be driven by the economy. When the economy is going well, we would expect to see an increase in 457s; when the economy is retracting, we would expect to see a decline. That is the sort of pattern we have had. Mr Kukoc can answer this, but I am suggesting that it would be hard to work out whether it was the economy or the changes that were driving an increase or decrease. I do not know whether you have anything else to add to that.

**Mr Kukoc**—That is correct; it is very difficult to disentangle the two. The timing of the reforms was exactly in the midst of the economic crisis, the financial crisis and the economic downturn and rising unemployment rates across occupations. At the moment, 457 visa applications are 40 per cent lower than for the corresponding period last year.

**Senator HUMPHRIES**—Did you say 40 per cent higher?

**Mr Kukoc**—No, 40 per cent lower.

**Senator Chris Evans**—Although last year was a record year.

**Mr Kukoc**—The last year was the record high year in applications. That was a result of the economic peak at the time. It is 40 per cent lower than at the corresponding period last year. We have seen some further drop in the applications following the 14 September 2009 changes. But that was largely because employers were still becoming familiar with the new legislation and the new environment and were reluctant to lodge applications before they became familiar with the environment. Since then we have recently seen a pick-up in applications again. So, applications most recently, as of last month, are higher than in July and August prior to the changes of 14 September.

**Senator HUMPHRIES**—I would have thought that economic conditions or economic outlook was brighter right now than it was 12 months ago. I am sure that is what the figures demonstrated, but that would be my impression. A reduction in the number of 457 visa applications between now and then would seem to suggest that economic factors and other factors such as the threshold and so on for obtaining 457 visas may be retarding some of those applications.

**Mr Metcalfe**—We saw 3,810 applications in March this year. I understand that is the highest number we have seen in any single month in the last year. I know that is only one month, but it is reflecting an increased rate from what we have seen over the last 12 months.

**Senator HUMPHRIES**—So they are 40 per cent down over a year, but they are up in an individual month. Is that what you are saying?

**Mr Metcalfe**—We are seeing the application rate going up again.

**Senator Chris Evans**—I think it is fair to say that we are starting to see a pick-up in applications.

**Senator HUMPHRIES**—But we are not sure whether that is because of the economy or despite the changes.

**Mr Kukoc**—Noting that the unemployment rate is much higher than the unemployment rate that we had at the end of 2007 and early 2008, when we were lower than four per cent—3.9 per cent—we are still above five per cent. There is a time lag effect because during this economic crisis a number of employers were reducing the number of hours that their existing employees were working rather than reducing the number of employees. That means there will be some time lag in any economic pick-up that will translate in increased employment because employers are largely resorting to the existing workforce—increasing working hours of the existing labour force.

**Senator Chris Evans**—There will also be regional differences in terms of the state of the various regional economies. That has been reflected. We have also seen a strong demand for medical professionals, et cetera, but we saw a drop-off in the lower trades levels as the economy contracted. But registered nurses, computer professionals, medical practitioners in training and medical practitioners were still at the top. So the high-skilled areas where demand for health does not drop off with the economy—in fact, it probably goes up as the economy goes down as depression, for example, and other things set in—but in other areas, such as construction trades, we saw a larger drop-off, being more responsive.

I think where you might see some impact of the changes is at the trades levels. I think the introduction of more strict English requirement levels and trade testing will see some of those areas tighten and see fewer applications. Quite frankly, that is a good thing because where we had abuse it was at that end where people with poor English language skills and dubious trade qualifications were being brought in and exploited. I would hope there is some changed behaviour at that end, because part of the reforms was to try to fix that problem. But in terms of the professional end of the market, it is pretty steady.

**Mr Kukoc**—It is pretty strong at the moment.

**Senator HUMPHRIES**—Have you noticed any differences in outcomes with respect to the removal of the regional concession? Is there any indication of that having made a difference to the number of applications?

**Mr Kukoc**—It is hard to say. The concept of market rates incorporates regional and locality flexibility, because the concept of market rates is equalising the terms of conditions of employment in the region, on the local work site, which means that the local conditions are taken into account when the market rates condition applies.

**Senator HUMPHRIES**—You mentioned a figure for a recent month of 3,810. Can we have a figure for the number of 457 applications month by month for the past year?

**Senator Chris Evans**—One of the changes I made was a very comprehensive report on 457 applications approval rates by country, by category and by industry. That is all available on the website quarterly—or is that monthly now?

**Mr Kukoc**—Yes, on a monthly basis. It also contains some interpretation of the results and an economic interpretation.

**Senator Chris Evans**—More than you would ever want to know about 457s in your life is there.

**Senator HUMPHRIES**—I could believe that., Do we have any figures on how long it has taken to finalise labour agreements that are negotiated as part of the 457 process?

**Senator Chris Evans**—Labour agreements were an existing mechanism. I will be corrected if I am wrong, but the only significant change was that we required people in ASCOs 5 to 7 to be employed under a labour agreement rather than individually sponsored. That previously I think only covered a very small number of people. Labour agreements have been in operation for many years. Mr Kukoc may be able to help you with the trends.

**Mr Kukoc**—Labour agreements represent a negotiated concession to the standard rules on 457, of course. The length of time taken to negotiate an agreement is dependent on the quality and completeness of the application. If we get all the information that we require, the process is pretty much streamlined, especially as the department has become the sole signatory to the labour agreements.

Previously we had a dual role with us and the Department of Employment, Education and Workplace Relations. Now it is our department that signs off on these labour agreements. So the process, provided that all the conditions are met and the application is complete with all the information we require, is pretty much streamlined. Of course, you need to be aware that, as I said, it is a negotiated concession on our standard 457 rule. It is usually in the semi-skilled area, ASCOs 5 to 7, where there has been evidence of exploitation and abuse incidents in the previous period. So we are keeping our eye on that. That is why labour agreements are a special arrangement outside the 457 process.

**Mr Vardos**—As at 31 March, there were 95 signed labour agreements and another 57 under negotiation.

**Senator HUMPHRIES**—When you say ‘under negotiation’ do you mean that you have sent an application and they have not finalised the labour agreement—so, that has to be finalised before the application can be finalised?

**Mr Vardos**—We have received an application and it is either being considered by the department on its merits or we have gone back to the applicant to seek further information. It is a bit of an iterative process when they are under negotiation.

**Senator Chris Evans**—They might apply and say, ‘We want to pay \$10,000 less than the award rate’, or ‘We want to bring in people who cannot speak much English’, or ‘We want to bring in people who have a different trade qualification.’ It depends what they are seeking as a concession. There is a negotiation as to whether what they are seeking is reasonable and what it means to the rest of the labour market.

So there is a process. It is not a question of filling in the form, sending it in and having it processed. We often say to them: ‘No, we are not going to agree to that; we do not think that is reasonable. But if you want to frame it in this way we might sign up to that.’ It is that sort of process.

**Senator HUMPHRIES**—Are these labour agreements generally put forward in respect of a single applicant, or are they usually in connection with a number of applicants?



**Mr Vardos**—It can vary from a couple to tens. Just to give you an indication, of the 95 signed labour agreements, 12 were with employers from individual companies, 20 with the meat industry, 63 with the on-hire industry, and the number—

**Senator HUMPHRIES**—What industry?

**Mr Vardos**—On-hire labour companies. The number of visas that they would get under each labour agreement varies. I do not have the range, but it can be under ten to 40, 50 or more.

**Senator Chris Evans**—Of the labour agreements I have seen—some of them come across my desk—many have been with on-hire companies dealing with health professionals. They tend to contract to major employers, but the employer has not applied, it is the on-hire company that wants permission to bring in 20 registered nurses to place with employers. They have been a large part of the market, those sorts of on-hire firms. The previous government tightened the rules around on-hire because there was concern about some abuse not long before the change of government. They added a bit of integrity to the system. On-hire has been a big part of the market.

**Senator HUMPHRIES**—There are new enforcement provisions connected with the integrity reforms of the 457 visas that have been incorporated in the act now. I assume they have commenced.

**Mr Kukoc**—Yes, they have.

**Senator HUMPHRIES**—Can you tell me what the general reaction of the community has been to using 457 visas since those integrity reforms?

**Mr Kukoc**—As I explained at the last Senate estimates, our approach has been more one of information and education—raising awareness among the employers of the new legislation and sanctions that are available to us. We do have a risk management compliance framework—we do site visits. But at this stage we are not applying the heavy-handed approach. This is new legislation and we would like to make sure that all employers are absolutely aware of the new rules and the possible sanctions against them. We have not seen any major concern. I have not heard of any major concern about how we have implemented the new sanction powers and the new workers protection rules among business and the public.

**Mr Vardos**—But it is fair to say that since our last appearance before the committee when we explained that we were taking a gentle approach at introduction, it now ramps up as time passes. Over time you will see a higher level of enforcement action being taken as the transition period has expired.

**Senator Chris Evans**—I think the main anxiety was about the market rate. A lot of people misunderstood what that meant. My experience of feedback from business has been initial apprehension. When they worked out what it really meant—which was that you should pay them what you pay your Australian worker doing the same job—they were much more relaxed. Once they get that message, the market rate is not a very complex subject. If I am employing an Australian sheet metal worker on \$900 dollars a week and I get an overseas worker and I pay them \$900 a week, I am paying the market rate, thanks very much. I think once people get past their concerns about complexity, a lot of the people in human resources

and pay systems said, 'That is easy; I just have to pay them what I pay the locals.' So I think a lot of that apprehension has disappeared.

**Senator HUMPHRIES**—Good.

**Senator Chris Evans**—Some of them might like to pay them less. Do not underestimate that. But it is not that complex to pay them the same as the Australian worker.

**Mr Vardos**—There is another point that is worth making. The number of sanctions that may be issued in any given year is not really a measure of compliance overall across all 457 business sponsors because we do take a targeted approach and deal with those sectors that we believe may be high risk. So there is a bit of a skewing. While sanctions may be applied, it is based on a risk management approach rather than right across the board.

**Mr Kukoc**—In addition to information campaigns raising awareness, we conduct site visits. We have had 92 sanctions in the program year to 31 March. We have also had 394 formal warnings. But at this stage we still have not gone into the next layer of sanctions, which are infringement notices and civil penalties. But that may happen if some employers have repeatedly offended.

**Mr Vardos**—Those two statistics Mr Kukoc noted were based around 1,126 site visits. Out of those visits flowed the 394 warnings and 92 sanctions.

**Mr Kukoc**—And no infringement notices so far.

**Senator HUMPHRIES**—You say that you have the figures on the website for the number of applications for 457 visas. Is it applications or grants of 457 visas?

**Mr Kukoc**—We have both, for both applications and grants, by country, by occupation—by ASCO group.

**Senator Chris Evans**—By shoe size—it is very comprehensive.

**Senator HUMPHRIES**—Mr Kukoc or Mr Vardos, I think you also said that there have been 95 labour agreement applications finalised and there are 57 still in the pipeline.

**Senator Chris Evans**—Yes, he said there were 95 current and 57 applications current.

**Mr Kukoc**—There are 95 signed labour agreements and, as at 31 March 2010, there were 57 labour agreements under negotiation.

**Senator HUMPHRIES**—How many labour agreements have been refused outright?

**Mr Vardos**—I do not have that figure.

**Mr Kukoc**—We do not seem to have that figure. We will take that on notice.

**Senator HUMPHRIES**—Is it a substantial figure? If someone applies and they are seeking a \$20,000 pay cut for their workers, they will usually be sent off to negotiate another outcome, I assume, so you would not be refusing very many outright.

**Senator Chris Evans**—I think that is right. I think you might have some deterred applicants who decide that they are not going to get the sort of concession they hoped for. Whether that would be taken as a refusal or an application discontinued is the question. In my experience, I have not seen a lot of absolute refusals. It has been more of a question of negotiation around the conditions. But we will take that on notice.

**Mr Vardos**—That is correct. In the time I have been dealing with this I cannot recall an outright refusal. As the minister has suggested, it becomes then a negotiation process if what they want is unacceptable. We draw the line in the sand and, if the company is prepared to come up to meet the benchmarks we have set, then you have an agreement. I cannot recall at this moment an outright refusal of a labour agreement. That is not to say that there may not have been some.

**Senator HUMPHRIES**—Can you take that on notice and get back to me?

**Senator Chris Evans**—If it is an employer with a very poor record of employing 457s then we probably would not enter into an agreement with them. There is potential that we would refuse someone on the basis of the applicant's record.

**Senator HUMPHRIES**—Have there been any issues associated with business sponsors complying with the new sponsorship obligations set out in the regulations?

**Mr Vardos**—That is reflected by the 394 formal warnings and the 92 sanctions. They would have flowed from sponsorship obligation issues. I can only give a general response at this point. I am not sure—

**Senator HUMPHRIES**—So they would all flow from a sponsorship arrangement?

**Mr Vardos**—The most common reasons for a sanction being issued are provision of false or misleading information to the department, such as inconsistent pay slips; application criteria no longer being met, such as the sponsor no longer meeting a commitment to provide training to Australian workers; and failure to notify the department when certain events occur, such as the cessation of employment of a visa holder. Those are the three most predominant reasons for a sanction being put in place.

**Senator HUMPHRIES**—Are those issues being progressed? Are those individual businesses having problems either addressing them or maintaining their obligations under the sponsorship arrangements, or are there systemic types of issues that you may have had complaint about from industry representatives? Can you characterise what those sponsorship problems might be?

**Mr Vardos**—I would have to speculate here. Perhaps my colleagues can give a more substantial answer. But it would be based on a field visit to a business that employs 457 visa holders. But, on a risk based approach, you would tend to visit more businesses within a certain sector or industry that has been identified as high risk. You may get a pattern for that industry. But I am just generalising here.

**Senator HUMPHRIES**—What are those sectors?

**Senator Chris Evans**—Probably ACT restaurants, given their history.

**Mr Kukoc**—It is part of our risk management framework, as Mr Vardos mentioned. We do target industries and employers that, based on our historical data on non-compliance, we have identified as high risk. It is a targeted approach.

**Senator HUMPHRIES**—I understand, but I am asking what those areas of high risk are.

**Mr Kukoc**—It was in the hospitality industry—

**Senator Chris Evans**—Agriculture, parts of manufacturing in the past. We will see whether we have any more recent figures. My experience is that where we have had exploitation of Australian workers is where we had the problems with the employment of 457 workers—those where conditions were not necessarily top-notch or where there was a history of exploitation of workers. The pattern was applied to overseas workers in the same sorts of industries where we would have had concerns about over the years about the treatment of Australian workers.

**Mr Kukoc**—In addition to hospitality, my colleagues advise me that it is in the meat industry and in the construction industry, especially you have a lot of subcontracting going on.

**Senator HUMPHRIES**—I have some other questions about 457 visas and other visa categories, which I might put on notice. I will turn to the skilled occupation list, which we were touching on before. I have a copy of what I assume is the complete list. I cannot see any chefs or hairdressers on the list—the minister has kept to his word in that respect. The old list had not only occupations but points associated with occupations. So they were presumably ranked according to the higher level of priority. There are no points associated with the list that I have. Does that mean that we have dispensed with the points system?

**Mr Kukoc**—Our points test is currently under review. Until it is reviewed and the new points test is announced, the current points test applies. The skills list only enables applicants to lodge a valid application if their occupation is on the skills list. It is a first determinant. They need to have their occupation on the skills list in order to lodge a valid application. Once that application is lodged we allocate different points to different criteria, including age, English language, whether their qualification is Australian or overseas—there are a range of criteria, and that still applies.

**Senator HUMPHRIES**—For every occupation on the new list there is a corresponding occupation on the old list that the people would have to refer to to work out how many points they earn.

**Mr Vardos**—Bearing in mind that the new arrangements start on 1 July and, with the points test under review, that will be synchronised.

**Senator HUMPHRIES**—I hope that means it will all be clear by 1 July?

**Mr Vardos**—Yes.

**Senator Chris Evans**—Senator, just so that you are clear, the new SOL, which we accepted on the recommendations of Skills Australia for the new test, will apply from 1 July. I will get Mr Speldewinde to take you through the interaction of the measures.

**Mr Speldewinde**—The intention is that, when the minister formally puts into effect the points test with the legislative instrument, that instrument will also include the points and the relevant assessing authority that will be assessing people's qualifications against each one of those occupations.

**Senator HUMPHRIES**—How long do we expect it to be before the points are also available to go against these occupations?

**Mr Speldewinde**—The regulations that underpin the skilled occupation lists are due to be considered by the Executive Council on, I think, about 15 June. We would expect that, all going well, the new list would be published within days of that.

**Senator HUMPHRIES**—Does that imply that there is no prospect of consultation with affected industries before that points system is published?

**Mr Speldewinde**—Consultation with affected industries has been going on now since Skills Australia first published its specialised occupation list, which I think was in March.

**Senator HUMPHRIES**—So you have sought views both on which occupation should be listed and on what priority or weight should be given to each occupation?

**Mr Speldewinde**—The proposal is that we would not be changing weightings. Most of the occupations on the new skilled occupation list were represented, at least at an aggregate level, on the old skilled occupation lists. If something was a 60-point occupation under the old list, we would not be proposing to change that under the new list.

**Senator Chris Evans**—Effectively it is a subset of the old or reduced list. There are a couple of changes, but effectively it is a subset. So the points that were allocated before will be allocated on the new list. The point I want to make to you so that we are not misleading you is that a formal review of the points test is occurring. There has been consultation and a discussion paper published about that, so it is part of the overall reform package. A review of the points test itself is occurring. But from 1 July effectively the old points test or the current points test will be replicated against the new SOL. I do not want to mislead you. We are actively considering the way the points test works—whether it is still meeting our needs and whether it requires an overhaul. There is a discussion paper and submissions from industry bodies and all that process is underway.

**Senator HUMPHRIES**—Just to be clear, if you have an occupation on the list and it has a lower number of points than another occupation, does that mean you go into a queue behind a person with a higher number of points on his or her occupation?

**Mr Speldewinde**—The way the points test works is that the occupation points are only one of a number of factors that accumulate to determine whether a visa applicant meets the minimum standard to apply for a visa. For an independent migrant, at the moment, the pass mark is 120 points. The maximum they could get for their occupation would be 60 points.

**Senator HUMPHRIES**—For things like state of health, age, and things like that.

**Mr Speldewinde**—Educational levels, English language ability et cetera.

**Senator Chris Evans**—It is the case that it can distort or influence the result quite markedly and there are a lot of arguments around the appropriateness of the current points allocations. But what is the case is that once people pass the pass mark they are then queued in order of application, and that is one of the things that I think are fundamentally wrong with the system. As I have announced, we are looking at that issue. Fundamentally, if I have 10,000 cooks in front of the doctor, I should be taking those 10,000 cooks before I process the doctor. That is the current system and it has been the system up until now. That is why I brought in the critical skills list. If you asked me whether that was a good way for Australia to do business, I would say absolutely not. So we are about reforming that process that allows us to

take the skills we need, and part of that process is the abolition of the MODL and the introduction of the SOL. But part of it is the points test review and our selection methodology. Those, if you like, are the next two stages in the reform process.

**Senator HUMPHRIES**—You said, Minister, that you have accepted the recommendations of Skills Australia with respect to that list. You have taken the whole body of recommendations and adopted them unchanged.

**Senator Chris Evans**—That is right. There was some interaction between the department and other agencies. When Skills Australia was consulting about the list we were engaged with it, DEEWR was engaged with it and other stakeholders were engaged with it. But, if you are asking me when it wrote to me with the list, I can say that we accepted it without amendment.

**Senator HUMPHRIES**—Was it Skills Australia that was principally engaged in the process of consulting with industry stakeholders and so on? You are satisfied that that process was robust and that they had consultations with all the key stakeholders? Did they have a discussion paper or another way of giving people a chance of commenting on draft proposals?

**Mr Speldewinde**—They did put out a discussion paper which basically outlined a set of principles that they thought might be important, and there was public comment around that. As I understand it, there was extensive consultation between Skills Australia and individual stakeholder groups who were making a case for or against continuing to have their occupation on the skilled occupation list. Most of that was done at arm's length from the department. We have a program of engagement with stakeholders anyway, and it would be fair to say that at times there was some crossover where stakeholders would be asking us to make representations on their behalf to Skills Australia. The department did not do that. We stuck to the line that the Skills Australia process was independent and needed to be seen that way and, therefore, their interaction needed to be with Skills Australia.

**Senator HUMPHRIES**—Do we have a list of the organisations or stakeholder groups that Skills Australia consulted or invited to make comment on their—

**Senator Chris Evans**—It is DEEWR's responsibility, but I am sure that, if you wanted to put that question on notice, they could give it to you. I am not trying to be difficult, but it is their process.

**Mr Metcalfe**—We can let DEEWR know that you might ask that question. They are appearing next week.

**Senator HUMPHRIES**—Indeed they are.

**Senator Chris Evans**—They are appearing later on in the program. DEEWR is up next week.

**Senator HUMPHRIES**—That is right.

**Senator Chris Evans**—You will get a chance then. Skills Australia will appear as part of their portfolio, I understand.

**Senator HUMPHRIES**—Excellent. I have a question about the holding of practical assessment tests through VETASSESS in other countries. Is this the appropriate place to ask about that?

**Mr Metcalfe**—Yes.

**Senator HUMPHRIES**—I have had a constituent complain to me that there are trade-qualified people in Sri Lanka waiting to take the VETASSESS practical assessment tests. They tell me that the VETASSESS assessors are refusing to travel to Sri Lanka—for, we are told, security reasons—to allow people to undertake the tests there. Can you confirm whether that is the case?

**Mr Speldewinde**—The relationship between VETASSESS and the Commonwealth is part of a mandate that was handed out by COAG in February 2006. VETASSESS undertakes that offshore skills assessment function as part of a contract that it has with Trades Recognition Australia. Trades Recognition Australia is a business unit of the Department of Education, Employment and Workplace Relations. I have also heard that particular claim. As we understand it in Immigration, there were concerns particularly during the last days of the strife—the civil war in Sri Lanka—and that VETASSESS was acting on advice from the Department of Foreign Affairs and Trade. That is our understanding. But you probably should clarify that with DEEWR itself.

**Senator HUMPHRIES**—The obvious point to make there is that the Department of Immigration and Citizenship is saying that the situation in Sri Lanka has stabilised to the point where we do not need to consider humanitarian applications. DFAT is saying that the situation is too unstable to send people to Colombo to do tests.

**Senator Chris Evans**—First of all, that is not what the government is saying. But it was safe enough for me to visit and it was safe enough for Mr Smith to visit.

**Senator HUMPHRIES**—So it should be safe enough for the VETASSESS people to visit, too, shouldn't it?

**Senator Chris Evans**—I would argue that if they were going to Colombo there should not be a problem. But I think the answer was that—

**Mr Speldewinde**—They were acting under advice at the time. I am not sure what the advice is now.

**Mr Metcalfe**—Senator, I think it is a commonly drawn analogy but I think it is quite a different issue as to what DFAT's professional opinion is about the travel advice for Australians as opposed to the processes we undertake, which is a decision as to whether or not a national of Sri Lanka would be persecuted upon return. I can understand why people say that it is not safe for them, but they are quite different issues. On the issue of VETASSESS and whether or not it is safe for them to travel to Sri Lanka, I am sure that DEEWR can cover those issues next week. But certainly I was there with the minister last year and we had a very good visit for a few days.

**Senator Chris Evans**—And we are both bloody big targets!

**Mr Metcalfe**—That is probably the reason I was taken, I think!

**Senator HUMPHRIES**—For the sake of my constituent can we clarify now whether any advice would prevent VETASSESS assessors from travelling to Sri Lanka? I am talking in particular about Colombo, which I understand has been relatively free of some of the violence

that was taking place, even at the height of the civil war. Can we find out quickly whether there is still any current advice discouraging travel by VETASSESS assessors?

**Mr Metcalfe**—We could do no better than refer you to the Smartraveller website, Senator, to see what foreign affairs' current advice is in relation to people travelling.

**Senator HUMPHRIES**—With respect, it is not me who needs to know; I am not going to go to Sri Lanka—

**Mr Metcalfe**—No.

**Senator HUMPHRIES**—but VETASSESS assessors are. If they are operating on some outdated advice about the wisdom of travelling to Colombo, it ought to be updated and they ought to be advised that there are people are seeking applications on that island who deserve to be seen. A large number of them have paid their fees—those fees were paid a long time ago—and they are still waiting to get their assessments. So I think it is quite reasonable to ask that if they have paid their fees they should get a chance to demonstrate their skills.

**Mr Metcalfe**—We are very happy to look into that. Indeed, if you wanted to put us in touch with your constituent we would be very happy to assist that person to contact the relevant people. It is something we would be very happy to do.

**Senator HUMPHRIES**—I would like you to take on notice the current state of advice that would be relevant to VETASSESS assessors on whether they can travel to Sri Lanka—is it safe to travel to Sri Lanka or not for these assessments?

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

**Senator HUMPHRIES**—If it is safe then I would expect you to be advising them that they ought not to defer these visits.

**Senator Chris Evans**—Senator Humphries, we are prepared to help. We are not prepared to take responsibility for matters that are not the responsibility of the department. We are happy to help to try to solve your problem but DFAT's advice is a matter for DFAT. DEEWR's relationship with VETASSESS is for DEEWR. We are happy to raise this issue with them, say you have an interest and assist to sort it out, but I will not be providing you with advice about whether or not DFAT's advice tells VETASSESS to do one thing or another. I just want to make that clear. That is completely outside our bailiwick.

**Senator HUMPHRIES**—With respect, what is within your bailiwick is whether these assessors go off to do the job that they are paid to do. They are effectively delegates of the Australian government. Are they going to do the job that they are tasked to do if the travel advice is satisfactory? I understand that it has been satisfactory for these purposes for some time. If that is the case then, with respect, it is you, Minister, and Mr Metcalfe, who ought to be getting onto the VETASSESS people and saying, 'Get to Colombo and do the job.'

**Mr Metcalfe**—I understand exactly where you are coming from. It is not our role to assess trade qualifications or other occupations. Clearly, that is within the responsibility of the department of employment. But we are happy to work with your constituent and, to the extent that we can provide information on notice, we will do that. But I just flag that we will be drawing upon information from the department of foreign affairs and the department of employment. We have no independent capacity or role in that regard.



**Senator HUMPHRIES**—I want to ask about foreign student visas. Can you tell me how many international students currently are on 485 visas, awaiting resolution of an application for permanent residency?

**Mr Metcalfe**—We will just get that figure for you.

**Mr Kukoc**—Referring to 485 grants from 2007, 2008, 2009 and 2010, over the last three years we have granted altogether 31,410 485 visas. At the same time we have around 36,530 485 visas on hand as at 30 April 2010.

**Senator HUMPHRIES**—Sorry, I could not hear that. Could you just repeat that figure?

**Mr Kukoc**—As at 30 April 2010 we had on hand 36,530 485 visas. So far we have granted 31,410 485 visas.

**Senator HUMPHRIES**—So there are 31,000-odd granted already?

**Mr Kukoc**—Yes.

**Senator HUMPHRIES**—Again, is that a historically large number to be sitting in the pipeline?

**Mr Kukoc**—It is not in the pipeline; we are talking about the 31,000 granted.

**Senator HUMPHRIES**—It is the 36,000 I am talking about.

**Senator Chris Evans**—The visa was brought in only in 2007.

**Mr Kukoc**—The visa was brought in only in 2007 so it is a normal increase in the number of people who are applying and the number of visas on hand.

**Senator HUMPHRIES**—Do we have an average figure for the length of time that students are waiting for a decision between application and grant?

**Mr Kukoc**—I probably have that somewhere in my folder.

**Mr Vardos**—It is more likely that our colleagues in the client services area of the department might have that sort of data across all client cohorts.

**Mr Kukoc**—I have just been advised that it is three to four months.

**Senator HUMPHRIES**—Is that approximately the average level over the last couple of years?

**Senator Chris Evans**—I think Mr Speldewinde can give you some information that will help to explain these figures in terms of priority processing. I think that might help with your issues. I would have a crack at it but I think he is going to make a better effort.

**Mr Speldewinde**—Thank you, Minister! There were cohorts of the 485 visa that were subject to a priority processing general direction issued by the minister, and that direction applied up until 8 February this year. Those cohorts were essentially those people who were applying for a 485 visa who did not have occupations on the critical skills list. Part of the requirements for a 485 visa is that you must have a skills assessment. To have that skills assessment you must nominate an occupation. So if they did not nominate an occupation on the critical skills list they were prioritised to a much lower priority in terms of the 485 visa. Essentially, the effect of that has been to protract the average processing times for the 485s.

Since 8 February that priority processing direction has been lifted, so they all receive equal processing priority now, and they are now starting to flow through.

**Senator HUMPHRIES**—Can you give us an idea of the countries from which these visa applicants are principally coming?

**Mr Kukoc**—I have the breakdown of the top 10 countries for 485 visas on hand. The top three countries are India, China and Nepal.

**Senator HUMPHRIES**—Nepal?

**Senator Chris Evans**—It reflects the student population coming through.

**Mr Kukoc**—It reflects the composition of the student cohort, because they go through 485 onto the permanent residency. After Nepal are Korea, Bangladesh, Sri Lanka, Pakistan, Malaysia, Indonesia, Hong Kong and then all other nationalities.

**Senator BARNETT**—Could I just come in there? What was the reason for Nepal having such a high figure?

**Mr Kukoc**—There has been a large increase in student visa applications and grants over the last few years from Nepal. They are just flowing through the 485s into the permanent residency applications.

**Senator Chris Evans**—The 2005 changes saw a large increase in a range of markets. When I instituted an integrity check on Nepal we found that the numbers had come down quite a lot. We had a huge intake of Nepalese and Indian students, and integrity measures have reduced that flow enormously. This is one of the markets where people effectively were selling taxi driver visas under the guise of trade qualifications in Australia. That is not to disparage all Nepalese students who came in under the scheme, but Nepal was one of those countries where that racket took hold.

**Senator HUMPHRIES**—With respect to those countries, would it be possible to get on notice some figures for the number of applicants from each country?

**Mr Speldewinde**—We have those.

**Mr Kukoc**—We have those.

**Mr Metcalfe**—Could you give those to him now?

**Senator HUMPHRIES**—That would be great. We are talking about 2008-09?

**Mr Speldewinde**—I can give you 2009-10, year to date, up to 30 April.

**Senator HUMPHRIES**—Okay.

**Mr Speldewinde**—On hand as at 30 April, India was the top country by a very long way—there were 17,224, both primary and secondary. Primary applicants are the main applicant, the person whose skills and qualifications are being assessed, and secondary applicants tend to be any dependants that they might have with them. Are you happy with total numbers?

**Senator HUMPHRIES**—Total numbers are fine.

**Mr Speldewinde**—Second was the People's Republic of China, with 5,411—so you can see there is a huge gap. Third was Nepal with 2,717; Korea had 1,419; Bangladesh had 1,136;

Sri Lanka had 951; Pakistan had 861; Malaysia had 727; Indonesia, 644; Hong Kong, 508; and the difference was all the others, which was 4,932.

**Senator HUMPHRIES**—Thank you very much for that. What mechanism is used to extend their visas?

**Mr Speldewinde**—The 485 visa is not an extendable visa—it is a once-only visa grant. The intention of the visa was to allow those people who graduated from an Australian educational institution the opportunity to do a number of things if they so chose. That included improving their English language ability, getting skilled work experience, seeking an employer sponsor, undertaking a professional year where one might be available—and there are three at the moment that are approved; those are in accounting, IT and engineering—or simply working to try to recoup their fees before they go home.

As I said, it is not a renewable visa but at any point in time, if a 485 visa holder under the current arrangements believes that they meet the standard for permanent migration, they are able to apply for permanent migration. The 485 visa does not have any restrictions on work rights and people on a 485 visa can also undertake short courses of study.

**Senator HUMPHRIES**—Are people seeking such a visa eligible for bridging visas?

**Mr Speldewinde**—They are. At the time they apply for the 485 visa they are granted a bridging visa. The bridging visa does give them work rights, and they hold that bridging visa until such time as a decision is made on their 485 visa application.

**Senator HUMPHRIES**—Do they have access to Medicare while on those bridging visas?

**Mr Speldewinde**—They do not have access to Medicare unless they are from a country where there is a reciprocal health agreement.

**Senator BARNETT**—Can you nominate the main countries out of those top few, such as India, China, and Nepal? Do any of those countries have reciprocal Medicare rights?

**Mr Speldewinde**—I am not an expert in the area but I do not believe so.

**Mr Kukoc**—Very few of them will have reciprocal agreements because it is mostly European countries.

**Senator BARNETT**—And the US, New Zealand and the UK?

**Mr Kukoc**—And the US, of course.

**Senator BARNETT**—And Canada?

**Mr Kukoc**—Probably, but I am not certain about Canada.

**Mr Speldewinde**—I do not think any of those top five are.

**Senator Chris Evans**—Wealthy Western democracies is probably the answer, where reciprocal means equivalent health care.

**Senator HUMPHRIES**—You have given me the figures for 2009-10 to date for the granted number of applications by each of these countries. Could you take on notice the same figures for 2008-09 please?

**Mr Speldewinde**—The figures I gave you were the applications on hand; they were not visa grants. I can give you visa grant data if you wish.

**Senator HUMPHRIES**—Right, sorry.

**Mr Speldewinde**—But not by nationality. I can get that for you.

**Mr Kukoc**—I have with me visa grants by occupation for 2008-09 and 2007-08 but not by nationality. We would need to take that question on notice.

**Senator HUMPHRIES**—Could you take this on notice: what is the total number of international student visas granted in 2008-09?

**Senator Chris Evans**—Do you mean 485s?

**Mr Kukoc**—Is it 485s or student visas?

**Senator HUMPHRIES**—I am asking this question on behalf of a colleague, so I am not sure.

**Senator Chris Evans**—We have been discussing 485s. That is not international student visas.

**Mr Kukoc**—The total number of grants for 485s in 2008-09 was 14,458.

**Senator HUMPHRIES**—And how many have been approved so far this year?

**Mr Kukoc**—These were all grants.

**Senator HUMPHRIES**—For 2008-09 there were 14,458. How many have been approved for 2009-10?

**Mr Kukoc**—In 2009-10, 16,579.

**Senator HUMPHRIES**—How many were declined so far for 2009-10?

**Mr Kukoc**—I do not have that information. I will have to take that question on notice.

**Senator BARNETT**—How many were declined in 2008-09?

**Mr Kukoc**—I do not have that information with me.

**Senator Chris Evans**—We can take that question on notice, if you wish.

**Mr Vardos**—The grant figure for this year is as at 30 April, to be precise.

**Senator HUMPHRIES**—Has there been an increase in the rate of decline of international student visas?

**Senator Chris Evans**—We have moved off 485s and we are now talking about student visa applications, or are we still talking about 485s?

**Senator HUMPHRIES**—I am talking about 485s.

**Senator Chris Evans**—The terminology that you are using is not, which is why I am clarifying. They are not international student visas. They may well have been international students but they are post-study visas. If you are asking about the 485—

**Mr Kukoc**—We would like to take this question on notice. We can give you the full performance statistics on the 485 visa in the last three years.

**Senator HUMPHRIES**—Okay. Thank you for the information about the 485s. Could I ask you to take some questions on notice about international student visas, not 485s. That is what my colleague is asking for. How many international student visas were declined in 2008-09, how many were approved in 2009-10 and how many were declined in 2009-10, to date? In respect of these sorts of visas—you might take this question live—has there been a marked increase in the decline of international student visas?

**Senator Chris Evans**—A marked increase in the decline?

**Senator HUMPHRIES**—Yes, or a marked decline in the increase?

**Senator Chris Evans**—Do you really want to know whether they are going up or down?

**Senator HUMPHRIES**—That too, please.

**Senator Chris Evans**—Are you interested in the refusals or in the visa grants?

**Senator HUMPHRIES**—I am interested in the refusals.

**Senator Chris Evans**—The refusals would be up.

**Mr Kukoc**—For the exact data I will need to take this question on notice. From my recollection there has been a small drop in the grant rate, from over 90 per cent to around 84 per cent or 85 per cent. But I would need to confirm that, and I will take this on notice.

**Senator Chris Evans**—We will get you the figures, but there has been a large drop in the approval rate out of India and Nepal as increased integrity measures have seen larger numbers of rejections and withdrawn applications. The integrity measures have had a marked impact on the way in which we have dealt with applications. We are now seeing a drop off in applications, but we had a high number refused and we had a high number withdrawn as people were required to go through increased integrity measures. India and Nepal are the two markets to come to mind, but we also did these in Mauritius and a couple of other countries.

**Mr Kukoc**—Zimbabwe and Mauritius.

**Senator Chris Evans**—And Zimbabwe. We will get you the figures on that. I might say it was much higher in the VET sector than in the higher education sector. But we can give you the figures on those things.

**Senator HUMPHRIES**—Can you tell me what the average processing time for international student visas is at present?

**Mr Vardos**—I think we mentioned while ago that the processing time is three to four months.

**Senator HUMPHRIES**—I thought that was the 485s, but okay.

**Mr Kukoc**—Our response was in respect of the student visa, because you asked the question about student visa processing.

**Senator HUMPHRIES**—Can you tell me then what the average waiting time is for 485 visas?

**Mr Kukoc**—We will need to take this question on notice.

**Senator Chris Evans**—I think we will do you a set for student visas and 485s on all the questions.

**Senator HUMPHRIES**—That is a very good idea. My other questions are in respect of international student visas. Has the length in time for processing international student visas increased since the introduction of the changes to the visas? If so, by how much? I understand that my colleague suggested previously that the waiting time was of the order of four to five weeks, and it is now over six months. Would that be correct?

**Senator Chris Evans**—What are the changes to the visas? What do you mean by that?

**Senator HUMPHRIES**—That is the question I was going to ask you. You mentioned there were integrity measures—

**Mr Metcalfe**—Are you talking about assessment levels that are applied?

**Senator HUMPHRIES**—I do not know, to be frank.

**Mr Metcalfe**—For quite a long time we have had different assessment levels, depending upon the perceived risk and fraud from particular markets based on nationality. The assessment levels only go from one to four, and essentially require more onerous obligations on applicants to prove their bona fides. There is a regular review of those assessment levels, depending upon the performance of that cohort. I suppose that is our most significant means of determining how we apply interventions to particular case loads.

**Mr Kukoc**—For example, assessment level 1 would involve electronic online visa applications with a very quick turnaround. Assessment levels 3 or 4—especially 4—would require a lot of documentary evidence and a paper based process, which will take longer.

**Senator Chris Evans**—That is based on our experience of that cohort in terms of compliance, overstaying and protection visa applications et cetera. So basically, we have a cohort which comes, studies and goes home. They are likely to be at level 1, and they are financially able to support themselves. If we have a cohort which has a history of not meeting the visa conditions, not studying successfully and having difficulties financing themselves, they will be at level 4, and we adjust it according to the experience of those students. It is a risk management technique.

**Senator HUMPHRIES**—Are the providers of services to international students raising any concerns about processing times at this point in time?

**Mr Vardos**—Not processing times per se. They are experiencing a decline. There is a double jeopardy issue for some countries—both a decline in the level of applications, which the minister has touched on, and then the integrity measures are an issue. Whilst I am not aware of specific concerns about processing times, they have got concerns about the level of applications that are getting through overall.

**Mr Kukoc**—Especially in high-risk cohorts and the countries where we recently strengthened the integrity. They introduced additional integrity measures, including the recent measure to apply a higher risk assessment level to package courses—the assessment level that applies to the highest-risk course in that package. If they are packaging two courses, and one course has AL3 and the other AL4, we would apply an assessment level of AL4. That was recently raised with us by ACPET as a concern.

**Senator Chris Evans**—We can check the processing times for you, but I make no apologies for integrity measures that mean processing times have lengthened. I have made that very clear to the department. I do not want us letting through fraudulent claims more quickly to meet time pressures. For instance, we have introduced interviewing techniques in markets of concern that require the applicant, based on a risk profile, to come in and be interviewed about their application. That has led to large numbers of rejections and withdrawals, but would have lengthened the process. I make no apologies for having lengthened the process.

We have found high rates of fraud and inadequate applications that do not meet our standards, and that has probably lengthened them. I can get you the figures on the India or Nepal markets, but it has been lengthened for a very good reason. I am happy to tell people that we will continue to take longer to get it right, rather than get it wrong quickly. I have had that discussion with a few of the migration agents.

**Senator HUMPHRIES**—I quite agree with the philosophy behind the position that you are taking. I am just querying that if it blows the lag from about one month to six months, whether the way in which it happens needs to be reviewed. That is based on the figures which are on this piece of paper I have—they may not be accurate.

**Mr Metcalfe**—That is where very active management of the sorts of issues that Ms Hand was talking about earlier—the global manager concept and so on—is important. I make it clear that within particular countries there are, of course, different cohorts. Generally we find that the higher education sector attracts less fraudulent applications than does the vocational training sector, but as we were alluding to before, sometimes applications are packaged. People indicate that ultimately they are coming to do a higher education course, but are doing some preliminary training. They are assessed against the higher education standard, whereas really the fraud is in the earlier qualification.

That very active management is something we have applied in our key posts in New Delhi, China and a range of other overseas posts. But the combination of active management of the caseload, together with the department investing more significantly in risk management—and we have created a new division to really focus on risk and integrity of decision making—means that I think you will see the results improving and that the quality applications are being approved more quickly and the applications of concern are being refused. That is the objective we are trying to get to.

**Mr Vardos**—There is one remaining point to make: even within a national student cohort from a particular country you can have different behaviour between, for example, vocational education and training applicants and higher education and post-graduate applicants; a higher level of integrity and bona fides at the post-graduate level and not so flash at the vocational education end of the spectrum. This is another issue that may impact on the overall figure for a particular country.

**Senator Chris Evans**—We actually have different assessment levels for their different qualifications, even though they are from the same country. So, again, it is based on experience. We have had no trouble with the post-graduate students because they have been

accepted by universities et cetera, and they may be at a lower level than where we have had a problem.

**Mr Kukoc**—Actually, we recently dropped the assessment level for all post-graduate students from all countries to AL2, so it is a pretty streamlined process now.

**Senator HUMPHRIES**—I have finished with student visas, and I will go on to family reunion after the break. If the people who are associated with students want to go, that is fine.

**Mr Metcalfe**—Chair, with your indulgence; I hesitate to single out particular officers because many officers make a contribution, but I would just like to acknowledge that Mr Speldewinde has done some fantastic work in this area over the last year or so under a lot of pressure. He and his branch have been instrumental in supporting the government in these major changes that we are seeing. We are in the middle of once-in-a-generation improvements to the migration program. and Peter and his team have done a great job.

**Senator HUMPHRIES**—Congratulations.

**Senator Chris Evans**—And there is more work to be done!

**CHAIR**—Thank you very much.

**Proceedings suspended from 3.30 pm to 3.45 pm**

**CHAIR**—We are still on outcome 1.

**Mr Metcalfe**—We have some information that we could provide at this point in relation to the visa applications—the revenue issue you raised before, Senator Humphries.

**Mr Sheehan**—Senator Humphries asked about the \$31.73 million for 2009-10 for the revenue reduction and what that represented in terms of reduction of overall revenue.

**Senator HUMPHRIES**—Overall visa numbers.

**Mr Sheehan**—Yes. It is about 3.2 per cent. I can table a copy of the numbers that I read to you earlier and also with the protections in the out years for your information. In terms of changes to the application volumes, there is an estimated net reduction of 12,567 applications in 2009-10 for those visas.

**Senator HUMPHRIES**—You do not have a breakdown of what categories of visas?

**Mr Sheehan**—The categories but not the individual numbers. The categories are 175, 176, 475, 476, 487, 885 and 886.

**Mr Metcalfe**—Those are the subclass codes. If you want the particular visa code numbers, we can provide those to you as well.

**Mr Sheehan**—That is in the general skilled migration program.

**Senator HUMPHRIES**—Is it in the general skilled migration program that you are expecting to have a general reduction in applications?

**Mr Sheehan**—That is right.

**Senator HUMPHRIES**—I think that is reflected in the figures that we had before. For general migration to Australia, you mentioned there was a reduction in income from \$136



million to \$101 million expected this coming financial year. What would we attribute that fall in general migration to?

**Mr Metcalfe**—I am guessing, so I will give a general answer and we will come back later or on notice. I think it probably reflects an estimation of the impact of the changes that we are seeing with the skilled occupation list and the general expectation that the government will be making changes in due course to the points test. Therefore, we are trying to bring about a situation where fewer people who will ultimately be unsuccessful make applications for visas and trying to maximise the number of applications that will be successful. That is my working assumption, but I will correct that or ask an officer to correct that later if that is not correct.

**Senator HUMPHRIES**—Okay. I turn to family reunions. We know, of course, that the government announced that the level of family migration will be reduced by 5,750 in 2010-11. Exactly how does the government go about the task of engineering such a reduction in visa approvals? Can you break up, for example, the categories in which there would be fewer visas available? How do you project that that will play out throughout the year in terms of applications that are already in the pipeline?

**Mr Kukoc**—Of the 5,750 places in the family stream, partner places have been reduced by 3,000 places to 42,000 from 45,000. Preferential other category places have been reduced by 1,750 places, to 750 places from 2,500.

**Senator HUMPHRIES**—What does ‘preferential other category places’ mean?

**Mr Kukoc**—That includes age-dependent, last remaining relative and carer visas.

**Senator HUMPHRIES**—Does ‘partner’ include both a married partner and a de facto spouse?

**Mr Kukoc**—Yes. The non-contributory parent category has been reduced to 1,000 places, from 2,000 places in 2009-10. Contributory parents in child category places will be maintained at 7,500 and 3,300 places respectively. So the key reductions are in the partner category—from 45,000 to 42,000—and the preferential category—from 2,500 to 750.

**Senator HUMPHRIES**—So in each of those categories there are simply fewer visas to be handed out.

**Mr Kukoc**—This is a planning level.

**Senator HUMPHRIES**—Can you give me an idea, for example, of how many applications there were in the last financial year for each of those three categories where there will be a reduction?

**Mr Kukoc**—In the preferential category the 2008-09 applications were at 5,243. For 2009-10, the year-to-date applications are at 3,798. I have the migration program outcome to 30 April 2010. For partner places we had 53,116 lodgements in 2008-09.

**Senator HUMPHRIES**—And to date this year?

**Mr Kukoc**—To date, in total for the parent category we have granted 39,417 visas.

**Senator HUMPHRIES**—And the non-contributory parent category?

**Mr Kukoc**—To date we have granted 1,500 non-contributory parent visas. For contributory visas we have granted 5,616.

**Senator HUMPHRIES**—What about non-contributory parent visas in 2008-09?

**Mr Kukoc**—We granted within the cap, which was 7,500 last year.

**Senator HUMPHRIES**—Effectively it looks as if you are tending towards fewer partner grants anyway this year, if the year-to-date figures are any indication. A cut of 3,000 partners is significant but not huge in the overall size of that program.

**Mr Kukoc**—For partners?

**Senator HUMPHRIES**—Partners, yes.

**Mr Kukoc**—It is largely within the range that has been planned for the last couple of migration program years. The range was always between 40,000 and 45,000.

**Senator HUMPHRIES**—How does that work in practice? I suppose that in each of these categories at present there are more applications than there are visas granted anyway. Assuming that levels of demand are the same, will people simply be further back in a queue?

**Mr Kukoc**—They will be queued.

**Senator Chris Evans**—I add in relation to partner visas that one of the reasons the government set the level that it did was on my advice. I think some improvement integrity measures in the partner visa caseload this year may well see a reduction in potential grants. I spoke to Mr Hughes about this a while back. Every now and then people revisit these issues and I am keen for us to revisit the partner integrity issues and have a closer look at that. I do not think there is mass fraud but I do think there is room for us to tighten up a bit on some of the patterns that have emerged in recent years that I think probably warrant another look. I think we might have the effect of depressing demand a little as a result of those activities. I am not suggesting that we have a major problem, but we have seen the emergence of some patterns about which I have some concerns. A closer look at that might well see us dampen some of the enthusiasm in some of these areas. I do not want to overstate that, but I just thought there was a bit more room in partner visas as a result of that than maybe in the last couple of years.

**Senator HUMPHRIES**—I think we would all support that type of measure. Is it possible to get for this financial year to date the number of refusals in these categories? I suppose that if a person applies, say, for a partner, they can either get accepted—that is, granted a visa—or they can have their application not considered because a certain number have already been accepted. In the case of non-contributory parents the quota is already filled, so they might be refused. Is it possible to say how many have been refused in those four categories you gave me in the year to date?

**Mr Kukoc**—Unfortunately, I do not have that information with me. I would like to take this question on notice. You know that we go through a two-stage process with partner visas. The first is the provisional visa and then the second assessment, pending on the genuine relationship, is the permanent visa process.

**Senator HUMPHRIES**—Would you take that question on notice, please. With respect to those who have been refused, do we have any indication of how many take appeals to the MRT?

**Mr Kukoc**—That is another question that I need to take on notice.

**Senator HUMPHRIES**—Will you take that question on notice for those four categories, as well as how many refusals are appealed and how many appeals are successful. That would also be useful. I think we are talking here about 2008-09, if we are looking at both appeals and outcomes of appeals.

**Mr Kukoc**—Yes.

**Senator HUMPHRIES**—If you could do that it would be useful. Can you give me any information about how the numbers of applicants in those various categories for applications compare with the previous three years?

**Mr Kukoc**—Senator, that level of detail I would need to take on notice. We have seen some pickup in demand for partner places in recent years, which reflected the increased skilled migration program over the last few years. There is always that link. However, I think in recent months we have seen the stream changing course, so there is a downward trend in applications for partners, but only recently. In recent years there has been an increased demand for places in the partner space.

In the contributory parents category the government has made available an increased number of places since 2008-09 of 7,500. We do not have any queues, so we actually have available places in that category. The processing time is about a couple of months. With non-contributory parents, given the limited numbers, we have a significant queue. That is where the pressure is. But, of course, there is an alternative route through the contributory parent category. In terms of the preferential category, earlier I mentioned the numbers of applications in 2008-09 and 2009-10.

**Senator HUMPHRIES**—When we talk about integrity measures that might be taken to check the bona fides of applicants, I assume that the category in which this issue is most alive is the partner category, where you are determining whether a partner really is bona fide married or the partner of an Australian citizen or permanent resident.

**Mr Kukoc**—We have strengthened the integrity measures. Actually, these measures were implemented by the previous government. We now have a two-stage process—a provisional visa application and then, subject to testing of the genuineness of the relationship, we go into the permanent visa grant process. We have in place a number of measures to minimise the potential abuse of the partner visa program. As I mentioned earlier, applicants for partner visa must meet a range of legislative and policy criteria for granting of a visa, including the most important requirement that I mentioned: they need to demonstrate that they are in a genuine spousal relationship with their sponsor. That two-stage process, firstly the provisional stage and secondly the permanent stage, has proven to have improved the integrity quite considerably in this migration program category.

**Mr Vardos**—Senator, good old-fashioned, face-to-face interviewing is the principal technique in testing claims, both onshore and offshore.

**Mr Kukoc**—So we have interviews and we require documentary evidence, including statutory declarations from third parties, supporting the claim of genuine relationship. There are some other measures—for example, there is a limitation on repeat sponsorships and a total of two sponsorships per person is allowed, but they must be at least five years apart. Additionally, persons who have themselves been sponsored for a spouse visa may not sponsor another spouse until at least five years after they have applied for their spouse visa. And, of course, we have a minimum one-year relationship requirement for most de facto partner applicants. So a number of integrity measures are in place.

**Senator HUMPHRIES**—I recall as a lawyer sitting in on some of the interviews that the department conducted quite a long time ago. I accept that they are quite rigorous processes. What sort of bona fide checks are conducted, though, for other kinds of family reunions, such as children and parents? I assume you require a birth certificate to prove the relationship in the case of such people?

**Senator Chris Evans**—Senator, there are a complex set of issues around this, including paternity and other things that emerge in this and other caseloads. But also in the humanitarian area of family reunion—for example if you are trying to get a death certificate from Afghanistan or a birth certificate—in certain countries there is a trade, and you can get whatever birth certificate you want issued by whichever local official you give some money to. There are a whole range of challenges, depending on source countries, for these things, and often it is no fault of the applicant. I have had a lot of experience, constituent-wise, trying to get death certificates out of Afghanistan, for instance. Often it proves impossible. What sound like quite simple measures end up being very complex.

**Mr Kukoc**—I mentioned before that we have a very strong focus on documentary evidence and birth certificates, which are of course as part of that. Also it is important to know that we have a specialist bona fides unit for further investigation. So we have a risk management framework where we base it on certain information, and that triggers further investigation by the bona fides unit. That then goes into the additional checks, including home visits, to verify the claims. As we all know, applicants found not to be in a genuine relationship will have their visa application refused at either the provisional or the permanent stage of processing. We also cancel a visa after the grant of a visa if it is subsequently found that fraud has been committed in relation to the application. It is a pretty extensive and intensive process of integrity, I would say.

**Mr Vardos**—Senator, I do not want to suggest that it is used extensively, but we also have at our disposal DNA testing in some circumstances. If it is from a high-risk cohort we can also go down that path, particularly in child cases.

**Senator HUMPHRIES**—What would be the standard way of dealing with a sponsor from Afghanistan who wanted to bring children into Australia and who could not produce any birth certificates?

**Mr Vardos**—Senator, I am not well versed to comment on that. I would need to talk to someone who has been through the process.

**Senator HUMPHRIES**—Maybe you could take on notice just a description of what typically would be the process if there were a lack of documentation.

**Mr Metcalfe**—There might be someone in the humanitarian program who might be able to help you more. I suspect that they would be hammering it more within that program. Otherwise we will take that question on notice.

**Mr Kukoc**—Senator, while I was reading the information I came across some data that you requested earlier. I can tell you now the grants and rejection on the partner visas if you are interested.

**Senator HUMPHRIES**—Yes.

**Mr Kukoc**—For the current program year, 2009-10, as at 31 March 2010 the department had finalised 41,723 partner visa applications. This number includes applicants applying on the basis of marriage, de facto partner and prospective marriage. Of the total number of applications, 37,979, or 91 per cent, were granted a visa; 2,254, or five per cent, were refused; and 1,480, or four per cent, were either withdrawn or otherwise resolved.

**Mr Vardos**—Senator, another caseload where there is the potential for fraud and where bona fides checking has to be of a high standard is in the carer visa category. In that case, for example, we might actually insist on a health check of the person here in Australia who says they need a carer from country X, to satisfy ourselves that that person does need a carer.

**Senator HUMPHRIES**—You said earlier Mr Kukoc that if a person was found to have fraudulently obtained a visa the visa could be cancelled. I assume that once a person has obtained Australian citizenship the option of a sanction does not exist at that point.

**Mr Kukoc**—That is only an option if the person is on a permanent resident visa. But we have other arrangements for citizens, and Peter Hughes may be able to help.

**Mr Hughes**—There is provision in the Citizenship Act for people to lose their citizenship in certain circumstances if the underlying permanent residence that led them ultimately to be able to meet the citizenship requirements was obtained fraudulently. It is a very complex process because obviously it is not easy to take citizenship off people. But there is a process if the original grant of citizenship can be traced to underlying fraud in obtaining permanent residence.

**Senator Chris Evans**—As the previous government found when they tried to do some work around these issues, if someone is found to be a refugee and you take Australian citizenship off them, they are still here. You do not solve the problem if you cannot return them. Some people have quite simplistic propositions around this issue. The Howard government did a bit of work on these issues. It is very complex and quite difficult to make progress on it.

**Mr Hughes**—Minister, the other element to which you are referring is that, as we are party to the convention against statelessness, the Citizenship Act has in it protection against statelessness. So, of course, even if you have the kind of problem described, it is not appropriate to take citizenship off someone if it renders them stateless, because of our adherence to that convention. That is why removing citizenship is something that occurs very sparingly internationally. If you are going to take citizenship off someone, do they have another citizenship to revert to or are you going to render them stateless?

**Senator HUMPHRIES**—Excluding humanitarian applicants and those people without another citizenship to turn to, I take it that there are very few cases each year. Can you tell us how many cases in the last year where—

**Mr Hughes**—I will have to take that question on notice. Deprivation of citizenship is quite rare, but we will get a figure for you.

**Senator HUMPHRIES**—Would you say that there had been any increase in non bona fide applications across any of these categories in the last year or so?

**Mr Kukoc**—I need to take that question on notice to obtain specific data. It is my understanding that we have not seen any major integrity issues arising recently.

**Senator Chris Evans**—We see trends emerge and then respond to them, Senator. For instance, on the carer visa, the secretary and I went to Vietnam a year and a half or so ago and it was raised with us there that there might be an emerging trend relating to carer visas. The department undertook some checking of that, and we thought we had a bit of a problem there, so they put in place some extra integrity measures. One of the things about migration is that, if you cut off one pathway, people tend to flow down another. I know that the carer visa was one we started having a bit of a closer look, because numbers had spiked in a number of source countries and it seemed to be becoming quite popular. Increased integrity measures there have seen the demand in popularity drop off a bit. That is not to say that there are not a lot of genuine cases; there are. We are responding to that stuff all the time, and we have actually improved the integrity monitoring to try to ensure that we respond more quickly to these things.

**Mr Metcalfe**—Senator, under the reorganisation that has come into effect in recent times in the department, we have established a division that relates to risk, fraud and integrity to try to bring all those issues together in one area of expertise, and I think we will see quite significant results. We are anxious to understand what is happening in our business more quickly so that we can detect trends and particular areas of fraud to have greater capability of at what I call the higher end investigations, where it may lead to prosecution activity.

We have teamed that with a global manager for integrity issues. In the same way that Ms Hand was talking earlier about global managers for various visa lines or citizenship lines, our most senior officer in South Australia has now been charged with responsibility for global operational integrity issues, and we have quite a specialist unit there that is looking at those issues in a practical sense as well. I am quite heartened by initial results from that division and from that global manager. It is something that we would be happy to keep you briefed on over future hearings of the committee.

**Senator HUMPHRIES**—Thank you very much.

**CHAIR**—Thank you very much. We can dismiss people associated with outcome 1.

**Mr Metcalfe**—Madam Chair, just before we move to outcome 2 we have some further comebacks from Ms Hand relating to freedom of information issues that I think Senator Humphries or Senator Barnett was talking about before.

**Ms Hand**—Senator Barnett, you asked about FOI statistics for the last two financial years, this one and the previous one. I have a table that Mr Schiwyl will give to you in a minute with

those statistics. It is very pleasing to note that since June 2009—and the statistics actually go back to July 2008, but I am talking only about the last 12 months—we have gone from 66 per cent up to 90.10 per cent in terms of meeting service standards and, as I said, that appears sustainable.

**Senator BARNETT**—Would you go back to the 90.10 per cent? Is that this financial year or last financial year?

**Ms Hand**—April this year. It has progressively getting better. In December it was 76 per cent; in February, 86.8 per cent; March, 88 per cent; April, 90 per cent. As I said, in May we exceeded 90 per cent.

**Senator BARNETT**—So you have the figures on a month by month basis for this financial year?

**Ms Hand**—Yes, I do. You asked how we achieved this. There were some pretty basic measures in some cases and more sophisticated measures in others. One of the key things we have done is to remind our staff, when someone is submitting an application, to give back the documents, because we do not necessarily need to keep all the documents. That means that clients do not need to lodge a FOI request with us for access to their own personal documents. Given that accounted for more than 50 per cent of the applications we were given, that obviously has had a significant positive impact. We have employed a case management approach which includes initiating processing within the first 24 hours of receipt of an application. Then we have had a proactive monitoring of our caseload to address issues in advance of the 30 days coming. There are a whole range of other training, case management and record-keeping measures. They are documented for you and we will give that to you now.

**Senator BARNETT**—I appreciate that. I will have a look at that and, if we have further questions, I will let you know. I will give you heads-up on program 4.3 and answer to question No. 113 that you have given. You have kindly responded to the number of people going in and out of Christmas Island last calendar year and the cost for the 2009 financial year, which was \$2,675,000, and the average cost per charter for those charters was \$83,611. I would appreciate an up-to-date analysis of those figures. Obviously those figures are up to date to the calendar year for 2009—that is, to 31 December 2009. So the latest figures with respect to charters in and out of Christmas Island and the cost for those charters to date would be appreciated.

**Mr Metcalfe**—Thanks. We will get some people working on that to see what we can give you later on.

**Senator BARNETT**—Thank you very much.

[4.19 pm]

**CHAIR**—The committee will now move to outcome 2, Protection, resettlement and temporary safe haven for refugees and people in humanitarian need through partnering with international agencies; assessing humanitarian visa applications; and refugee and humanitarian policy advice and program design.

**Senator HUMPHRIES**—I would like to ask first of all—

**Mr Metcalfe**—Sorry to interrupt, Senator Humphries. Senator Barnett referred to question 113 in relation to charters off Christmas Island. But the question 113 that I have relates to 485 visas.

**Senator BARNETT**—Unless that is question 59 under program 4.3.

**Mr Metcalfe**—Thank you.

**Senator BARNETT**—It might be page 113 of the *Hansard* of the estimates.

**Mr Metcalfe**—Thank you.

**Senator HUMPHRIES**—I notice from the answers you gave before in overview that you are looking at some transfer of positions subject to all of the qualifications that we discussed from a range of outcomes towards outcome 4. One of those outcomes was outcome 2 reducing the establishment by five. That is not a huge amount, I grant you. Would it be true to say that, given the extra demand in outcome 4 for services or for delivery of outcomes, there is a related degree of pressure on delivery for outcome 2 as well—that is, the need for staff there would be greater because of the large number of IMAs rather than less?

**Mr Metcalfe**—Yes, certainly. There is a significant effort being put into the processing of irregular maritime arrivals who prima facie engage our protection obligations and therefore proceed to a refugee status determination. I would note that the overall number of persons coming into our humanitarian and refugee program remains at 13,750. That is a global number. The effect of the increase in IMAs is that there are fewer places available for people from overseas. So it is not as if there is an increase in the number of refugee places. Processing is shifting to more people who have arrived in an irregular way in Australia compared to people who may have been awaiting a visa from overseas. Our efforts in relation to the workload associated with people arriving on Christmas Island is impacting on the numbers of staff we have available for refugee status determination processes and protection visa decision making and we are expanding those numbers and training more staff. It is a priority area for us.

**Senator HUMPHRIES**—Okay. So it is possible that that backfill process that you referred to before might particularly impact on outcome 2 and, in fact, you might not see any significant reduction in resources for that?

**Mr Metcalfe**—I am certainly expecting that with the staff associated with protection visa processing, whether it is for people who have applied, after they have entered Australia ordinarily on an aircraft with a visa, or whether they have arrived on a boat in an irregular manner. We are putting more resourcing into that area. And that, in relation to irregular maritime arrivals, is fully funded.

As I was explaining earlier, activity funding is provided and in the area of irregular maritime arrivals we are essentially funded for what we need to spend. So there are no financial constraints upon the department in resourcing properly the number of staff required to deal with the number of people arriving at the moment. Across the whole of program 2, which again is a big program, the budget estimate is a net reduction of five staff, which is, to be honest, minuscule, or it is virtually zero. But we are seeing that we are putting more staff



into the processing of applications in Australia because of the increase in irregular maritime arrivals.

**Senator HUMPHRIES**—Can you tell us what the difference in resourcing required would be for an irregular maritime arrival versus a person who applies offshore for a humanitarian visa?

**Mr Metcalfe**—I will get Mr Hughes or one of his colleagues to talk a little bit more about it. Ordinarily, people coming to Australia from overseas under the refugee and humanitarian program are coming through two broad streams. They may be coming as a refugee where they have been identified by UNHCR as a refugee. We do undertake interviews to satisfy ourselves about that person's background and, of course, we do health checking and, where necessary, security checking depending on nationality. That is not an inconsiderable effort. It does require us to send processing teams to some fairly remote places—refugee camps on the Thai-Burma border, in Africa, in the Middle East or whatever. Some of those teams come out of our posts overseas and some come from Australia itself. It is more efficient sometimes to send a processing team from Australia. So it is not an inconsiderable workload.

In relation to the second major stream, which is the humanitarian caseload, which largely relates to people who have been sponsored by family members or community groups, again there is a processing component associated with that. The work done by our staff in assessing asylum claims in Australia, whether it is for a protection visa or a refugee status determination if the person is an offshore entry person, is a very significant piece of work. It requires considering written submissions that the applicant or their representative has made to us, interviewing the person, assessing the person's credibility, which is of course a particularly important aspect to whether there is veracity to the claims, and then weighing those particular claims against the country information and in the light of our obligations under the refugee convention, international and domestic law. That is a specialised and serious process that we undertake, as I indicated in my opening statement.

If the decision is that a person does not meet our protection obligations then there is also a substantial requirement for the reasons for that to be documented because it will form the basis of the person's eligibility for review either to the Refugee Review Tribunal if the person is onshore or to the independent merits process that has been established for offshore entry persons. Where the decision is that a person is a refugee, there is again a documentary process for quality control processes. We talked a fair bit about that this morning with the tribunal at the table. We need to make sure that if people are being found to be refugees that that is occurring in a proper manner. Again, that is a serious task and it is time consuming.

In terms of the quantum, if you were to compare a refugee interview overseas and the time and resources associated with that with a refugee interview for protection in Australia—I will see if Mr Hughes can provide more detail or we may be able on notice to provide you with information as to on average how many hours it may take for each one of those things to occur, bearing in mind that the interview times and issues may vary widely depending on nationality, pre-assessment and other things that have occurred. But I will see if Mr Hughes can help me further.

**Mr Hughes**—Mr Metcalfe has not left a lot uncovered for me to talk about other than to make the point that, generally speaking, staff based overseas and most but not all of the people doing humanitarian program resettlement work based overseas, are going to be more costly than staff in Australia assessing asylum claims in the country. It is just another cost factor.

**Senator HUMPHRIES**—But the staff based overseas are doing a number of things, not merely considering or processing applications for humanitarian resettlement.

**Mr Hughes**—It depends on the location. In some locations that are heavy posts in relation to the humanitarian program you would find some staff fully occupied on that. In other places where it is a small component of the workload it would be mixed, as you say.

**Mr Metcalfe**—If you were to go to our posts in Bangkok, Amman or Nairobi, you would find staff who are working full time on these issues.

**Senator HUMPHRIES**—But the posts will have to be maintained; you have to have someone there for that purpose.

**Mr Metcalfe**—The point we are making is that I do not have in my head the latest cost of maintaining an Australian-based officer overseas, but it is certainly in excess of about \$500,000. There is not only salary but also allowances, accommodation and a whole range of other costs associated with that, compared to the average cost of an officer in Australia, which at the level we are talking about—the APS six level—would probably be, as a rule of thumb, about \$100,000. Our staff in Australia are relatively cheaper than an Australian staff member based overseas.

**Senator HUMPHRIES**—I take it that the people we assess in that second category for humanitarian resettlement have been assessed already by the UNHCR for their status as a refugee. Why is it necessary to conduct further checks of that person before giving them a humanitarian visa?

**Mr Metcalfe**—I will get Mr Hughes to answer, but I think there is a distinction between the refugee program and the humanitarian program. Quite often someone coming under the humanitarian program may not have been assessed by the UNHCR. But Mr Hughes can probably explain it in a bit more detail.

**Mr Hughes**—The refugee component of 6,000 is exclusively based on people referred to us by UNHCR. They are people they have assessed to be a refugee. In that case we like to inform ourselves of the people's claims and form a view for Australian purposes of whether or not we are also satisfied that a person is a refugee. But by definition, if they have been mandated by the UNHCR, that is a very light touch. The processing, therefore would concentrate more on other issues such as whether we are satisfied that the family composition is correct and that there is no fraud in terms of people being brought into the family unit who are actually not part of the family unit. That can be a difficult issue.

Therefore, we concentrate on the health bona fides and character issues. The other component of the special humanitarian program has humanitarian criteria of a somewhat lesser status than that of a refugee but nevertheless identifies a person who is subject to discrimination or other practices that amount to a gross violation of their human rights if they

were return to their country origin. In that case, obviously we need to make an assessment. Some of those people who are nominated under the special humanitarian program may also be mandated as refugees by UNHCR. Again, we can have a light touch since we have the satisfaction of a UNHCR assessment. However, if they are not, we would want to look into their claims and satisfy ourselves that they met the Australian criteria.

**Senator HUMPHRIES**—You could fill our humanitarian quota 100 times over with those people who are mandated by the UNHCR as being refugees with a genuine claim for resettlement. Would there not be a case on the face of it for such claims to be accepted on the basis of the UNHCR's recommendation and even to then conduct any further checking onshore in Australia once they have come here?

**Mr Metcalfe**—As Mr Hughes said, it is quite a light touch, so we are not going through a full process of trying to establish whether or not there is a fear of persecution; it is more a verification of what the UNHCR have told us. The time is spent more around those aspects of establishing family composition and dealing with any identity fraud or other issues. Further to our earlier discussion, our longstanding experience has been that that is best done directly with the individual in an interview situation rather than seeking to do it remotely. Once the person has come to Australia, frankly, it is too late. It would be very difficult to return a person to a refugee camp type situation. We work closely with Canada, the United States and other refugee-taking countries. International practice would be reasonably similar in this type of area. But it is fair to say that we are not doing a full-blown refugee status assessment overseas. We believe our interview is an important part of an assessment as to whether someone should come to Australia.

**Senator HUMPHRIES**—Could I ask you to take on notice—I realise this is difficult—an assessment of the resources required by the department to process the application of an offshore humanitarian applicant compared to those for an IMA?

**Mr Metcalfe**—We can have a go. I think we will necessarily have to qualify what we say. But if we could say, 'Let's take an average type of offshore refugee process, what do you calculate that as?' What does that mean in terms of processing? If we were to take an average type—

**Senator HUMPHRIES**—That is what I am referring to.

**Mr Metcalfe**—what does it throw up in terms of the amount of effort? With that qualification that there would be an element of subjectivity to it—it would not be based on a broad sampling—I think that is something we could have a go at.

**Mr Hughes**—We can have a go at it.

**Senator HUMPHRIES**—Can you tell me how many Australian staff are currently working at overseas posts?

**Mr Metcalfe**—I will get the right information brought back. Are you talking generally across all of our programs?

**Senator HUMPHRIES**—Yes.

**Mr Metcalfe**—Ms Hand might have the figure from memory.

**Senator Chris Evans**—The secretary has been prepared to go into hand-to-hand combat with the Treasurer to protect those positions.

**Mr Metcalfe**—I lost a couple of budgets ago.

**Senator HUMPHRIES**—I will hold your coat for you!

**Mr Metcalfe**—The figures comprise our officers attached to our various embassies, high commission and consulates overseas. I will correct this later, but the figure I have in my head is about 126 or 130 staff. We also have quite a significant number—around 30—of airline liaison officers who are on short-term missions, quite often not attached formally with diplomatic accreditation to the mission but who operate in key airports, physically working with airlines and airport authorities to work on document and passport fraud issues. For example, there are 192 flights every week from Singapore to Australia. We have three officers based in Singapore who cover some of those flights but who are working closely with Singapore airport security to provide training and other requirements. That is a successful and longstanding program. I will shortly provide you with the correct figure for the number of attached staff, but it is in the vicinity of 125 to 130 and about 30 airline liaison officer staff as well.

**Senator Chris Evans**—I know they were on the job because as I was coming back from my Christmas holiday in Thailand with my family one of them jumped out to check my boarding pass. He had an Australian accent. I thought, ‘What are you doing here?’ Then I worked out who he was.

**Senator HUMPHRIES**—It might have been the only job they did in the last two weeks, but there is shortage there for you! Can you also let me know whether the number of Australian staff at these overseas posts, including airline based staff, has change significantly since 2008-09?

**Mr Metcalfe**—There was a reduction in the 2008-09 budget—from memory there was a 10 per cent cut across all portfolios, including Foreign Affairs and Immigration—as part of the savings measures associated with that budget. So that occurred, but there have been no other significant changes. Indeed, we placed a number of additional staff overseas in the last year or year and a half in relation to combating people smuggling and in liaison positions in a number of posts in our region. There are about an additional five. I have now been told that as of 1 April this year we had 128 Australia based immigration officers in 39 locations. They provided leadership to our 1,001 locally employed staff who are in total employed across 69 locations overseas. I should add that, while we have a significant number of Australia based staff posted overseas, we have very capable locally employed staff in those 69 locations.

The minister has met quite a few. Some of them have been with us for long periods of time and given very good service to Australia over decades in some cases. I recall staff that I met in the last year in Singapore, Bangkok and China who have been with us for many years who are very experienced and who work under the leadership of the officers we post for periods of three to four years from Australia.

**Senator HUMPHRIES**—That is good. Are you saying that 128 is up from 2008-09 or is it much same?

**Mr Metcalfe**—I will have to check as to that movement. My recollection was that we had a cut of 10 per cent a couple of years ago, but we have since added numbers back to take on specific roles in relation to liaison with counterpart agencies on the people-smuggling issue. Last year's budget provided another five positions, from memory.

**Senator HUMPHRIES**—I want to know at which posts overseas humanitarian and refugee visa grants have been made in the last year and how many in each post.

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

**Senator HUMPHRIES**—Would it be fair to say that all of those applications are processed ultimately by Australia based staff, or is it done by a combination of Australian and locally employed staff in different locations?

**Mr Metcalfe**—Sorry, what was the question?

**Senator HUMPHRIES**—Are all of the humanitarian visa grant decisions made by Australia based staff at those posts or are some of them made by locally engaged staff?

**Mr Metcalfe**—I will have to check on that and let you know.

**Ms Hand**—The answer for humanitarian decisions is yes, but I will confirm that.

**Senator HUMPHRIES**—Yes for Australia based staff.

**Ms Hand**—Yes.

**Senator Chris Evans**—My understanding is that they make the final decisions and other people help with the processes. But the sign-off is done by the Australian based staff.

**Mr Hughes**—That is my understanding. Clearly, there are many processes involved in bringing a case to a conclusion, and the Australia based staff are obviously supported by local staff who provide the material and the final decision is made by an Australia based staff member.

**Senator HUMPHRIES**—I assume that in each post there would be a designated officer like a first secretary or something who would—

**Mr Metcalfe**—There is a whole range of first assistant secretaries here who would like to be working overseas, but I don't let them! I think they are first secretaries.

**Senator HUMPHRIES**—Whatever they are called—the 2IC.

**Mr Metcalfe**—That is right. Our positions overseas tend to be at the APS6, executive level 1 and executive level 2 levels. We also have a number of senior executive service positions as our regional managers. There are five or six of those across the globe. The officers who would be making decisions on permanent visas, such as humanitarian visas, would be those APS6 senior migration officers or 'second secretaries' in Foreign Affairs parlance.

**Senator HUMPHRIES**—So the decision would not be made by the ambassador, for example?

**Mr Metcalfe**—No, the ambassador would not get involved in that detail.

**Senator HUMPHRIES**—Does the department have a presence in the migration sense in Damascus at the moment? I know there is no embassy in Damascus, but do we have a migration presence?

**Mr Metcalfe**—No.

**Senator HUMPHRIES**—Are any visas processed there at all?

**Ms Hand**—No.

**Senator HUMPHRIES**—Where would a person in Syria go to make a visa application?

**Ms Hand**—They would submit an application to Amman. I am confident that is the correct response, but I do want to confirm that.

**Senator HUMPHRIES**—Do we have many applications from Syria based people?

**Mr Hughes**—Leaving aside Syrian nationals, there is a case load of Iraqi refugees that we have resettled from time to time.

**Senator HUMPHRIES**—I understand that there is a reasonably large number. Why don't we process applications in Syria itself?

**Mr Hughes**—I think it is a decision for the whole of the government and the foreign affairs portfolio as to whether they will open Australian representation in Damascus.

**Senator HUMPHRIES**—Do we need an embassy or a high commission in a place before we can start to consider visa processing in those places, or can we have places where there is no embassy but—

**Mr Metcalfe**—It is technically possible for visa processing to happen in places where there is not an embassy, but ordinarily there is an embassy or a high commission and we are part of that.

**Senator HUMPHRIES**—When was the last time a refugee or humanitarian visa was processed in Damascus?

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

**Senator HUMPHRIES**—I will ask you to get the answer for other sorts of visas as well, please.

**Senator Chris Evans**—Do you mean processed from Damascus or in Damascus? The answer to 'in Damascus' will be none or not for a long time. Are you interested in applications out of Syria processed elsewhere?

**Senator HUMPHRIES**—I am interested in knowing when was the last time—if we have never processed visas in Damascus—

**Mr Metcalfe**—Not for a long time.

**Senator HUMPHRIES**—Not for a long time. In that case, what I want to know is: when was the last time we processed a visa from Damascus?

**Mr Metcalfe**—I suspect it would be many years ago. In terms of processing of an application in Damascus, we will take that on notice. I am not sure where your questions are going, but if you would like some information about processing arrangements for people from

Syria and how applications are considered in Amman, Beirut and other places, we would be happy to provide a little bit of information about that.

**Senator HUMPHRIES**—I do not think I require that, but thank you anyway. Can you tell me how many Afghans Australia has issued visas to in 2009-10 to date and from which overseas posts?

**Mr Metcalfe**—We would have to take that on notice. That would be the series of categories from visitor, student, potentially temporary resident through to refugee. We do not have a visa-processing capability in Kabul. Applications from people from Afghanistan are ordinarily dealt with in Dubai.

**Senator HUMPHRIES**—Do we still have a post for considering applications in Islamabad?

**Mr Metcalfe**—We do.

**Senator HUMPHRIES**—I have an answer to a question that was taken on notice at the last round of estimates which says that Australia continues to resettle Afghans living in Pakistan under the humanitarian program and that processing responsibility for this case load was transferred from Islamabad to Dubai in October 2008.

**Mr Metcalfe**—That was associated with a view of the department as to a general desire to reduce our profile in Islamabad because of the security concerns we have experienced. We had an incident where one of our visiting officers was only half an hour away from a hotel bombing. She was staying in the hotel that was bombed but she had left half an hour before the bomb went off. We took a corporate decision that we would seek to find ways to process that case load without requiring as many staff to be present in that particular place.

**Senator HUMPHRIES**—So Australia does not accept and process applications for refugee and humanitarian visas out of Pakistan at the moment; it does it all from Dubai.

**Mr Metcalfe**—Are you quoting our own answer back to us?

**Senator HUMPHRIES**—I am just confirming what I think you have just said. Is that right?

**Mr Metcalfe**—I will check and confirm that the process is occurring elsewhere. Again, we can probably check and come back after dinner.

**Ms Hand**—The processing is in Dubai.

**Senator HUMPHRIES**—Do you accept applications in Pakistan if someone fronts up to the embassy or high commission in Islamabad?

**Ms Hand**—Yes, we do.

**Senator HUMPHRIES**—You will, as it were, post box the thing to Dubai?

**Ms Hand**—That is right. We have officers there, both locally engaged and Australians, and we accept applications.

**Senator HUMPHRIES**—How many applications were accepted in Pakistan in, say, 2008-09?

**Ms Hand**—We will have to take that on notice.

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

**Senator HUMPHRIES**—I would also like you to tell me what nationalities have been granted visas through that process and particularly how many from Afghanistan. I assume that these questions will all be taken on notice. Has the UNHCR referred any Afghan cases in Pakistan to Australia?

**Mr Metcalfe**—We will check on that, Senator.

**Senator HUMPHRIES**—If you establish that there were such cases could you tell me when the last one was done?

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

**Senator HUMPHRIES**—I also want to know how many Afghan applications were accepted and how many travelled to Australia in 2008-09 and 2009-10 to date.

**Mr Metcalfe**—Is that for refugee applications or all these categories?

**Senator HUMPHRIES**—I think I am talking about refugees—humanitarian applications.

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

**Mr Hughes**—Senator, just to make it clear, Afghans do in fact form a significant number of the humanitarian program and have been in the top five countries of birth for some years.

**Senator HUMPHRIES**—I have to ask some questions about the committee.

**Mr Metcalfe**—I can provide the responses for A based staffing over the last few years. You asked me earlier for those figures, and I can put them on the record now if you wish.

**Senator HUMPHRIES**—That is fine but I have to go. I will be back in a little while.

**Mr Metcalfe**—In response to your earlier question, as at 30 June 2007 we had 147 Australian based officers overseas, as well as 16 short-term missions for airline liaison officers. On 30 June 2008 we had 137 A based officers overseas and 18 airline liaison officers. At 30 June 2009 we had 124 A based positions overseas and 28 airline liaison officers. I gave the figure before that we had 128 A based officers overseas as at 1 April 2010. We had around 30 airline liaison officers in place.

**Senator PARRY**—Thank you, Mr Metcalfe. I will take over from Senator Humphries. How many humanitarian refugee visas have been granted out of Indonesia and Malaysia from the caseload of asylum seekers processed by the UNHCR from 2008-09 Australian until the year to date and what nationalities were they?

**Mr Hughes**—I will check to see whether we have that.

**Senator PARRY**—Thank you.

**Mr Hughes**—I think not the way that you have asked it, Senator. I think we will have to take that question on notice.

**Senator PARRY**—Can I ask the question in a better way or would that not help?

**Senator Chris Evans**—I know that we produced the figures for last year but we will probably take on notice the figures for this year.



**Senator PARRY**—That is fine. Do you have last year's figures there? Can those be included in *Hansard*?

**Mr Hughes**—We do not have them but we do resettle a significant number of refugees out of Malaysia and currently we are processing refugees for resettlement out of Indonesia, but I will get you the exact numbers in the way that you asked them on notice.

**Senator PARRY**—Thank you. You might also need to take this question on notice: what type of visas were they given?

**Mr Hughes**—Yes, Senator, we will do that.

**Senator PARRY**—How many applications for protection visa were made by onshore applicants who arrived legally?

**Senator Chris Evans**—What do you mean by legally onshore?

**Senator PARRY**—I do not know because I do not know the basis for the question.

**Senator Chris Evans**—I just wanted to be clear that we understood. Mr Hughes will take you through the potential but there would be those who applied onshore who arrived legally on a visa and there would be those who arrived onshore without a visa.

**Senator PARRY**—We can break up the question. How many applications for protection visa were made by onshore applicants? Do you have a category of whether or not there were legal onshore applicants?

**Mr Hughes**—That helps. Senator. This financial year, from 1 July to 2 April 2010, there have been 4,277 protection visa applications lodged by people who were not irregular maritime arrivals. The second part of your question was how many of those arrived with visas. There would be a small number of those who were unauthorised air arrivals. I do not have that figure with me, but I would have to get that.

**Senator PARRY**—Would you take that question on notice also?

**Senator Chris Evans**—The vast majority would have been people who came on a visa and then either applied or who might have overstayed and then applied.

**Mr Metcalfe**—That is right. There are probably three subcategories. There would be people who arrived on a valid visa, entered Australia and then sought refugee status while they were still lawfully in Australia. There would be people who arrived on a valid visa, overstayed their visa, and then sought refugee status at that stage. And there would be people who caught an aircraft to Australia and upon arrival in Australia were found to have false documentation or they had destroyed their documentation and thus were an asylum claimant at the border, having arrived by air. The figure that Mr Hughes gave you would include all those people, because it was non-boat arrivals. But if we can disaggregate those three figures we will do that on notice.

**Senator PARRY**—So we can expect target with three categories, based upon your answer Mr Metcalfe? How many applications for a protection visa were made by unauthorised boat arrivals? How many visas were granted in the first instance by the department in each category? How many were refused, and how many subsequently appealed in 2008-09, and

also in 2009-10, the year to date? How many failed asylum applicants have been removed? I can again break up that question if you would like me to go piece by piece.

**Mr Metcalfe**—Could you do them one at a time, Senator?

**Senator PARRY**—I can. It just gives you the context of the question in its entirety. How many applications for a protection visa were made by unauthorised boat arrivals?

**Mr Metcalfe**—By virtue of Australian law, an irregular maritime arrival is precluded from applying for a protection visa unless the minister agrees that they should be allowed to apply. The process that works is essentially that the department undertakes a refugee status determination and only if that is successful would the minister be invited to allow the person to make a protection visa application. I think the question that you are probably asking is: how many irregular maritime arrivals sought refugee status in Australia, because that would be a different figure to the number of people who sought protection visas. That is a later part of the process.

**Senator PARRY**—Can we then have both sets of data? Can we have the set to which you have just referred in addition to the ones who have also sought a protection visa.

**Mr Metcalfe**—We can certainly talk about the number that sought refugee status in Australia. The number who were then seeking a protection visa would only be those who had been found to be owed refugee status. We can talk you through that process.

**Senator PARRY**—The second part of the question was: how many visas were granted in the first instance by the department in each category?

**Mr Metcalfe**—That would be very close to the same number who applied for protection visas because one could not happen without the other.

**Senator PARRY**—Do we have an answer or do you have to take that question on notice?

**Mr Hughes**—Again, I think because of the way in which you have asked that question, I will have to take it on notice to provide an answer and have it broken up into the way that you want it.

**Senator PARRY**—That is right. The third part to this four-part question is how many were refused and how many subsequently appealed in both the 2008-09 year and the year to date? How many failed asylum applicants have been removed—probably the critical question of the four?

**Mr Hughes**—We will also take that question on notice. If we can find it in the way in which you have asked it later today we will provide it.

**Mr Metcalfe**—I could make a general observation, and it would be a very general one. In relation to refugee status we have seen applicants from Afghanistan and Sri Lanka. Initially when we started seeing irregular maritime arrivals we were finding very high proportions to be refugees. What we are seeing now is a significant proportion not to be refugees. We will take the question on notice but we have seen a changing outcome for the decision making. We attribute that largely to changing situations in those countries and information we have about those countries. No doubt we will talk about that later. But there is a clear trend where the

department is now refusing many more applications from nationals of those two countries than we had been, say, a year ago.

**Senator PARRY**—I gather that all those points were taken on notice.

**Mr Hughes**—Yes, Senator.

**Senator PARRY**—How many places in the humanitarian and refugee program have been provided to onshore asylum claims, including air arrivals and those who have arrived unauthorised by boat? Can we have a breakdown of those figures? Again you may need to take that question on notice.

**Senator Chris Evans**—It is the two earlier figures added up, basically.

**Senator PARRY**—Yes, it would be.

**Mr Hughes**—I can say that in the year to date.

**Senator PARRY**—That would be good.

**Mr Hughes**—The way to regard it is that under the policy settings that have applied since 1996-97, anyone who claims protection in Australia and is owed protection by Australia and obtains a protection visa, obtains that visa and has it counted against the special humanitarian program component of that program. Therefore, for this financial year—2009-10—from 1 July to 31 March there were about 3,500 onshore protection visa grants that related partly to people who had arrived in Australia by air applying for protection visas and partly to people arriving by sea.

**Senator PARRY**—You will be able to give a breakdown of both categories?

**Mr Hughes**—I am not sure that I have the year to date in that format, Senator. I will have to give you the breakdowns separately.

**Senator PARRY**—Can you take that question on notice?

**Mr Hughes**—Yes, I will.

**Senator PARRY**—How many places in the humanitarian refugee program have been provided to the family members of onshore asylum claimants and unauthorised boat arrivals and are visas usually provided through the humanitarian programs or through the family reunion programs? Again, can we have a breakdown?

**Mr Hughes**—People who obtained Australia's protection by applying domestically in Australia and who have immediate family members overseas or, in some cases, more distant family members, can seek to have them in Australia either through the split family provisions of the humanitarian program or, if they wish to do so—for example, if it is a spouse—they could sponsor them through the migration program. Generally speaking, most people who obtain protection visas would seek to be reunited with their relatives through the split family provisions. I think some do go through the normal migration program. I would expect that to be a much smaller number.

**Senator PARRY**—So you are saying that it is both? What would guide the applicant as to which way to go?

**Mr Hughes**—I think what would guide the person is that, if the immediate relative overseas comes through the split family provisions, they would get greater support in post-arrival services than a person coming through the migration program. The cost would be much less because there are significant application fees in the migration program.

**Senator PARRY**—There is a clear financial advantage to come through the family reunion aspect?

**Mr Hughes**—If you can come through the split family that is more beneficial.

**Senator Chris Evans**—Having said that, of course, we get 140,000 applications a year, or is it not that large?

**Mr Hughes**—It is not that large any more in the special humanitarian program, but the waiting times might be very long for those seeking to be reunited through the split family provisions of the humanitarian program because it is capped and the numbers are limited. So you might have a much longer waiting time and that might encourage some people, if they are able, to seek to have a family member come out through the migration program.

**Senator Chris Evans**—So you could not, say, apply for a spouse visa for your partner. You would not get as much assistance and you would have to pay the fees, but you might get a quicker result because you have gone through the normal migration program. One costs more; the other one might be quicker.

**Senator PARRY**—Exactly.

**Senator Chris Evans**—So people obviously make their own decisions.

**Senator PARRY**—What was the breakdown again? Which was the smaller number of preferred entries for family members?

**Mr Hughes**—Coming through the migration program would be the much smaller number.

**Senator PARRY**—Again, can you provide those figures on notice?

**Mr Hughes**—Yes, Senator.

**Senator PARRY**—What is the acceptance rate by nationality of onshore protection claims and how does that compare with acceptance rates in the United Kingdom and in North America? Again I am happy for you to take that question on notice if you need to.

**Mr Hughes**—I will take it on notice but I will make some general points about that. Making comparisons in this area is extremely difficult for a whole variety of reasons. Different countries have very different caseloads. For example, if I talk to my European colleagues I find that they have some asylum claimants from countries that match those coming to Australia but not always the same ethnicity—there might be substantial ethnicity differences in who claims asylum where. Equally, there would be many countries or nationalities represented in the asylum caseload in Europe and North America which we would not see so much of in Australia.

**Senator PARRY**—Is that a demographic issue or is it because of acceptance in some countries over others?

**Mr Hughes**—I think it is a whole lot of issues—

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**Senator Chris Evans**—Including geographic.

**Mr Hughes**—I was going to say, geographic, for example. For many years Europe has had very high asylum claims from many people from African countries, simply because of the links between Africa and Europe, the travel and transport links, and former colonial connections are high. There was a big movement of people between Africa and Europe and by comparison very little to Australia. That is reflected in the caseloads. Also in Europe for many years there have been high numbers of people applying from countries that comprised the former Soviet Union. For example, Chechnyans might apply in significant numbers for asylum in Europe and I am not aware that we have had one here.

There is some crossover of caseloads but they also can be very different because of basic geographic reasons. Also, the recognition rates under the convention can vary quite dramatically because some countries, in particular, European countries, have other provisions by which they can let people stay. Some countries might have a very low refugee recognition rate for a particular nationality or cohort but you would find that because they have other provisions under which the people can stay people found not to be refugees might in fact be allowed to remain in the country anyway either for a very long temporary period or on a pathway to permanent residence and citizenship. We will see what comparable information we can get.

**Senator PARRY**—Thank you. Your caveat is noted anyway.

**Mr Hughes**—It is a minefield.

**Senator Chris Evans**—I have asked the question myself, Senator Parry, and I received a similar answer, and my head hurt.

**Senator PARRY**—Have you got the data as well?

**Senator Chris Evans**—Yes, and my head hurt at the end of it.

**Mr Hughes**—If your head hurt you are in the right position, Senator.

**Senator PARRY**—That was the cut-down version from Mr Hughes.

**Senator Chris Evans**—Mr Hughes can take you through it at length. I can arrange a private meeting if you like!

**Senator PARRY**—I note your pain, Minister. Thank you very much, the caveat is noted and that will be in *Hansard* to supplement the answer. Similarly, what is the acceptance rate by nationality of protection claims made by those arriving in an offshore excised place?

**CHAIR**—We will make this your last question and then we will go to Senator Hanson-Young.

**Mr Hughes**—I will get you that on notice, Senator.

**Senator Chris Evans**—Is that the end of a series of questions that we will take on notice in the next minute or so?

**Senator PARRY**—Yes, that ends my questions on notice.

**CHAIR**—Senator Hanson-Young.

**Senator HANSON-YOUNG**—We have almost reached the end of the day and we are finally getting to the juicy part.

**Senator Chris Evans**—I think 10.45 pm is at the end of the day, Senator.

**Senator HANSON-YOUNG**—I was hoping that you were not too exhausted, Minister, and that we would not be too stropky with one another.

**Senator Chris Evans**—I have been looking forward to your arrival.

**Senator HANSON-YOUNG**—Fabulous. I want to ask some questions about the suspension. I know that opposition senators asked some questions earlier so please tell me if you have already answered these questions. I want to hear directly from the department about the justification and purpose of the suspension. I will take my questions from there.

**Mr Hughes**—I think the government outlined in the minister's statement the reasons for the suspension. In essence, it relates to the two countries whose nationals are subject to the suspension. There is shifting country information relating either to the whole country or to parts of the country, and the suspension will allow us time to look into that in more detail and to use that information for determinations relating to future arrivals.

**Senator HANSON-YOUNG**—Minister, in your announcement relating to the suspension—I have the transcript in front of me—you reference the UNHCR, the review and their reports into the conditions in Sri Lanka and Afghanistan as the reasons why you put forward this suspension. But you also state:

A number of other countries have already suspended processing of claims from Sri Lanka. Based on that review, and the country information we've been getting and reporting from posts, we've decided to suspend processing.

Do you believe that that is still a correct and true statement?

**Senator Chris Evans**—Yes. I think there has been an issue around the support for decisions of other countries to suspend. Mr Hughes might be best able to answer in detail, but that was advice that we were given. To be frank, some of the countries that we think have been involved declined to confirm those arrangements. What they were doing can be described in a number of ways. It is not unusual for there to be suspensions of processing. Australia has done it before. It is done informally in a number of areas and we have had some feedback from other countries.

We did make the point that we were waiting on changing country information, in particular relating to Afghanistan and Sri Lanka—important further UNHCR work that has been foreshadowed. I make the point that we do not rely solely on the work of the UNHCR, but obviously it is a major source of country information. However, the assessment relating to Sri Lanka has been a bit delayed over what was expected. I am told that it is still expected but it was expected earlier. Obviously that will be an important piece of information. Although I note that they put up a bulletin on their website regarding conditions in Sri Lanka, which I do not think I have with me. But it was not the review that they have been signalling for some time. There was a report, which they put on the website last week, which updated some of their information about the return of persons to the north. It reports:

UNHCR welcomes resumption of return movements in northern Sri Lanka. Some 207,000 IVPs have left camps in the north and east of the country since the organised return process began in August last year. They either returned to their homes or are staying with friends and relatives in various districts.

There is a report that went up on their website, I think, last week.

**Senator HANSON-YOUNG**—The same week that the—

**Senator Chris Evans**—No, sorry, this is dated 27 April. I did not see it until last week. I just referred to that because it was an interesting development. The actual review to which they have committed has not yet been made available.

**Senator HANSON-YOUNG**—I have jotted that down because I might come back to that. In relation to the announcement and the justification, on quite a number of occasions in the announcement that you made with your ministerial colleagues, both you and Stephen Smith referenced the UNHCR review and the fact that other countries had done this several times. I have highlighted the three or four occasions on which you directly referenced it in that statement. Yet the regional representative of the UNHCR has been quoted as saying:

The delay in processing of applications in anticipation of a UNHCR review was unprecedented.

He said that in an interview on 11 April. On 12 April he said to the Australian Broadcasting Corporation:

We are in the process of reviewing our guidelines in relation to Sri Lanka as we are in relation to many other countries but there is nothing remarkable about that and whether that results in a change of current guidelines or resumption of the same sorts of statements I don't want to prejudice that.

He is suggesting that this is nothing overly remarkable, yet the announcement that you made was extremely important. While I disagree with it, in terms of your policy it is an extremely large part of it and a shift. It strikes me that the announcement you made contradicts the communication from the representative from the UNHCR. It does not necessarily marry.

**Senator Chris Evans**—The first thing I would say about that is that I met with the UNHCR representative the other day as part of the normal contact I have with them, and I do not know whether or not he was quoted correctly on this occasion. He certainly seemed to be a little misrepresented this morning when I saw the headline in the *Australian* and then the comment, which did not seem to match. But maybe that was the subeditor.

**Senator HANSON-YOUNG**—I guess that that is why I am reading his words and not the headline.

**Senator Chris Evans**—For a delay to be unprecedented, given that Australia has done it before, clearly it is not unprecedented. That is not factually correct.

**Senator HANSON-YOUNG**—Are you saying that the UNHCR is wrong?

**Senator Chris Evans**—I know for a fact that Australia did it before in 2001.

**Mr Hughes**—Yes.

**Senator HANSON-YOUNG**—In 2001 under a John Howard government.

**Mr Metcalfe**—Following September 11 and the very dramatic circumstances that changed in Afghanistan after the invasion of Afghanistan by the US coalition.

**Senator Chris Evans**—I make the point, because there has been much gnashing of teeth over this issue, that I encourage people who criticise the delay to point me to the country that processes people as quickly as we do. I include the UNHCR and others in that. We have one of the most efficient regimes in the world and we have a commitment to prompt processing. Look at other western democracies where there are tens of thousands of people waiting sometimes for years for their claims to be heard. I think some of the angst about a three-month or six-month pause in Australia is a little overcooked.

The other point I clearly make is that no-one will be denied an opportunity to lodge a claim for asylum and be assessed against the refugee convention. What we have done is paused new claims while we have assessed developing information in countries. Our experience is that conditions are changing. For instance, in Sri Lanka, they have had two democratic elections. There is a lot of reporting about improved conditions and people returning to their homes. I just referred you to the most recent UNHCR posting on their website that I have seen, but we are looking at new country information from both Sri Lanka and Afghanistan. As I said, one of the critical pieces of information we had in mind when the processing pause was announced was the forthcoming UNHCR country review, because the current one is—

**Mr Hughes**—April 2009.

**Senator Chris Evans**—April 2009. Their advice, quite frankly, is pretty dated. But I do want to keep making the point that the UNHCR are very focused on that. They are not responsible for decisions that Australia takes. We use their advice and information as one of the sources of information.

**Senator HANSON-YOUNG**—Will you be considering as another source of your information the report put out last week by the International Crisis Group, which signals very clearly that returning people to Sri Lanka at this time, particularly those of the Tamil community, could be extremely dangerous?

**Senator Chris Evans**—With respect, Senator, that is not what report says. I am one of the few people in Australia who have read it. I hope you have read it, because that is not what their conclusions are. They specifically refer to LTTE's connections when they are talking about the fear of returns. Mr Hughes would know more. I actually read the report and the conclusions quite closely.

**Senator HANSON-YOUNG**—So you will be taking that report into consideration.

**Senator Chris Evans**—Absolutely. But Mr Hughes might want to speak. I do not control the country information taken into account by the department. Perhaps Mr Hughes ought to answer that. But I do want to make the point that if people actually read the report and the conclusions, it is not what was represented in much of the media reporting. Its main recommendations were specifically focused on people with LTTE combatants or close links.

**Mr Hughes**—Like the minister, I have also read that report. I think you will agree that it refers very largely to events in the final period of the civil war.

**Senator HANSON-YOUNG**—It talks about the need for a war crimes investigation and those recommendations.

**Mr Hughes**—It refers to the events there and abuses by—



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**Senator HANSON-YOUNG**—Both sides.

**Mr Hughes**—Yes, on both sides—rather than the events since the ending of the war. Nevertheless, it is a piece of information that is available to our decision-makers when assessing claims, along with many other documents.

**Senator HANSON-YOUNG**—Sure. Can I follow up on the comment you made earlier, Minister, around the fact that the assessment that you were waiting for from the UNHCR has since been delayed. What will that mean for the suspension process? Will that now be delayed in terms of lifting the suspension as well?

**Senator Chris Evans**—As I say, I have to be careful. I do not want to overstate the UNHCR report because it is just one piece of information. I guess what I am saying is that in the thinking about the suspension, the changing country information and the success of the two elections and other reporting, we were conscious that there was a new UNHCR assessment of Sri Lanka due quite shortly, and that was part of my thinking about how we handle these matters. The cabinet has made a decision that we review the Sri Lankan processing pause no later than three months after the date of the announcement. We will do that and at that time we will obviously take into account all the information that has come in in the meantime, both in terms of country information but also in terms of the experience of the ongoing processing that is occurring of Sri Lankans with asylum claims in this country. We are still processing those who arrived before the processing pause and we are seeing increased rates of refusal of asylum claims. We have not had a lot of claims since the pause was announced, so I do not want to draw too long a bow on any of that. But we are getting some feedback on the impact of the newer country information feeding in. But the cabinet will make a decision in accordance with the announcement. We will obviously access any information we can get which helps make that decision.

**Senator HANSON-YOUNG**—Sure. But despite the fact that you have said today that you do not want to overstate the importance of that UNHCR report, it was clearly referenced by yourself and your ministerial colleagues as the piece of information that you would be relying on. I take the point that you did not say ‘solely’. But it was the piece referenced time and again in relation to that announcement. If that report is now being delayed, surely then there is thinking within your department and cabinet that you would also then have to extend the suspension until you have that information.

**Senator Chris Evans**—I do not accept the logic of that.

**Senator HANSON-YOUNG**—It is based on your logic.

**Senator Chris Evans**—It is not. When we announced the suspension we were aware that we thought the current UNHCR assessment was dated and not terribly relevant. We thought it was too old to be of much use. That is a judgement of the government. The decision-makers obviously make their own decisions. But I think it is fair to say that events have moved on considerably in Sri Lanka in the last year and that we were getting reports from all sorts of organisations about returns to the north, about people leaving the camps, about more safe conditions, about the concerns being limited to certain provinces. All that information has been flowing through and decision-makers have been taking that into account. In announcing the suspension of processing, I did refer to that because that was very much at the forefront of

my mind in terms of one of the pieces of information that would be regarded as a serious contributor to country information. But if you are asking me will we not make a decision until the UNHCR puts out a new report, the answer is no, we will proceed in accordance with the government decision. Would I prefer that they have issued that by the time we get to that point? Yes, because I think it will be useful advice.

**Senator HANSON-YOUNG**—What you are saying is that there is a possibility that come the three-month deadline you may very well decide to extend it because you do not have all the information you need.

**Senator Chris Evans**—We made that very clear at the time of announcement, that at the end of the three-month period when we reviewed the suspension we may make a decision to continue it.

**Senator HANSON-YOUNG**—And now you know that one of the key pieces of information that you were going to rely on has been delayed.

**Senator Chris Evans**—Yes. I am not sure how long it has been delayed. I do not think it is indefinite.

**Senator HANSON-YOUNG**—So it may indeed come by the end of June?

**Senator Chris Evans**—Yes. All I am saying to you is that the issuance of a new country report from the UNHCR will not change the timing of the government's consideration of these matters. I regard it as an important piece of information among a whole set of pieces of information, like the crisis group report, which our decision-makers have access to and take into account. As I said, I read those reports carefully myself in terms of broader government policy. That UNHCR report will not be critical in the sense of affecting the government's timing or policy decision. But clearly it is an important piece of advice that if it is issued we will take into consideration.

**Senator HANSON-YOUNG**—Will you also take into consideration the various different legal opinions that have released since the suspension was announced in relation to the legality of the suspension policy itself? Of course, there was some released over the weekend that was commissioned by the Human Rights Law Resource Centre by three prominent lawyers in Melbourne saying that this indeed breaches three international conventions and protocols and there is a question mark over our own domestic law. Are they the types of things that you will take into consideration as well?

**Senator Chris Evans**—I will get Mr Hughes to take you through those issues in some detail. Needless to say, the government sought the appropriate advice before making this decision. We have relied on that advice in making this decision. I do not accept the legal advice you referred to. Obviously, with any issue one can get the legal advice that argues both sides of a case. But this government is very confident that we have not breached the refugee convention. I make the point again that I think even the UNHCR has said that publicly, but I will double-check on that. We process people much more quickly than nearly anywhere else in the world. Even with the suspension in place, we have processed people much quicker than almost anywhere else in the world. So I do not accept that criticism that somehow people are being denied justice by virtue of the suspension.

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**Senator HANSON-YOUNG**—We also arbitrarily detain those people while they are in the waiting process, and that, in all fairness, Minister, is a key difference.

**Senator Chris Evans**—Some people are detained in other countries; some are not. I would not say they are ‘arbitrarily’ detained but they are detained and that is a difference between the systems in many other countries, so I concede that. I also do not accept the argument that somehow there is discrimination against particular races as a result of this. Again, we have very comprehensive and senior legal advice on that. But I will get Mr Hughes to deal with that question in some detail.

**Mr Hughes**—The minister has covered most of it. We have seen the documents or the legal reports that you have referred to and our legal people have had at least a preliminary examination of those. We do not believe that we are in breach of any international conventions in relation to the suspension.

I think it is worth remembering that under the refugee convention the principal responsibility for a state that is party to the refugee convention is not to have an act of refoulement—not to send any person back to a place where they will be persecuted. Of course, nothing about the suspension would result in that happening. The convention does not actually lay down any particular procedure or timing of looking at persons with regard to the obligations that apply to a state under the convention. Therefore, a suspension is not prohibited by the convention. As the minister said, many other countries do take periods of time to assess refugee claims much in excess of what the time would be, even for people who are suspended.

Equally, we do not think that there is any difficulty with the Racial Discrimination Act, because the suspension is not based on race or ethnicity. It is based on people of a particular nationality making claims against either the government of the country of origin or non-state actors in the country of origin. So we do not think there is a breach of the Racial Discrimination Act. Equally on the detention point, detention is authorised by the Migration Act, and equally under international conventions periods of detention authorised by law for legitimate purposes are considered acceptable. Our legal advice is that we do not accept the views that were prepared in that report originating in Melbourne.

**Senator HANSON-YOUNG**—Despite some differing language and emphasis from you, Minister, in relation to the UNHCR issues from the first couple of days when the announcement was made and today, I must say there is consistency here when it comes to the legal opinion, because you were quoted the day after, on 10 April, at a door stop saying that you had very strong legal advice that the suspension is within all legislative requirements in this country. It sounded from that that you were fairly confident. I have heard that basically repeated today despite various legal opinions being released to the contrary. Are you so confident that you are prepared for the Commonwealth and for taxpayers’ money to be spent to challenge this in a court? That seems to be where a number of people are suggesting they will take this.

**Senator Chris Evans**—That is the great thing about living in a democracy. I am the most sued man in Australia, so, quite frankly, one more law suit ain’t going to worry me. The bottom line is that the government took the appropriate legal advice in coming to its policy

position. We were alert to those concerns and we thoroughly checked and sought legal advice about the impact of possible decisions the government could take. We are confident that our legal advice is robust and that we do not breach either the refugee convention or Australian law. We will argue that position publicly and in the courts if we have to.

It is not my role to tell people whether or not they can or cannot take legal challenges. But it is appropriate for the Commonwealth to defend properly taking government decisions. If people want to challenge that, fine, but we are confident in our advice. We were obviously prudent and careful in getting such advice before we took any decisions and took that into account in making our decisions. That is where it stands. If people have contrary advice, quite frankly that does not surprise me and it does not surprise me that lawyers who are active in these areas would look to prosecute a particular case. But that decision is for them.

**Senator HANSON-YOUNG**—Who commissioned the legal advice? Was it through the immigration department or through PM&C?

**Mr Metcalfe**—It was through the Australian Government Solicitor.

**Senator HANSON-YOUNG**—But was it asked for by the immigration department?

**Mr Metcalfe**—Yes, it was.

**Senator HANSON-YOUNG**—Not the Department of the Prime Minister and Cabinet?

**Mr Metcalfe**—No, it was in providing advice to the government on the issues that we sought to obtain the advice, which is something that we have done for many, many years. We never set out to act unlawfully. Quite the contrary, we always seek to ensure that we are acting lawfully and it is simply a standard procedure to seek legal advice as to whether particular measures would be permitted under Australian law or would in fact breach Australian or international law. We are quite confident, as the minister says, that the suspension is authorised by Australian law and that the suspension is not in breach of Australian or international law.

**Senator HANSON-YOUNG**—Minister, so you are confident about the legal advice, despite the contrary opinions. I must say I am surprised at the comment saying that you do not believe there is any discrimination because clearly there is a differentiation. I guess it is a matter of semantics, isn't it?

**Senator Chris Evans**—No, it is a matter of law. You asked me whether I had legal advice about whether legally we were breaching Australian law. So it is not about semantics. I got legal advice that said we were not in breach of Australian law.

**Senator HANSON-YOUNG**—What about breaching our obligations under international law? You are suggesting that there is no discrimination.

**Mr Metcalfe**—Under international law the key issue here is the absolute requirement under the refugees convention not to send a person who is a refugee back to a place of persecution—the non-refoulement obligation.

**Senator HANSON-YOUNG**—Sure. There is also an obligation not to treat people differently.

**Mr Metcalfe**—No person is being sent anywhere as a result of this. The minister has made it very clear. The suspension is to enable us to collect further country information in situations where there is clearly a dynamic and developing situation in the country to enable the best possible decisions to be taken in accordance with our legal obligations. So the suggestion that to suspend an application is somehow in breach of the refugees convention patently just does not add up.

**Senator HANSON-YOUNG**—There is a requirement not to treat people differently based on where they have come from. That is a requirement under the convention.

**Mr Metcalfe**—With respect—

**Senator HANSON-YOUNG**—If the basis of suspension is that there is changing and modifying conditions within a country, you could look at a variety of different places that people come from. Partly the reason they are seeking refugee status and protection is that things are changing in their countries.

**Mr Metcalfe**—That is right, and that is why we find people to be refugees. No-one doubts the capacity of this department to honour our obligations under domestic and international law. Sometimes we have drawn a fair degree of criticism where we have found people to be refugees, if you go back over the years. But, by any definition, of course we will look at the particular circumstances and have to look at the circumstances in each country. The only way you can test whether an Afghan fears persecution should they be returned to Afghanistan is to look at the situation in Afghanistan. So of course there is going to be differentiation as to the circumstances where people come from—both the generic country information and the particular circumstances that people might find themselves in. Any refugee status assessment process is going to look very closely at the individual circumstances of people. To suggest that there is one-size-fits-all is quite wrong. There is no one-size-fits-all.

**Senator HANSON-YOUNG**—No.

**Mr Metcalfe**—The decisions are taken based on the best possible understanding of the circumstances, the particular individual's statement and assessments of their credibility and veracity.

**Senator HANSON-YOUNG**—I totally agree that it is based on the assessment of an individual's fear of persecution, and well-founded fear of persecution. That does not really matter. How do you then make a decision about suspending people from an entire country if your whole premises is that people are assessed on an individual basis—base on their individual well-founded fear of percussion?

**Mr Metcalfe**—Because you have to understand the circumstances applying to that person upon return to that country.

**Senator HANSON-YOUNG**—Of course, and you could take any country in the world that people come to Australia from, seeking protection, and say, 'Well, things are changing here; things are changing there.' Why Not suspend all applications?

**Mr Metcalfe**—In that case you would never make a decision. This suspension was for a defined period, in view of what any commentator would regard as a quite dynamic situation. As the minister said, in recent months there have been two democratic elections in Sri Lanka

and we have advice from UNHCR on their website about the situation applicable to many citizens of that country. In relation to Afghanistan, there is clearly emerging and changing information, particularly in relation to the cohort that we are seeing in the largest numbers—people of Hazara ethnicity. So it is absolutely open to us to say that things are changing in this situation and let us just wait to see how this develops. This is not a permanent suspension or a return of people arbitrarily. It is simply saying that we need to collect more information to enable good decision making to occur.

**Senator HANSON-YOUNG**—Sure, and in the meantime those people remain in immigration detention.

**Mr Metcalfe**—That is correct.

**Senator HANSON-YOUNG**—That, of course, is the sore point for a lot of people. Minister, we have had this discussion many times, both in this setting of Senate estimates and in the chamber, and you have said publicly that you want to see detention as a last resort. In the case of those people who arrived after 9 April from Sri Lanka and Afghanistan, detention is not the last resort; detention is the first place and they will be there until such time as the government decides to lift the suspension.

**Senator Chris Evans**—They are subject to mandatory detention, which is the same as any person arriving unauthorised at an excised offshore place. So they are not being treated any differently in terms of their reception and mandatory detention. That is government policy and it is bipartisan across the major parties. It is something you hate and we have had this discussion many times. You will continue to hate it and it will continue to be government policy. The point you make is that the suspension may lengthen people's time in detention.

**Senator HANSON-YOUNG**—It has blown out your 90-day rule, hasn't it?

**Senator Chris Evans**—There is no doubt we are under pressure in terms of the 90-day rule for a range of reasons, including numbers—the sheer numbers involved. In terms of Sri Lanka, we also have other complications there, as you saw with security issues over some of the Sri Lankan arrivals. There is a range of complexities. But if your point is that people will probably be in detention longer than they would have been, I have to concede that is probably right. There is still a range of factors that apply, but it is equally true that based on emerging country information it may well be that we return more people as a result of the situation having improved during period in which their claims have been suspended.

If in fact the situation in Sri Lanka has materially improved for large numbers of those seeking asylum here, they will not be granted asylum and they will be returned safely to their homes, which is the preferred position of the UNHCR and usually the applicant. It is not an unreasonable proposition to say, 'We think actually you are more likely to be able to be safely returned as a result of the changing country information.' At the end of the suspension they will still get their claims assessed, but it is my expectation that, given the way things are occurring in Sri Lanka and the reporting coming out of Sri Lanka, more people will be able to return safely to their homes and will not be found to be refugees. But they will get their claims tested. We are already seeing an increase in unsuccessful claims. We have already returned some persons to Sri Lanka. Other countries are returning people to Sri Lanka. If the trend continues in terms of improved conditions we expect more to be able to return. If the

situation worsens and if civil war operation out again, clearly that situation will change. But we think we will be in a better position to assess some of these things after the end of the suspension. We think things are improving and we would expect the successful asylum claim rate to be much lower if things continue along this path.

**Senator HANSON-YOUNG**—How is this different from your way of getting around the temporary protection visa scheme? It is the same principle. You want to be able to send people back. Rather than setting up a temporary protection visa scheme, which you and I have criticised—unfortunately the opposition wants to bring it back—this is your way of being able to do it. But they are not given any visa; they are detained until such time as you say, ‘Okay, you can go home.’

**Senator Chris Evans**—The debate in Australia on these issues is always emotive and very rarely based on any factual information. Quite frankly, I cop it from the left and the right. They are both usually irrational. This has nothing to do with TPVs. I know it is a rallying cry, but the TPVs were introduced by the previous government to deny people the right to permanent protection. We are doing nothing of the sort. People will be assessed—

**Senator HANSON-YOUNG**—You are denying them a right to be able to justify why they deserve permanent—

**Senator Chris Evans**—That is not true. I do not know why you do not listen.

**Senator HANSON-YOUNG**—I am listening. You are not processing their claims for three to six months and that may be extended because things are getting so much better that you want to be able to send people back.

**Senator Chris Evans**—I have two points. I have made it perfectly clear to you that they will get their chance to have their asylum claims assessed. That is completely different to a TPV, where they were assessed as being owed protection, successful in their claim and then were granted a lesser right than full protection. Under this government, if they are found to be owed our protection, they will get full protection and will get a permanent protection visa. What we have said is that, as a result of changing country information and emerging improved circumstances, we will—

**Senator HANSON-YOUNG**—Which was the same justification used for temporary protection visas.

**Senator Chris Evans**—That may be as it may be. But if you are asking me whether this is anything to do with TPVs, the answer is no. They clearly failed in the objectives that the former government set for them. But if your accusation is that I would prefer people who can return safely to their home to return to their home, I am guilty. That is exactly my position. If they are not refugees, if it is safe for them to return home, that is this government’s position—that they ought to return home. It is the position of the UNHCR. Not everyone can be resettled, not everyone from Sri Lanka can move to Australia.

**Senator HANSON-YOUNG**—No-one is suggesting that they should.

**Senator Chris Evans**—That is the logic of your position. The logic of your position is that anyone from Sri Lanka ought to be allowed to come to Australia. What I am saying to you is that they will get an assessment and if they are a refugee they will be given a protection visa

in this country and be allowed to settle and be assisted in that resettlement. If they are not refugees, they will be returned home and settled safely. We expect increasing numbers to be able to be returned home. All the evidence points to that. We are assessing further information. We have already successfully returned some people to Sri Lanka. Other countries are returning them. In our opinion, they have been returned safely. Clearly the circumstances in Sri Lanka are moving. The report I referred to from the UNHCR the other day talked about 207,000 IDPs having left camps in the north as part of the return process begun by the Sri Lankan government. So things are changing. There are hundreds of thousands of people who were in camps who are not in camps now. To deny that or to pretend that that should not influence the Australian government's decision making is wrong. We do think it is relevant and we are adapting our policies to respond to what we see are changing circumstances.

**Senator HANSON-YOUNG**—But you lock people up in the meantime?

**Senator Chris Evans**—We have a policy of mandatory detention and we try to make that as humane and as dignified as possible. But, yes, people are mandatorily detained. That is government policy.

**Senator HANSON-YOUNG**—Minister, if you are so confident about your legal advice why do you not release it?

**Senator Chris Evans**—Normally we do not release legal advice, Senator. All I can say to you is—

**Senator HANSON-YOUNG**—It has been widely criticised that this policy breaches our obligations. You believe that it does not. If your advice is that it does not, why not release that advice?

**Senator Chris Evans**—Senator, I do not think there is much that this government or any government does that is not widely criticised and not widely criticised by the Greens. But that does not mean we are wrong and it does not mean you are right.

**Senator HANSON-YOUNG**—So everybody else is wrong, and you are right?

**Senator Chris Evans**—I do not know who everybody else is, Senator. But if I looked at the public comments of the UNHCR I do not see them screaming from the rooftops that we are in breach of the refugees convention. Maybe I have missed that. Not everyone else is making the sorts of claims that a small section of the refugee advocacy community is making. They can get their legal advice and they can advocate on behalf of it. But all a responsible government can do is to seek the proper legal advice through the normal channels. We did that. It was prudent and proper. We have done that. Our advice is that there is no problem with the action we have taken—it is supported by that legal advice—and so we have acted in accordance with government decisions.

**Senator HANSON-YOUNG**—Yet you will not release it?

**Senator Chris Evans**—Normally we do not release that legal advice, Senator.

**Senator HANSON-YOUNG**—But you could.

**Senator Chris Evans**—If I released it what would you say? Would you be convinced? No, you would not. You would not change your mind, would you, Senator?



**Senator HANSON-YOUNG**—I do not think that what you are doing is right. Whether or not it is legal is another matter. You are arguing that this is legal. You are arguing that this does not breach international conventions.

**Senator Chris Evans**—Yes, and you are arguing the opposite. So we disagree.

**Senator HANSON-YOUNG**—I am simply posing the question. Whether or not I believe it is right is another matter. I do not believe it is right. I do not think it is right to discriminate against people simply because of the country that they come from. It is not right to lock up people and leave them waiting in limbo. You said that the three-month period may be extended. I do not think that that is the right approach. We differ there.

**Senator Chris Evans**—I understand that, Senator, and I respect your views. All I am saying is that if I gave you legal advice that stated I was right, you would not believe it, and it would not change one thing you have said. You and I both know that.

**Senator HANSON-YOUNG**—Because you do not think you can convince me, you will not release your own legal advice?

**Senator Chris Evans**—No, Senator, I am acting in accordance with normal government practice in this regard. As you quite rightly said, if people have contrary legal advice and they want to test it in the courts they can and will. Obviously it will play out there. If my confidence is misplaced—

**Mr Metcalfe**—We will get some more lawyers.

**Senator Chris Evans**—Yes. Then I will have to wear that. All we can do is seek the appropriate legal advice through normal government advisory channels. That advice was very clear that the actions we have taken are legal and do not breach international or domestic law. If we did not have that advice we would not have taken the action.

**Senator HANSON-YOUNG**—Do you think it is the right thing to do?

**Senator Chris Evans**—Senator, we think this is the appropriate public policy response, given what Australia is dealing with at the moment and given what is happening in those countries. We will review the suspensions in accordance with those cabinet decisions.

**Senator HANSON-YOUNG**—Who did you consult before you made the announcement?

**Senator Chris Evans**—The cabinet.

**Senator HANSON-YOUNG**—You did not consult anybody else? You did not consult with the UNHCR, the Human Rights Commission or anybody else to ascertain whether this was a reasonable step to take considering it was such a big step?

**Senator Chris Evans**—Senator, this is a policy decision of government. Normally we do not discuss cabinet decisions or cabinet considerations with people prior to making those decisions. You asked me whether I had conversations with the UNHCR, the Human Rights Commission, refugees advocates and organisations. Yes, I do all the time. Am I aware of their views broadly? Yes, I am. Did we actually say, ‘What do you reckon if the cabinet decided to do this?’ No, I did not and I would not. But the cabinet was aware of people’s views; it had the legal advice before it; and it came to what it thought was a sound public policy decision. After cabinet had made that decision it was announced publicly as is the normal process.

**Senator HANSON-YOUNG**—How much have you allocated specifically in the budget for the suspension? Obviously, holding people for that time, as opposed to processing their claims, will blow out the processing time and therefore the detention. What is the cost relating to the detention budget specifically for these claims?

**Senator Chris Evans**—Senator, I will ask the officers whether they can help you with that. I think the answer is probably that they cannot break it down like that. But I am happy to see how they can help you. Can I just make the point to you that I think there will be far more pressure on the system from people who are refused refugee claims than from those who are suspended. The history of this has been that people who seek asylum might not be accepted at the RSA process. Under this government they then have an appeal process, and that appeal process allows for an independent merits review. So that adds to the time that they engage in proceedings. Despite being excised in offshore places, they are capable of getting lawyers to mount actions for them. Some have already done that.

Again, that will delay final decisions on their cases and their claims. Then the government has the issue of managing the return of persons who are failed asylum seekers. If you are asking me whether I am more focused on the impact of that on long-term detention, the management of clients or the suspension, quite frankly, it is the former. I think that issue will cause the most difficulty. If you get three months for an application, three months for review and then there are legal proceedings, one has to deal also with returns, I think our previous experience in this area under successive governments is that that is where a whole range of difficulties emerge.

I know there is a lot of focus on the suspension and that it is a bit of a cause celebre at the moment, but in my view the focus is not on the right things. I reiterate: every person who seeks to claim asylum will have that claim assessed against the refugee convention.

**Mr Metcalfe**—Senator, in response to your question, there is no particular line item in the budget or disaggregation of the particular cost of this measure. It would be very difficult to estimate that. Pages 60 and 61 in program 4.3 of the portfolio budget statements cover the general costs relating to irregular maritime arrivals and offshore asylum seeker management. Obviously it is a factor of the number of people who arrive, the length of time that they are in detention and the processing costs associated with them together with, as the minister said, approval rates. Where there are high approval rates and people rapidly move through detention accommodation, the costs are lower than when there are increasing numbers of refusals. People may be accommodated for longer periods because they pursue merits review rights and possibly litigation, pending the ultimate conclusion of their application.

**Senator HANSON-YOUNG**—Minister, right at the beginning of my questions I asked for the justification and purpose of the suspension. You said that you wanted to be able to see the bigger picture and the current conditions of both Sri Lanka and Afghanistan. Why did you choose those two countries?

**Senator Chris Evans**—Because, Senator, those are the two countries where we have had emerging information of changes. As I said, in Sri Lanka, we have had two democratic elections; we have had the end of the civil war; basically the break-up of the LTTE; and the commencement of removing people from internment camps. A lot has changed in Sri Lanka. I

took the opportunity to visit there last year. Mr Smith visited there last year. We have tried to inform ourselves of those developments and to support and encourage the development of a peaceful resolution in Sri Lanka. We are absolutely of the view that the situation has changed and that we ought to take that into consideration. It is also the case that in Afghanistan there was a changing country situation and there was improved security in a number of areas.

But fundamentally, while we are considering the claims from Afghanistan it is true that the vast majority of claims out of Afghanistan have been from people of Hazara descent and that the information on the status, standing and treatment of Hazaras inside Afghanistan has changed quite markedly. A lot of information is around about that, which has been influencing our decision makers and which we take into account. Quite frankly, we are seeing increased refusals of asylum claims from Afghanis. Those numbers are flowing through the system now as a result of that changed information. That is the reality; real changes are occurring.

**Senator HANSON-YOUNG**—If those changes have already occurred and you are already able to make those determinations, why not just process their claims? If they are not found to be refugees you can send them home. Why warehouse them for six months?

**Senator Chris Evans**—As I tried to explain to you, Senator, we think that if these changes are occurring, as seems to be the case—and we are still looking for more information, confirmation and security, if you like, on some of those decisions—people will be able to be returned safely when a decision is made on their case. More people are likely to be returned. A refugee decision assessment is a point-of-time decision. Changing circumstances lead you to a position where you think you may well make a slightly different decision if the circumstances changed.

**Senator HANSON-YOUNG**—Is there any purpose in the decision to send a message of any type to people?

**Senator Chris Evans**—I think part of the message is that we are seeing changed assessment results and we believe there is a change in circumstances. People from those two countries are being found not to be refugees—people who perhaps were being found to be refugees a year or so ago. We are seeing quite a different outcome from those assessments. If that is a message it is confirmation of the reality of what is occurring in our decision making. What is happening in Sri Lanka is very much a reflection of what is happening internationally. People are dealing with Sri Lanka and the return of people to it in a different way from the way in which they were dealing with it a year or so ago. The country is changing. You have to make fine judgments about how far and who is safe.

**Senator HANSON-YOUNG**—Sure.

**Senator Chris Evans**—If I said to you that I was assessing Sri Lanka on the basis of last year's position, you would say that that was not very smart. It just would not be smart. Things have changed and we are taking time to pause to reassess some of that information. Mr Hughes is a senior officer in this area. He can probably explain better than I can. I do not know whether he has something to add.

**Mr Hughes**—No, I have nothing to add; the minister has summed it up well. In relation to both those two caseloads the information and signals we are getting about the situation as it applies to people from those caseloads and the country of origin is that things are improving.

Compare that with other caseloads where there has not been a decision to suspend because the country information is very static. If it is static and no change is expected in any particular direction in the future, you continue with the decision making. But in these particular cases there are just a lot of signals from sources that the analysis will produce a different result in the future. Hence we are spending time doing that analysis and waiting for some further reports that are expected.

**Senator Chris Evans**—I take this opportunity, Madam Chair, to say something. Earlier I referred to the International Crisis Group's *War crimes in Sri Lanka* in response to a question about that Asia report. I wanted to confirm what I said in a note in its recommendations to India, the United States, Canada, Australia, the United Kingdom, France and other European Union countries such as Switzerland and others. Recommendation No. 11 states:

Do not extradite LTTE suspects to Sri Lanka unless guarantees of humane treatment and fair trials are in place. Instead prosecute in domestic courts where possible and appropriate.

That is, their recommendations about returns referred specifically to LTTE suspects. The other relevant recommendation is recommendation 14, which states:

Grant asylum or other protected status to witnesses and act to preserve evidence of war crimes, particularly by allowing officials to co-operate with credible investigations.

Those are the two relevant recommendations. There was no recommendation, as was reported and interpreted by many, as a general recommendation not to return people to Sri Lanka.

For the record I also quote Mr Richard Towle, the local UNHCR representative, in an interview with Alexandra Kirk on Friday 12 March, I presume on the ABC's *AM* or *PM* program. Mr Towle said:

Given the situation in Sri Lanka, the rapidly evolving conditions, particularly in the north, our existing assessments are actively under review at present.

He then went on to say:

Well I don't want to pre-empt what the guidelines will say. But clearly there has been a significant number of people who have left the camp populations in Sri Lanka and in the process of returning to their places and regions of origin.

Further on, he said:

But it's certainly moving in the right direction ...

Those are the sorts of comments that were made by the UNHCR, which I think are consistent with what I have been saying. The UNHCR speaks for itself but I think there is a consensus that things have been improving, and that is reflected in the government decision making. I wanted to clarify those two things.

**CHAIR**—Thank you. Any further questions?

**Senator HANSON-YOUNG**—Yes. There have been a number of reports since the suspension. I came up with the idea of sending a message because of the number of reports, which have been quoted by both you and by the Minister for Foreign Affairs and Defence—and I realise that this is not the Department of Foreign Affairs and Defence—suggesting that the reason we have not seen any real or significant reductions in the number of people either from Afghanistan or Sri Lanka reaching Australia and asking for asylum since that

announcement was made was that they were already part way through their journey. That then indicates that you wanted to send a message to those people. This is not about the process that Australia goes through once people arrive here; it is not solely about that.

**Senator Chris Evans**—No, Senator. I have not read the transcript like you have, so you have an advantage over me, but I think I made it clear in response to the question that I thought it would send a message that reflected the fact that the Australian government believed that circumstances were changing and that we expected fewer people to be found to be refugees coming from those source countries. So, yes, I was very clear at the time, I thought, that it involved a message as well. I did make the point that when people said, ‘Will this stop the boats’ I did not think it would. I made no great claims for that—

**Senator HANSON-YOUNG**—It is not just in relation to people who arrive by boat, is it? If they came by plane—

**Senator Chris Evans**—We talked about that earlier. That is true; we have made arrangements for the treatment of onshore claims. The point that I made in relation to that was that if people had spent \$US14,000 or \$US20,000 and had started on their journey, they would be unlikely to be deterred by the announcement. I suspect that it will have some deterrence effect among some clients but I certainly do not make any great claims that it is a measure that will have a great impact on arrivals.

I make the point that the Sri Lankan arrivals have been a bit spasmodic. We have had peaks and troughs of activity. We had a couple of very large boats last year, and then we had a period when we did not have any arrivals. We then had a few arrivals, and then a period without them. It has been a slightly different pattern, whereas the arrival of Afghans departing from Indonesia has been consistent and very regular.

**Senator HANSON-YOUNG**—I will move from the topic of the suspension. I want to follow up some questions I asked at the last estimates that were taken on notice. One of the questions I had—we had quite a discussion about it, and in the end you needed to take it on notice to get back to me—related to how many people who were currently held on Christmas Island had already been found to be refugees by the UNHCR at some other processing point, that being Indonesia, Malaysia or elsewhere. The answer I received suggested that during the entry interview you ask individuals whether the UNHCR has assessed them. They are requested to sign a form giving their permission to the department of immigration to provide their details to the UNHCR. I assume that is to cross-reference so that people cannot just say yes and you are not sure. However, the answer that I received states that the department of immigration:

... does not collect or aggregate statistics on the number of people on Christmas Island who have already been found to be refugees by UNHCR.

My question was not whether you aggregated them or whether you collected statistics. My question was how many people in that process had already been found by the UNHCR to be refugees. You admitted that you would know, because you have the information, but you have not been able to tell me. I am just wondering why that is.

**Senator Chris Evans**—This is one I will handball to the department. I cannot help you. I must have signed off on their non-answer. I will let one of the officials explain to you why they cannot tell you. Mr Hughes?

**Mr Hughes**—Good. Thank you for that.

**Senator Chris Evans**—Why not?

**Mr Hughes**—The answer is that we would use that piece of information in the decision making. In other words, if we were to discover that a person who arrived as an irregular maritime arrival was mandated by UNHCR, we would use that in the assessment process and obviously it would carry very strong weight in an Australian assessment of whether Australia owed the person protection obligations. I would say, however, that sometimes there is a mixing up in relation to people arriving in Australia because of the fact that they might have been registered by UNHCR in a foreign country, which merely means that they have called into the office and UNHCR has said, ‘Here is a letter that notes you have called into the office and we will at some future time assess your claims under the convention.’

**Senator HANSON-YOUNG**—They have not actually been assessed.

**Mr Hughes**—They have not actually mandated them. I would suspect that there would be a lot more people in that circumstance than there would be people who have been mandated, given the time that it sometimes takes the UNHCR to do those things. Therefore this answer is saying that, if we find that out, it will be used in the refugee status assessment process, but we do not collect the numbers and add them up. We have not developed a statistical collection to do that. Maybe it is something we should do.

**Senator HANSON-YOUNG**—Maybe it is something you could do, because then I could easily have the number. Thank you for explaining what you use the information for. I assumed that that was what you would use the information for. I take the point about the two different categories—those registered as opposed to those assessed. However, there have of course been people—whether they are still in immigration detention or have since been given their permanent protection by Australia—who had already been assessed by the UNHCR at some point. Indonesia is probably a clear example, because we have heard of those cases. For example, a number of people on the *Oceanic Viking* were carrying that assessment and they were, of course, easier to resettle more quickly because we knew they had already been through that process. So there are, of course, people out there. My question was: how frequent is this? It seems to me that, if a number of people are coming through that process—whether it is by boat or by plane—to Australia seeking protection and they have already been assessed, surely we should be able to keep some record of those numbers. Something is not quite working there. Why are we forcing those people to be assessed twice? I know that our assessment is different to the UNHCR’s, but—

**Mr Hughes**—I might add that the UNHCR assessment carries very substantial weight, but sometimes things happen in the intervening period. In other words, it depends on whether it was an assessment yesterday or an assessment two years ago. Things can happen in the intervening period. Sometimes UNHCR revisits its assessments when further information about a person becomes available. I do not think we would see ourselves in the business of second-guessing UNHCR or thinking that we could make a better decision than it can, but I

think we are prudent in checking with UNHCR as to whether it still stands by its assessment. I think there have been cases where, since it has made an assessment, it has received a new piece of information—

**Senator Chris Evans**—We had one recently.

**Mr Hughes**—and it says, ‘Now that we think about it, we ought to revisit that’, or, ‘We might have a new piece of information.’ We are not in the process of second-guessing UNHCR, but it is prudent to ask whether that still stands and whether we are satisfied that nothing has happened that would change that assessment.

**Senator HANSON-YOUNG**—I just wanted to clarify it; I am not suggesting that anyone who comes here who has already been assessed by the UNHCR gets a tick once we find that out. What I am suggesting is: if this is part of the process of asking and then verifying with the UNHCR, let us get an understanding of how many people this involves.

**Mr Hughes**—I will be happy to look into what is involved in aggregating that into a statistical collection.

**Senator HANSON-YOUNG**—Thank you. The second question that I put on notice at the February estimates hearings—I have received the answer—related to the number of people granted visas from posts in Jakarta and Kuala Lumpur. I did not necessarily specify Jakarta and Kuala Lumpur; I said Malaysia and Indonesia. The answer that has come back has given me figures for 2008-09 for both Jakarta and Kuala Lumpur. Those refugee category visa grants are from 2009-10 up to 31 October. There is a significant difference in the numbers between Indonesia and Malaysia. I was hoping that you could explain that for me.

**Mr Hughes**—I think that would reflect the fact that there is a bigger resettlement caseload in Malaysia, particularly a Burmese resettlement caseload, and that would reflect a higher number of UNHCR referrals to us. Having said that, we are also now starting to get more referrals from Indonesia, so I would expect the figures out of Indonesia to start to climb.

**Senator HANSON-YOUNG**—Why is there an increase?

**Mr Hughes**—Because the UNHCR is now recommending more people to us for resettlement.

**Senator Chris Evans**—On coming to government we took a decision to assist Indonesia to resolve some of the protracted cases they had. You might recall they had some people there for quite a long time. I think we and New Zealand undertook to take some of that protracted caseload, and have been doing so. I would have to get you the numbers. New Zealand agreed to take a group and we were taking a group of those who had been in the country for quite a while. That is now probably on a more regularised basis.

**Mr Hughes**—The UNHCR priority for a long time was not to resettle newer cases until they were satisfied that the very longstanding, protracted cases were resettled. They took a very strong stand on that. I think what we have seen now is that the ones they considered the longest stayers have been taken care of and they are moving into more recent caseloads, so we are now getting significantly more referrals and we have people actively processing them. The numbers from Indonesian will go up.

**Senator HANSON-YOUNG**—Thank you. I have questions around the IOM, but that might be better placed in outcome 3.

**Mr Hughes**—It depends what it is, Senator; it could be possible to deal with it now.

**Senator Chris Evans**—Is it about funding of their projects?

**Senator HANSON-YOUNG**—Yes.

**Mr Metcalfe**—I am sure it is fine to deal with it now; I think we have the right people at the table.

**Senator HANSON-YOUNG**—Again, there is a whole area around the IOM. I know we spoke at length about it last time. One of the issues that we were discussing was some type of service agreement. It was taken on notice as to whether we could get a copy of that service agreement. The answer that has come back from the department is no, that that is an agreement between the two parties and therefore it is confidential. Based on the significant amount of money we give to the IOM to run a variety of different programs, if there is no transparency in the process and public scrutiny of that type of agreement, how can we be sure that human rights standards and the basic standards that we as Australians believe are appropriate for treating vulnerable refugees and asylum seekers are indeed being upheld and are part of an agreement that we have with the IOM in its operations in places like Indonesia.

**Senator Chris Evans**—The officers are probably better placed to answer your question. I think the question referred to not releasing the agreement because it is confidential between the parties. But I think it is more than appropriate for you to ask questions about the services we provide and what they are doing for us et cetera either on notice or in the hearing. The officers will be happy to take you through it. There is no lack of transparency in terms of what we get them to do and what we pay them to do. I think there was a view about the commercial nature and the confidentiality of the thing so as not to release it. But you are perfectly at liberty to cross-examine Mr Hughes at great length as to what they do for us either here on or on notice.

**Mr Metcalfe**—Right at the highest level, and we have probably discussed this before, that the IOM is an international body governed by a constitution, and Australia has been a member of the IOM since the end of World War II. It is an organisation that plays a very significant role across a whole range of areas relating to the movement of people. It is critically involved with health-processing arrangements for refugees coming to Australia, with travel arrangements and whatever. They have also played a valuable role in recent years in relation to the management of and providing assistance to irregular migrants in places like Indonesia and elsewhere throughout the world. There has been substantial Australian government funding for some of those projects. A reluctance to provide that particular document does not in any case indicate a reluctance to provide you with information as to funding and what that funding is used for and the appropriate safeguards in relation to human rights issues.

**Senator HANSON-YOUNG**—It was the safeguards and those human rights standards that we were speaking about last time. I had asked whether they were part of the agreement, and no-one was able to directly answer that last time. Perhaps that is something you can specifically answer. We are back here tomorrow. If you are not able release the agreement,



could you please inform us as to whether human rights standards and the protection of human rights are actually referenced in that agreement?

**Mr Hughes**—We check on that. I think also, irrespective of any letters of agreement, the IOM, according to its charter and management, regards itself as an organisation that does respect the human rights of migrants and sees itself as supporting and helping migrants. My experience of the organisation is that it has a very strong pro-migrant support ethos.

**Senator HANSON-YOUNG**—Sure. Of course, the query is in relation to the standards of the service delivery. We provide IOM with funding to run a variety of different services for us. If we have agreement that particular standards will be met in terms of the protection and promotion of human rights—standards that we here in Australia would expect in Australian detention centres and facilities—we expect a certain level of standard. The minister has spoken about that since day one.

**Mr Metcalfe**—We will check and see how much we can assist. If it is tomorrow, we will do it tomorrow. We will let you know whether that is specifically contained in letters of agreement or whether it is understood on the basis of IOM's charter and governing principles and other documents that surround the organisation and the role and the mandate of the particular body.

**Senator HANSON-YOUNG**—Of course. One of the key issues would be an assurance of nonrefoulement.

**Mr Metcalfe**—Yes. It is quite clear from the IOM charter that they will not be involved with the involuntary return of people. Whether that amounts to refoulement or not, they have indicated that they are not prepared to undertake that work. They work for voluntary returns. You will recall that under the previous government the IOM was involved in the management and provision of services in place like Nauru and Manus. IOM saw that as within its charter because it was providing assistance to migrants. But it was not prepared to become involved, nor was it asked, as far as I can recall, to be involved in the involuntary return of people to their places of original residence.

**Senator Chris Evans**—I think we would argue that therefore, by definition, they cannot be involved in refoulement as they are not prepared to be involved in returning people involuntarily. They only assist if people have indicated they want to go home.

**Senator HANSON-YOUNG**—Okay. I am happy to leave it there if the committee wants to take a dinner break.

#### **Proceedings suspended from 6.28 pm to 8.00 pm**

**CHAIR**—We are going to reconvene our hearing into the estimates process on behalf of the Senate Legal and Constitutional Affairs Legislation Committee. Mr Metcalfe, I want to advise you that the committee has come to an arrangement that we will complete outcomes 2 and 3 tonight, and start with outcome 4 tomorrow. So anybody out there associated with outcomes 4, 5 and 6 can head home. My apologies for not letting people know that at 6.30 pm. Let us proceed with questions in respect of outcome 2.

**Mr Metcalfe**—Thank you, Chair.

**Senator HUMPHRIES**—Mr Metcalfe, I want to ask about people detained on Christmas Island who have been transferred onshore and have sought access to the Australian legal system. Can you tell me how many people in the financial year to date who have been on Christmas Island as IMAs and been transferred onshore have sought access to the Australian legal system?

**Mr Metcalfe**—I suspect that we will need to deal with this under 4.3, under offshore asylum seeker management, because people who have been detained on Christmas Island and have then come to the mainland remain offshore persons for legal purposes. There is no legal process or legal advantage that they enjoy by being transferred to the mainland. Their status as an excised person continues because they first arrived in an excised place. So we would expect to deal with the numbers of people who have been moved from Christmas Island to mainland centres under 4.3. Applications they may have made to the courts or whatever is an issue we would normally deal with under that section.

**Senator HUMPHRIES**—I also want to ask about the status of asylum seekers who were transferred from Christmas Island to Villawood on 27 March. Is that also a matter for outcome 4?

**Mr Metcalfe**—That would also be under 4.3.

**Senator Chris Evans**—I just make the general point, Senator, which seems to be misunderstood by some, that the legal status under the Howard legislation stays with them whether they come to the mainland or not.

**Senator HUMPHRIES**—We can have that debate now if you like, but I am taking Mr Metcalfe's cue that this is for tomorrow

**Senator Chris Evans**—All I am saying is that, in terms of legal action, whether they started on Christmas Island, at Villawood or in Timbuktu does not make any difference in terms of what they may pursue.

**Senator HUMPHRIES**—I understand some people dispute that assertion.

**Senator Chris Evans**—There is one person who does. But I back the Howard government's second reading speech myself.

**Senator HUMPHRIES**—That is very generous of you, Minister.

**Senator Chris Evans**—Otherwise, we were misled by the Howard government.

**Senator HUMPHRIES**—That would be impossible.

**Senator Chris Evans**—Then you and I will agree.

**Senator HUMPHRIES**—On this issue, there was a question I asked in the last round of estimates in February under outcome 2.1. I asked, in relation to Christmas Island, how many people have had their claims refused and how many have been sent elsewhere as a result of that. The answer included in it that, as of 20 May 2010, of these people, 23 have been found not to be refugees under the independent merits review process and are now subject to removal processes, subject to litigation and other barriers to removal. That question was answered under outcome 2, but are you suggesting that I cannot in fact discuss the question of litigation referred to in that answer until we get to outcome 4?

**Mr Metcalfe**—Well, yes. The accommodation arrangements, the numbers of people who have transferred and that sort of thing would, I think, fit under 4.3. In terms of processing outcomes, we are in program 2, and I think that is the right place. I think that Mr Hughes or Mr Fleming would be able to assist you in relation to people who have been found not to be refugees and what is happening in relation to independent merits review and related issues. We are in the right place for that.

**Senator HUMPHRIES**—I want to ask questions about those who have been found not to be refugees. I can ask about their success or otherwise under independent merits review?

**Mr Metcalfe**—I think we are in the right place for that, yes.

**Senator HUMPHRIES**—But I cannot ask about litigation other than in relation to independent merits review. Is that what you are saying?

**Mr Metcalfe**—I do not want to be confusing, but, under refugee and humanitarian assistance, under program 2.1, where we currently are, that certainly would go to status assessments and processes that subsequently arise from that merits review. If you want to discuss litigation in relation to that, I think those questions would be quite appropriate in this area. You were leading before, Senator, to the numbers of people, where they are being located and those types of issues, and I think that is more around offshore asylum seeker management. We essentially draw a distinction between immigration status issues around outcome 2 and the management of the people, which sits in 4.3.

**Senator HUMPHRIES**—Okay. It is a fine line we are treading. I will ask these questions in outcome 4 tomorrow, but I sincerely hope I do not get told: ‘Oh, no. You should have asked an aspect of that question in outcome 2.’

**Mr Metcalfe**—We would never do that. I am trying to assist you. If you want to talk about decision making in relation to the refugee claims of people who have arrived, you have the right people here. If you want to talk about merits review, you have the right people here. We can do that under outcome 2 right now if you wish.

**Senator HUMPHRIES**—All right. I was given the information in the answer to the question I just referred to from in relation to people who had been assessed between 1 July 2009 and 31 January 2010. In that time, 110 people had a negative refugee status assessment. Can I be told how many have been assessed as having a negative refugee status in the period between 31 January and now, or as most recently as we have figures for?

**Mr Hughes**—I am not sure I can give it to you exactly in that way, but I can say, Senator—and I hope this will be helpful—that we currently have 340 people who have had a negative refugee status assessment but are undergoing independent merits review or are within the window that would allow them to seek independent merits review.

**Senator HUMPHRIES**—Over what period is that?

**Mr Hughes**—I am saying as at 19 May.

**Senator HUMPHRIES**—How many did you say?

**Mr Hughes**—As at 19 May, there are 340 people—

**Senator HUMPHRIES**—Who have had a negative assessment?

**Mr Hughes**—Who have had a negative primary refugee status assessment and have either asked for independent merits review or are within the window that would allow them to seek independent merits review but have not done so yet.

**Senator HUMPHRIES**—So that might include some of those 110 that were referred to in your answer?

**Senator Chris Evans**—Senator, the figure I got for primary refusals when I sought to nail this down was, for the last year and a half or so since we have been dealing with recent arrivals, 480. That is 480 people have been assessed as not being refugees in the RSA process by the department. I do not want to mislead you—many of those are still subject to the independent merits review and have not been removed. I think we would have given you the numbers of people who have been removed, some of whom did not seek to go to independent merits review, so it gets more complex after that. But, if you want the figure for primary refusals, for offshore entry arrivals who have been assessed by the department and been found not to be refugees, the current figure I have is 480.

**Senator HUMPHRIES**—On my calculation, since August 2008, when there was a major announcement by you, Minister, on the government's policy with respect to unlawful arrivals there have been 5,932 such arrivals—IMAs. Could you tell us how many of those people have had protection claims refused? Is that the sort of year and a half you are referring to?

**Senator Chris Evans**—Yes. I will double-check that for you. But effectively the figure I had is that we had about 4,865 claims up until 19 May. But you have to remember that sometimes the figures issued include crew who have not made claims. There was a boatload of Indonesians who were coming apple picking in Victoria who I do not think lodged claims. So what might be recorded as interceptions would not necessarily be claims. Mr Hughes might be able to correct me if I am wrong, but the figure I have is 4,865 claims.

**Mr Hughes**—That is correct.

**Senator HUMPHRIES**—Whatever those figures for offshore claims—we are talking about offshore claims—since August 2008, you say there is approximately 380 people whose claims have been—

**Senator Chris Evans**—It is 480.

**Senator HUMPHRIES**—Sorry, 480, whose claims have been refused?

**Mr Hughes**—Some have left or been removed.

**Senator HUMPHRIES**—Sorry?

**Mr Hughes**—Some of those people have been removed from Australia.

**Senator HUMPHRIES**—That is my next question: how many of those 480 were removed?

**Mr Hughes**—One hundred and forty-eight.

**Senator Chris Evans**—I am not sure that that figure does not include those who did not seek RSA, Mr Hughes, so I just think we might double-check that. I am not saying you are wrong. You may be right. I just had a moment's doubt myself.

**Mr Hughes**—It does include them. They were interested in remaining in Australia but did not prima facie engage protection obligations so they were not subject to an RSA

**Senator Chris Evans**—The department does a sort of screening in and screening out process, and they were screened out so they did not actually have the RSA assessment.

**Senator HUMPHRIES**—How do they get screened out?

**Mr Metcalfe**—When a person first arrives in this situation in Australia, we undertake what we call an initial entry interview. That is for a whole range of purposes to establish who the person is, where they have come from, how they got here, who they travelled with and what people smugglers they may have been—

**Senator HUMPHRIES**—Health checks, security checks?

**Mr Metcalfe**—Health and security are separate checks. But the entry interview is an interview undertaken by my officers. It is a preliminary process. One of the things, though, that we establish in that entry interview is whether the person prima facie raises claims that may go to Australia's protection. In other words, it is quite a low threshold. Is there anything they are saying that may in fact enliven our international obligation to consider whether they are in fact a refugee? It is not, 'Are they a refugee?' but 'Is there anything that indicates that they may in fact be a refugee?' If we believe that there is a prima facie indication that they are raising refugee claims, then we forward them into the refugee status process, where they make an application, and we have a much more detailed consideration of their claim. If they are 'screened out', we have formed the view that they are not raising any claims that go to Australia's protection; therefore, they should be summarily removed from Australia. That has happened with some people. The minister mentioned some Indonesian nationals, for example.

**Senator HUMPHRIES**—So you are not talking about crew.

**Mr Metcalfe**—No. Crew are entry interviewed just on the possibility that they may raise protection claims, but it is rare indeed for them to raise any claims that go to protection. No, this is everyone who arrives in the country.

**Senator HUMPHRIES**—You are saying people who have come across in a boat may not in fact be seeking or appear to be seeking entry on the basis of being a refugee?

**Mr Metcalfe**—Yes. We have had those situations in the past. The minister mentioned some recent ones. Cast your mind back over a decade now. We had quite a few boat arrivals in the mid-1990s from China—from Fujian province—where the young men in those situations were interviewed and they were quite clearly not seeking refugee status. They were coming here to work. There was this rumour about jobs for the Olympics. So they were not entered into the process of refugee applications. This is where excision is an important feature of Australian law, because for a person who arrives at an excised place, they do not have an entitlement to make an application for a visa. They can only apply for the visa if the minister exercises a non-compellable power. So all of these processes that relate to entry interviewing and, indeed, refugee status assessment for people who arrive at Christmas Island occur before they have actually been allowed to apply for a visa. That, therefore, limits any access to statutory review processes and the RRT et cetera. So it is true that with—

**CHAIR**—Mr Metcalfe, is that the same policy now as it has been for how many years?

**Mr Metcalfe**—This was the rationale that led to the previous government introducing this legislation and previous legislation.

**CHAIR**—So that has not changed under this government?

**Mr Metcalfe**—It has not changed under this government. Indeed, I think this government made it clear that it would continue with excision in relation to Ashmore Island and Christmas Island. So that has been a feature of Australian immigration law for quite a long time now. It is true though that the vast majority of people who are arriving from Afghanistan, from Sri Lanka and from Iraq do enliven or do prima facie raise issues that mean that we are obliged to consider their claims in more detail.

**Senator HUMPHRIES**—So a small proportion of the 4,000 and whatever figure it was you used, Minister, or the 5,900 figure—

**Mr Metcalfe**—Have been screened out.

**Senator HUMPHRIES**—have been screened out. So the bulk of whatever is the accurate figure that remain stay on as active seekers of asylum?

**Mr Metcalfe**—Yes.

**Senator HUMPHRIES**—Of that number, whatever it is, since August 2008 approximately 480 have been refused protection claims?

**Senator Chris Evans**—At the first stage of the RSA.

**Senator HUMPHRIES**—At the first stage of the RSA, okay. You said, then, of that 480, 148 had been removed. Is that right?

**Mr Hughes**—Certainly 148 people who are irregular maritime arrivals have been removed.

**Senator HUMPHRIES**—That might be of the 480, though, might it? There might be one or two—

**Mr Metcalfe**—I think we need to be careful here. We have removed 148 people—

**Senator HUMPHRIES**—Since when?

**Mr Metcalfe**—who have arrived since October 2008, and 148 people have been removed. But we have made negative primary refugee status assessment decisions for 480 people. Those figures may overlap to a small extent, but the 148 is not a subset of the 480, which is the point the minister was making, I think.

**Senator Chris Evans**—Yes. That is right.

**Senator HUMPHRIES**—Could you take on notice the question of how many of those 480 have been removed?

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

**Senator HUMPHRIES**—It sounds as if a very large majority of the 480, though, are still in Australian detention.

**Senator Chris Evans**—That is right. They are still in process.

**Senator HUMPHRIES**—All right.

**Senator Chris Evans**—There are some who have had their independent merits review and have been assessed as not being refugees on appeal, if you like, and who are on a removal pathway. We might be awaiting travel papers or potential litigation or what have you. There is a large group who have not completed their appeal of the independent merits review process who are awaiting a decision. So there are a number of subsets within that. That is why I was at pains to stress to you that 480 are primary refusals and a subset of that have been removed. A subset of that are on a removal pathway and a further subset are still in their appeal process, if you like.

**Mr Hughes**—You can break that down.

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

**Senator HUMPHRIES**—So is it fair to assume that the 148 all sought asylum?

**Senator Chris Evans**—That is what I issued—

**Mr Hughes**—Some of those were the Indonesians who wanted to remain in Australia but did not prima facie engage any reason to look at Australia's protection obligations.

**Mr Metcalfe**—It is not a fair assumption that the 148 had all sought asylum.

**Senator HUMPHRIES**—Most of them would have, but not all of them.

**Mr Metcalfe**—That is correct.

**Senator Chris Evans**—I did not want to mislead you. It is never as simple as one would hope in explaining.

**Senator HUMPHRIES**—How many people who have had their asylum claims rejected and have been removed are still in Australia?

**Mr Metcalfe**—If they have been removed, they are not here.

**Senator HUMPHRIES**—Okay. Some of them may have been refused and removed but have returned on subsequent vessels. Were there not some people from the ship that came in 2001?

**Mr Metcalfe**—The *Tampa*?

**Senator HUMPHRIES**—The *Tampa*, yes.

**Senator Chris Evans**—I remember you asking about this before, Senator.

**Senator HUMPHRIES**—People who have subsequently returned.

**Senator Chris Evans**—I think—and tell me if I am wrong—but they would be treated as a new claim because some of the people who you say were on the *Tampa* were not removed. They returned voluntarily. So that is another set of complications. I do not know that you could define all of them as—

**Mr Metcalfe**—We will check this. I think it would be very unlikely that someone who has arrived recently and has been refused refugee status and has been removed has returned again, but we will double-check that.

**Senator HUMPHRIES**—Okay. Of the 89 people transferred from Christmas Island to Villawood in late March, how many are still at Villawood?

**Mr Metcalfe**—Can I answer that tomorrow under 4.3?

**Senator HUMPHRIES**—Okay, yes. Where generally would the people who have been refused refugee status and who have exhausted their appeal rights or review rights be? Would they tend to be on Christmas Island, would they tend to be on the mainland or are they distributed evenly between the two places?

**Mr Metcalfe**—I think the answer is that quite a few would be at Villawood, but we will give you a better answer tomorrow morning. Under 4.3, we have the officers here who understand who is where in our system. They will be able to provide more information about that.

**Senator HUMPHRIES**—Do you know what the longest serving detainee is whose status has been refused but who has not been returned to another country yet?

**Mr Metcalfe**—Of the irregular maritime arrival cohort?

**Senator HUMPHRIES**—Yes.

**Mr Metcalfe**—We will need to check on that as well, but I imagine it would take you back to probably some of the people who arrived in the early part of this new surge in October 2008.

**Senator Chris Evans**—There were groups who, contrary to popular belief, were in detention when this government took power, including 80-odd Sri Lankan men who people now refuse to admit arrived on a boat in 2007 when the Howard government was in power. So it depends where you start from. But of—and we will check this—those who have probably been in detention the longest as a generic group, there was a group of Sri Lankans who arrived in the middle of last year, but there may well be people who were earlier.

**Mr Hughes**—Yes. I thought the question was about people who had been refused by the department. Is that the oldest refused case?

**Senator HUMPHRIES**—Refused by the department or refused and reviewed but still unsuccessful who have no further avenues for appeal who are still waiting.

**Mr Hughes**—I do not think the oldest case would be all that old, but we will take that on notice for you.

**Senator BARNETT**—Can you advise how many there are that were refused but not removed? You are looking at the oldest case, but I would like to know how many were refused but not removed. They have gone through the process. They have appealed.

**Mr Metcalfe**—They would be a subset of that 480 figure we have been talking about in that they have been refused and they are pursuing merits review, awaiting removal or pursuing other avenues.

**Senator BARNETT**—So are you going to give us a breakdown of that 480, if you could?

**Senator Chris Evans**—I hasten to add that the most long-term detainees we have have been onshore arrivals. I have successfully reduced that cohort dramatically, but we still have a number who have been here a fair while who have been unable to return. But as you would be aware, there are sometimes issues with travel papers and getting other governments to readmit people et cetera. We have obviously had a couple of cases where the issue of the threat of the



death penalty has been an issue in negotiations with returning people. One was referred to in the Human Rights Commission report the other day. So our long-term detainees tend to be on the onshore population. But we can check for you the timing issues there.

**Senator HUMPHRIES**—I have a question about legal aid or legal assistance. For people who are seeking assessment as a refugee or for people who have sought and been refused such an assessment, what legal assistance is available to them?

**Mr Hughes**—The irregular maritime arrivals are assisted by the immigration advice and asylum assistance scheme service providers to submit their claims.

**Senator HUMPHRIES**—And that is all internal, is it?

**Mr Metcalfe**—They are essentially legal practitioners employed by the department under contract—a panel arrangement—whose role it is to assist people to articulate their claims and to ensure that they are able to be fully considered. It is a process that I believe dates back to the early 1990s because there was concern when we had those couple of boats of Cambodians in 1989 or 1990. Although people were evincing refugee claims, they were not articulating them. There were very long delays associated with a proper application being able to be considered. The then government essentially believed that it was more appropriate that people were given assistance so that the whole process of consideration could be speeded up, reducing the amount of time in detention.

**Senator BARNETT**—Mr Metcalfe, are they all dealt with in-house by your legal advisers?

**Mr Metcalfe**—No. It is essentially a panel established of various service providers. So they are outside law firms.

**Senator BARNETT**—When you say ‘service providers’, who are the service providers?

**Mr Metcalfe**—I can check to see if we have a list of the current panel. If not, we can—

**Senator Chris Evans**—Some community legal type advocacy groups.

**Mr Hughes**—And there are commercial ones.

**Senator Chris Evans**—There are commercial ones as well.

**Mr Metcalfe**—We can give you a list.

**Senator BARNETT**—I would be very interested to know the list and the cost for the last financial year and the cost for this year to date.

**Mr Metcalfe**—We will come back to you. If we can do it during these sittings, we will. Otherwise we will take it on notice to come back in due course.

**Senator BARNETT**—And, likewise, that is not just the initial part? That is for their whole—

**Mr Metcalfe**—That also provides assistance for any merits review process as well.

**Senator BARNETT**—So that is the same system that applies?

**Mr Metcalfe**—That has been the case for a long time.

**Senator HUMPHRIES**—How many applications for protection visas were made by onshore applicants who arrived in Australia legally?

**Mr Metcalfe**—I think we may have taken that on notice earlier.

**Senator Chris Evans**—We answered it earlier.

**Senator HUMPHRIES**—What was the answer?

**Senator Chris Evans**—I think it was asked by Senator Parry in your absence. You might find he was running through the same list you may have just started on. We will check. But we did answer that one for him. I think he has the answer for you.

**Senator HUMPHRIES**—You are so efficient.

**Mr Hughes**—The number of people who were not irregular maritime arrivals who applied for protection visas in the 2009-10 financial year from the period of 1 July until 2 April was 4,277.

**Senator HUMPHRIES**—Of course, the 13,750 humanitarian places that we provide for each year have to be shared between those people whom you just referred to, Mr Hughes, who arrived on visas and the IMAs and those people that we bring on humanitarian programs from overseas and family reunion programs for those in the other three categories.

**Mr Metcalfe**—As we discussed before, Senator, the humanitarian component of the refugee and humanitarian program provides for sponsored family members or people supported by community groups or others.

**Senator HUMPHRIES**—Does that come out of the 13,750?

**Mr Metcalfe**—The 13,750 covers people who come from overseas under the refugee and humanitarian arrangements and people who successfully seek asylum in Australia.

**Senator HUMPHRIES**—So how many places in the humanitarian and refugee program have been provided to onshore asylum claims, including air arrivals and those who have arrived unauthorised by boat? Is there a number of places that are provided for within that 13,750?

**Senator Chris Evans**—There is no quota, Senator. This, as I understand it, has been the same system since 1996. So it would have applied during the previous surge as well. If the question is whether that puts pressure on places, absolutely, yes. But has the system changed? No. But we can give you, I think, some figures which reflect successful visa issues by categories.

**Mr Hughes**—I did. I think that was another answer I gave earlier. Year to date, there were about 3,500 visas resulting from both irregular maritime arrivals and onshore protection claims made by people who arrived by air. That is the total year to date. That is to 31 March.

**Senator HUMPHRIES**—I suppose the basic point, though, is that the component of that 13,000-odd that is represented by IMAs is unpredictable and once the number of people arriving in that fashion each year is addressed then whatever is left can be shared between the other categories?

**Mr Metcalfe**—That is correct.

**Senator HUMPHRIES**—Hypothetically speaking, if there were more than 13,750 arriving, heaven forbid—that is a value judgment.

**Mr Metcalfe**—Let us hope not.

**Senator HUMPHRIES**—Let us hope not. But, if more than that arrived, what would happen to the program?

**Mr Metcalfe**—Well, the government would need to be making decisions as to how it wished to manage that, Senator. We have not had to address that scale of numbers in the past and we do not in the present.

**Senator Chris Evans**—No-one walks away from the fact that if you get a large number of unauthorised arrivals it puts pressure on the program and impacts on other aspects of the program. At the moment, not one extra visa has been issued as a result of unauthorised boat arrivals than would have otherwise been issued because it fits within the program. But are there pressures in terms of other people seeking family reunion? Yes, there are, quite obviously. Any program where we have a cap, we have pressures, be it parents or whatever. This is one of those. So it is adding to the pressures on the program. Of course, the figures quoted earlier were over the last 18 months or so, so, of the figures of those who have arrived already, their actual visa claims will be spread over three financial years. That is not to say it is not a problem. But those numbers will have come in the 2008-09 year and the 2009-10 year and will flow into the 2010-11 year as they are processed.

**Senator HUMPHRIES**—I think that does me for outcome 2.

[8.35 pm]

**CHAIR**—Let us move on to outcome 3, then.

**Senator HUMPHRIES**—I have one quick clarification. I am not sure if I have asked you to take on notice the number of people who fall into those four categories we talked of that make up the 13,750.

**Mr Metcalfe**—Yes. The onshore or the Australian applicants, the refugees and the humanitarian. They are the three, or, I suppose—

**Senator HUMPHRIES**—Well, the family reunion ones.

**Mr Metcalfe**—Onshore and offshore.

**Senator HUMPHRIES**—If you could give me the figures for those, please.

**Mr Metcalfe**—Yes.

**Senator HUMPHRIES**—I see the budget allocation of \$5.8 million over two years to deploy two DIAC officers in Afghanistan. I assume that that is not just salary. It would be quite good danger money if it were. Can you tell me how that figure is broken down, please?

**Mr Metcalfe**—That is based on advice from the department of foreign affairs and the department of finance as to the cost of establishing those two positions. The intention of the positions, Senator, is to allow us to have an on-the-ground presence in the expectation that we will be returning people to Afghanistan. But we will need to have local arrangements and local connections associated with the circumstances of their return. It is not intended to

provide a visa-processing capability. It is very much around the return of unsuccessful refugee applicants. The components are, as you would expect, a contribution to property and overhead costs and the salaries and allowances associated with the offices. Bear in mind that the pattern of work in the embassy is largely to rotate people in and out for a few weeks on and off because of the particular pressures.

But there is a very significant aspect there associated with security for the officers. Western diplomats, of course, are vulnerable. There is quite a heavy security requirement so that they can go about their business, including working with the relevant Afghan ministries or international organisations. We would have an expectation that they would be in a highly secure situation. Mr Hughes, who has been there recently, may be able to provide a little more detail. But they are the broad components of what appears to be a large cost.

**Mr Hughes**—I think you have accurately summed it all up. I think security for diplomats is a big cost—plus, given the standard rotation policy used there, in referring to two officers we are thinking of a rotation policy that might have the net effect of one person being there all the time.

**Senator HUMPHRIES**—I assume that they will be based in the Australian embassy?

**Mr Metcalfe**—That is correct. Indeed, we are working with the department of foreign affairs to secure physical space in the embassy. I understand that it is a very constrained environment.

**Senator HUMPHRIES**—I assume there is a compound or something for Australian embassy staff to live in in Kabul?

**Mr Hughes**—Yes, Senator. As Mr Metcalfe has mentioned, we are negotiating with the Department of Foreign Affairs and Trade, which will decide. Renovation work is going on at the premises there. They will advise us when they are in a position to make some space available for staff of DIAC.

**Senator HUMPHRIES**—So there are some extra costs associated with extra accommodation in both the embassy and the residential compound. But a large proportion of that will be security costs?

**Mr Metcalfe**—A large proportion is close personal protection.

**Senator HUMPHRIES**—If you say that the position is going to be rotated a lot, is part of that airfares for officers to go back?

**Mr Metcalfe**—Yes, it is. We have not settled the precise arrangements, but we would obviously be looking to Foreign Affairs as to how they administer the other attached officers at the mission. But we would expect that the officers would rotate so that essentially one job is filled by two people on sort of constant rotation, both of whom have the contacts and means of operating within the environment. Whether that means that on each occasion they would rotate back to Australia for a few weeks or simply to another post in the region and work there is the sort of fine detail we have not gone through yet.

**Senator HUMPHRIES**—Sure. Language training?

**Mr Metcalfe**—That would certainly be something that we would seek to do as well.

**CHAIR**—I am not pressuring you for time. Senator Hanson-Young has 15 minutes in this area.

**Senator HUMPHRIES**—If it was anybody else, I would say no, but I will let her go.

**CHAIR**—I am just wondering whether she should do her 15 and then we will come back to you. Or, if you have got only another five minutes, we could wrap you up.

**Senator HUMPHRIES**—No. I have a bit more than that, so I would be very happy to defer to Senator Hanson-Young.

**CHAIR**—Then she could go home, because she has a young child here. So that would be most accommodating.

**Senator HUMPHRIES**—I come from a family oriented party, so I understand that argument.

**Senator HANSON-YOUNG**—Thank you. The reason it is so short is that I put the IOM questions to you earlier, so I snuck that one in. The final question I have in outcome 3 is in relation to the specific budget measure in Budget Paper No. 2 that refers to border security and the engagement with Indonesia. Do you want to find that? Do you want me to keep talking, or do you want me to let you find that first?

**Senator Chris Evans**—I think you have got the right people at the table, Senator.

**Senator HANSON-YOUNG**—Great. So this engagement measure within Indonesia describes \$31.2 million going from the aid budget to managing irregular migration flows. I want to firstly clarify what that means in terms of going from the aid budget. Is that from Foreign Affairs? Is that from something else within Immigration? What will that actually be used for?

**Mr Metcalfe**—In broad terms, Senator, that indicates that the activity is ODA eligible. It qualifies as overseas development assistance and is therefore drawn down from the budget administered by AusAID and the department of foreign affairs.

**Senator HANSON-YOUNG**—Would you be able to specify the items listed that will be funded through that \$31.2 million and whether any of that money will actually go towards combating people smuggling, visa determination processes and the processing of involuntary returns?

**Mr Hughes**—The combination of things provided for includes assisting UNHCR with the early refugee status determination of irregular migrants in Indonesia, supporting Indonesia with accommodation and detention arrangements for people—

**Senator HANSON-YOUNG**—That is detention facilities?

**Mr Hughes**—Accommodation and detention arrangements for people intercepted by the Indonesian police and immigration. It is enhancing Indonesia's capacity to undertake returns of people found not to require international protection and assisting the Indonesian authorities in improving their immigration system.

**Senator HANSON-YOUNG**—Does any of that money go to the IOM?

**Mr Hughes**—At the moment, the details have to be worked through with the Indonesian authorities because the intention is to support them in their local capability. So I cannot say at the moment how much of that might be spent through IOM. But it is possible.

**Senator HANSON-YOUNG**—I understand the idea of accommodation and detention facilities, but in terms of the policing side of it, does that lead specifically to people smuggling, or is that about policing those people who are held in detention?

**Mr Metcalfe**—It is about irregular migrants or people who are potentially being people smuggled to Australia. It is simply a continuation and an expansion of what has been happening for many years, where we work with Indonesian immigration authorities to assist them with people who may be unlawfully in Indonesia who are seeking asylum. We work with the UNHCR and we work with IOM to provide capacity building so that the Indonesian immigration authorities have a greater ability to manage the situation that they face to ensure that people who are in fact seeking protection are able to access processes and so on.

**Senator HANSON-YOUNG**—Sure. Correct me if I am wrong. It is for individuals seeking asylum and helping to establish those processes?

**Mr Metcalfe**—It is for us to support Indonesia as it participates in regional arrangements and cooperation. So it is very much about supporting the Indonesian and international effort to support irregular migrants in Indonesia, many of whom are seeking to come to Australia illegally.

**Senator HANSON-YOUNG**—Will any of that money go towards Indonesia dealing specifically with people smugglers?

**Mr Metcalfe**—People smugglers or people being smuggled?

**Senator HANSON-YOUNG**—People smugglers.

**Mr Metcalfe**—It would not be my expectation that it would be targeted at people smugglers. There may be other elements of law enforcement cooperation through the Australian Federal Police, for example, where there may be work in that sphere. But this is very much about the immigration processes and supporting their processes to deal with the many people who are in Indonesia and come into Indonesia.

**Senator HANSON-YOUNG**—So the other various programs that are listed under the budget specifically about targeting people smuggling are going to be related to the smugglers as opposed to the individuals and this is about those individuals who are—

**Mr Metcalfe**—When we talk about people smuggling, there are many things within that. It is ultimately designed to ensure that individuals are supported without seeking to embark on the very risky voyage to Australia. From our perspective, that largely relates to assistance to the Indonesian immigration agency, the UNHCR and the IOM. Other elements of Australian government support certainly go to law enforcement cooperation, which will be more directly targeting the criminal elements associated with people smuggling.

**Senator Chris Evans**—Our focus is very much on capacity building in immigration in Indonesia. If you are talking about law enforcement initiatives, they are much in the AFP space of initiatives and work they do with the counterpart police operations et cetera. Our relationship is with Imigrasi and it is about their capacities and professionalism, be it on

border management systems through to policy development and detention and returns processing et cetera.

**Senator HANSON-YOUNG**—So you are confident that this \$31.2 million that has been taken from the aid budget specifically for this engagement with Indonesia will not be used to combat the criminality aspect of people smuggling? It is not about people smugglers; this is going to be about the—

**Mr Metcalfe**—I see the point you are making, though. This is very much about the immigration capacity as opposed to the law enforcement capacity, if you want to draw that distinction.

**Senator HANSON-YOUNG**—Thank you very much. That is all I have. I think I was under 15 minutes. There you go.

**CHAIR**—Gold star. Senator Humphries, we will go back to you, then.

**Senator Chris Evans**—Can we all go, then, if Senator Hanson-Young is getting an early mark?

**Senator HUMPHRIES**—Some of us get a not so early mark.

**Senator HANSON-YOUNG**—Thank you, Senator Humphries.

**Senator HUMPHRIES**—My pleasure, Senator Hanson-Young. I want to ask about compliance activities. What is the current budget for compliance activities in this area in outcome 3 type issues?

**Mr Metcalfe**—Again, I will just explore the issue with you. Visa compliance is program 4.1, but it depends if you are talking about compliance in the ordinary sense or compliance in the specific way we talk about it, which is dealing with overstayers and people who might breach visa conditions. Program 3.1, Border management, is where we deal with our work to cooperate with areas of combating people smuggling, working with other agencies in that respect, as we were discussing with Senator Hanson-Young, and issues such as security assessment processing, war crimes and those sorts of issues. It is very much about managing the border, including managing legitimate arrivals—those 24 million, 25 million or 26 million border crossings that occur each year.

**Senator HUMPHRIES**—I will deal with compliance issues in that sense, then, in outcome 4.

**Mr Metcalfe**—Yes. If it is around illegal immigrants in Australia or visa breaches, that would be the next program item.

**Senator HUMPHRIES**—That is where I will deal with it. Can you provide a breakdown of staff engaged to perform immigration functions? I have asked you in the previous outcome about staff engaged to deal with outcome 2 type issues in overseas posts. Is there a separate workforce that you can point to that deals with issues in outcome 3?

**Mr Metcalfe**—In border management we of course have staff at our international airports and seaports largely in a specialised role to provide specialised assistance to Customs officers, who do the more routine immigration processing on our behalf. We of course have those airline liaison officers and others that I mentioned in international airports who are seeking to

prevent fraudulent travel. A number of our staff at our overseas posts are particularly focused on what we call integrity issues, which go to fraud and broadly within border management type issues. We have staff who work on specific capabilities, such as forensic document examiners. We have a branch that deals with identity management issues. We have great expertise around detecting fraudulent documents and establishing people's identity. Of course, one of the initiatives in the budget is in relation to the rollout of biometric collection more fully. That is something we have been doing for some time, but we are going to do more of that into the future. I would not have a figure available as to what the staff under program 3.1 comprise. I could take that on notice and we could provide that aggregation of numbers. It would be in the hundreds of staff.

**Mr Correll**—One of the questions earlier today was a question on ASL break-up across the outcomes and outputs, and that would probably give that information.

**Senator HUMPHRIES**—Okay.

**Mr Metcalfe**—For the sake of completeness, I would also identify that quite a few of our technology staff are involved broadly in the border management area. We have sophisticated systems that support our borders—the Electronic Travel Authority and the passenger processing systems that link in with Customs and that sort of thing. Those staff who work in that technology area would be seen as people who would be contributing to this function as well.

**Senator HUMPHRIES**—All right. You will recall that earlier today I was asking you about what I call a go-slow in what I thought was MRT and RRT. I have found the article that I had in mind and it did not actually apply to MRT and RRT. It was not really a go-slow either. It was a report in the *Australian* on 16 April. I will quote the first paragraph:

IMMIGRATION Department officials have been ordered to back off all non-essential visa checking, such as raids on brothels and illegal fruit pickers, as mainland detention centres are at risk of overflowing because of the constant transfer of asylum-seekers from Christmas Island ... Department compliance officers were told late last week to detain people only where necessary, because of the space pressure inside detention centres.

**Mr Metcalfe**—I am aware of that article. That is something that would fit into the next program item, program 4.1, Visa compliance and status resolution. I would say, though, that there has been no go-slow ordered in this area—quite the contrary. Something that we have discussed at previous estimates and indeed for some years now is that we have been seeking to achieve strong compliance outcomes in terms of the detection and departure or status regularisation of people illegally in Australia who are breaching their visa conditions by working, without being required to actually place them in detention. It is an initiative that Senator Vanstone authorised as a pilot when she was minister. It has proved successful and it has now been adopted as a full program. We would be happy to talk with you about that tomorrow. That would put the lie to the suggestion that there is a go-slow in relation to our activities. We have had fewer than 50,000 illegal immigrants in Australia for some years now. We are keeping those numbers at that level even though we have had an increase in the number of overseas arrivals coming here. When you compare us to marker countries like the United States, Canada or the United Kingdom, Australia has a very good record in this space.



But that article and a more detailed response is something we might do tomorrow in compliance, under 4.1.

**Senator Chris Evans**—The officers will be able to take you through the successful operations in recent months and the numbers detained. We can point to cases, detentions and removals of persons during that period. Villawood is not full, and that compliance activity continues. It is happening in a more strategic way. There is more of an industry focus rather than just the dob-in approach. I think we are getting better results. There was, I think, the biggest operation ever late last year in the meat industry. But we have had a number of successful ones in recent times, so I am sure the officers of the section can take you through that.

**Senator HUMPHRIES**—I have a series of questions about bona fide checks undertaken at overseas posts which might be regarded as high-risk posts, the sort of people who might be seeking visas from those posts rather than the security of the posts themselves, current overstayer rates from those high risk posts, how departmental officers verify documents and how many travellers to Australia have presented with false or altered documents. Are these sorts of questions for this outcome or for outcome 4?

**Mr Metcalfe**—We could certainly cover some of these issues here.

**Senator HUMPHRIES**—Would you identify certain posts as being high-risk posts in that sense?

**Mr Metcalfe**—Yes.

**Senator HUMPHRIES**—What sort of posts are we talking about there?

**Mr Metcalfe**—We mentioned earlier, when we were talking about students, the various assessment levels that apply to different countries, depending on a risk assessment. There are a range of posts where we have very facilitative arrangements and other posts where we have high interventions. Some countries are more complex now. For example, the Electronic Travel Authority, where you can apply for an Australian visa through a travel agent over the internet—it is a very straightforward process—is largely based upon the fact that we have very low immigration overstay rates. I have not checked it lately and we would have some details under program 4 tomorrow, but the largest numbers of overstayers in Australia have tended largely to be people from the United Kingdom, but they tend to overstay for not a particularly long period of time.

**Senator Chris Evans**—I got into trouble when I described them as young blokes on the grog in Sydney last time, so do not say that.

**Mr Metcalfe**—I was not going to say that!

**Senator Chris Evans**—It seemed to run all over the radio stations for days. It was the only thing they found interesting out of Senate estimates.

**Mr Metcalfe**—There are a range of countries where we would say that we have to adopt more careful immigration processing, where we may require paper applications as opposed to electronic applications and where we interview high numbers of people. They tend to be largely from developing countries as opposed to developed countries. So North America, Europe, particularly the original members of the EU, and countries like Japan and South

Korea and Singapore are all seen as very low risk sorts of countries. There are few protection applications and very few overstayers. If there are overstayers, they are very short-term overstayers. Countries which are developing—Africa, parts of South America and the Middle East and Asia—may fit into medium- to high-risk categories.

Nothing is ever simple. What we are now seeing, of course, given the emergence of substantial economic growth in countries like China, is what I describe as mixed risk arrangements. Ten years ago, if you asked me about China, I would say it is a high risk country for immigration purposes. We have very careful assessment arrangements there. These days we would look at some cities in China as being quite low risk. For applicants coming from Beijing, Shanghai or Guangzhou, they have a very strong incentive to return, very strong economic reasons for travel and it is becoming a low-risk caseload. But for certain other provinces in China, we experience high risk, high levels of fraud and we therefore take a different approach. We could talk about this for a long time. With the minister's agreement, if you wanted a longer briefing about how we manage these issues and which countries pose particular risks, we would be happy to organise that, Senator.

**Senator HUMPHRIES**—Thank you. Are special arrangements made for bona fide checks of visa applicants from those high-risk posts?

**Mr Metcalfe**—Yes, they are.

**Senator HUMPHRIES**—What sort of special arrangements?

**Mr Metcalfe**—Mr Frew might be able to provide a bit more detail. Firstly, those countries would not be eligible for the electronic travel authority. They would be usually not eligible for other electronic visa applications. We would normally require an application to be submitted in paper form with supporting documentation. We would usually insist upon there being supporting documentation that would evidence a person's intention to return to that country, such as a reference from an employer indicating that they had been granted a period of leave and that sort of thing. It is the nature of the game that occasionally those references themselves are forgeries or fake, so we have to be careful in our means of assessing those particular applications. It may vary from visa category to visa category. In some countries, as we were talking about earlier, our usual experience is that applicants for student visas coming into higher education and postdoctoral type arrangements are usually very low risk. But for applicants coming into the vocational education area, they may be a higher risk level. So there is a range of processes we undertake.

One way to get a pretty clear impression of where we see risk is to look at where we have our overseas resources. Largely we no longer have A based officers in posts that are pretty low risk, or we only have a small number of officers there. So we do not have many Australian officers in London these days and very few through Europe or North America whereas—

**Senator Chris Evans**—A great regret to many of the staff, I would have thought.

**Mr Metcalfe**—Sadly, the opportunities are all difficult these days.

**Senator HUMPHRIES**—Character building.

**Mr Metcalfe**—Whereas our biggest overseas post now, due to volume and risk and fraud issues, is New Delhi. There is a big source of high quality migrants and workers and students from India, but there are a lot of non-genuine applicants as well. Our second biggest post is Shanghai, again because we have many high quality applicants but we have a lot of fraud as well. So we undertake a whole range of different measures.

Earlier I indicated that we had created a division under Gavin McCairns to focus in a concentrated way on risk, fraud and integrity issues and a global manager in South Australia to focus on these issues. I expect that we will continue to pursue ways to identify and to overcome fraud. The minister has made it very clear that he has expectations that we do this in a more timely manner, that we understand what is happening with the business and understand where trends are developing or issues are concerning far more quickly than we have now. We have a range of measures as to how we will meet that requirement. That is part of the overall sort of search for efficiencies in how we can in fact identify the easy cases more quickly and let those people through with minimum trouble but to focus in quite quickly and deal with those more difficult cases.

Finally, Senator, there are a range of other devices and arrangements. For example, we have the opportunity for some visitor visas. Where our post has a concern that a person coming to visit family members may not abide by the conditions of their visa, there is the opportunity for a so-called sponsored family visitor visa. A performance bond is taken from the family, which is returned if in fact the person departs Australia. So that is one of a whole range of tools that we have to manage these sorts of immigration risks.

**Senator HUMPHRIES**—So the checks vary as much by the type of applicant as they do by the location?

**Mr Metcalfe**—Yes. It becomes a factor of our understanding of what the people of that background have done and understanding the sorts of issues together with the—

**Senator Chris Evans**—It is a risk management—

**Mr Metcalfe**—It is a risk management.

**Senator Chris Evans**—matrix, basically, yes.

**Senator HUMPHRIES**—For the moment I want to focus on high risk posts. You said that the most common origin of overstayers was the UK.

**Mr Metcalfe**—I will check on that because I would not wish to defame any particular nationality. But in absolute terms, the United Kingdom and, indeed, the United States have produced quite large numbers. But usually in terms of the highest proportion, it tends to be a couple of countries in the South Pacific, where we get quite high overstay rates, even though the numbers are smaller. But I suspect our colleagues who are here for program 4.1 tomorrow will have more detail around those sorts of issues.

**Senator Chris Evans**—For instance, our highest protection visa application rates are out of the PRC. That was reported by the tribunal today. I think the PRC is about 30 per cent of the protection visa application rates. So the behaviour is quite different. Very few Americans overstay and apply for a protection visa, but they might overstay for short periods. So the behaviour for different clients is different and represents different risks.

**Mr Metcalfe**—I am just advised by Mr Correll that in question 123 from the latest hearing, the 9 February hearing, you asked us about bona fide checks and the various posts. We provided a very comprehensive response to that. That may have only just reached you. It does provide more detail for you.

**Senator HUMPHRIES**—You may have answered that question in the written answer. But does that indicate whether there has been any increase in overstay rates in recent days?

**Mr Metcalfe**—I am struggling. This would take us across again into program 4, Senator. We certainly can talk about overstay rates under program 4. But under border management, it is about the way we go about managing the border itself.

**Mr Correll**—The answer in short, Senator, is no. This answer does not go to the question of overstay rates, which is more linked into the compliance aspects. So that perhaps can be picked up tomorrow. There is some limited commentary in this response to it, but it does not cover it in any substantive way.

**Senator HUMPHRIES**—I want to go to the question of how departmental officers verify documents. I assume a large part of the work of DIAC officers is to look at documents which are submitted. There needs to be, I assume, alertness to the potential that documents are being forged or altered. What is the standard procedure for checking or verifying documents?

**Mr Correll**—It is in fact a very specialised area. We have specialist document examiners, who are highly skilled and highly trained. We have document examination laboratories, which have specialist technical equipment. Within airport locations we have labs and specialist equipment set up to examine documents and detect, for example, fraudulent passports. There is various equipment that can be used to aid, using particular light sources, in the identification of fraudulent documents. Our staff are involved in testifying, in some cases before courts, in relation to document fraud matters. So it is a very skilled area. We also provide some quite significant levels of training throughout the region to assist our neighbour countries upgrade the quality of their own document verification capability. We have had officers posted within the South-East Asian region specifically for training purposes across the region. So there is a lot undertaken. It is a specialist function located within our broad identity management area. We also support some training of staff from overseas immigration agencies as well, who do some placements with us within that document verification area.

**Mr Metcalfe**—I think it would be right to say it is a layered approach. Essentially we ensure that all of our front-line staff and, indeed, Customs officers are familiar with the types of indicators that may lead to a suspicion that a document has been tampered with or is fraud. The best example are travel documents, where some fairly straightforward checks are able to indicate whether there has been tampering with the photograph, the pages or whatever. You would probably notice that all Customs officers, when you come through an international airport, have a UV light source. That is able to give them a quick indication. So one of the important aspects here—this is something that we are very much working on with our international counterparts—is that front-line officers who encounter the documents are alert to possible signs of tampering and then able to call in, if required, the highly capable experts to actually find out whether that document is in fact false, has been tampered with or is fraudulent.

We rely of course on many other documents rather than just travel documents. We rely upon birth certificates and wedding certificates and employment records and those sorts of things. We have been developing some very significant databases of legitimate documents so that we can actually check. But also this is where human intervention comes in—making a phone call to a university to see whether they in fact did issue this particular course certificate or whatever it might happen to be. So it is a layered approach, with front-line officers given training as to the indicators or areas where there may be concern through to a specialised set of human skills and technology support so that we can try and identify those areas. This is one of the main areas where we have been providing support and capability building to partners in the Philippines and Indonesia and elsewhere in the region.

**Senator HUMPHRIES**—That is very impressive. When officers detect a false or altered document, obviously an applicant that is offshore will be refused an application. What typically happens to someone who is found within Australia to have used a false or fraudulent document?

**Mr Metcalfe**—We would usually have a conversation with the person as to the fact that the document is not, in our view, correct. There would be an opportunity to see whether our view was right or what their particular story happened to be. But if it clearly was a fraudulent document and there was an intention to mislead us, that would usually lead to a refusal of the application that the person was making, whether it was for a visa, whether it was for citizenship or whether it was for some other particular issue. In serious cases, there is the potential for prosecution. This probably takes us again across into program 4 tomorrow as to how we deal with that issue.

There is certainly evidence of substantial organised malpractice around the provision of documents to convince us and other government agencies as to things that people have that they should not have or whatever, whether it is employment background or that sort of thing. It is something that our compliance and investigations officers are closely focused on.

**Mr Correll**—We have a protocol with the Australian Federal Police in our airports, which is applied where there are people for various reasons detected at the border. They may be referred from Customs into the secondary line, as we call it, which is where the specialist immigration officers are located, including document verification experts. That can lead to the turnaround of the individual at the airport, where they are sent home. It can in some circumstances lead to prosecution action, where there is clear document fraud involved, through the Australian Federal Police.

**Senator HUMPHRIES**—In the last 12 months has anybody been prosecuted for presenting or using a false or altered document?

**Mr Correll**—I would need to check the detail of that. We would probably just need to check that through our colleagues at the Australian Federal Police. I know that our document examiners have within the last three to four months participated in giving evidence in court hearings, so I think the answer to that question would be yes. In terms of the numbers, I would need to check.

**Senator HUMPHRIES**—How many unlawful noncitizens have been located in 2009-10 to date?

**Mr Metcalfe**—That takes us across to 4.1 again, Senator.

**Senator HUMPHRIES**—I will backtrack a bit to what you were saying about the removal of people from Christmas Island whose claim for refugee status has been refused. I am sorry to backtrack a bit there. When they are returned to their home country, typically what is the route taken? I think I remember hearing the minister say at one stage that people do not generally fly from Christmas Island to Jakarta or somewhere like that.

**Mr Metcalfe**—No. Ordinarily, the person would return on a commercial flight under some form of escort. It would then depend on whether that flight left from Sydney or Perth or Melbourne. So it would very much depend upon where they might be located and where their destination was. But where they are returning to Afghanistan or Colombo, it would usually be through Singapore. It is the usual transit point. Going to Afghanistan, they would usually go on to Dubai and then return to Kabul from there. How they get to Singapore would really depend on which international airport in Australia was the most sensible to use. So that would largely depend upon their whereabouts.

**Senator HUMPHRIES**—So you do not have any sort of information about whether they tend to go through particular Australian airports? There is no dominant airport that is a departure point?

**Mr Metcalfe**—No. Usually if we were removing people from the east coast, it would be the obvious airports. If it were from Christmas Island, quite often it would be through Perth airport.

**Senator Chris Evans**—Think about it, Senator Humphries. Villawood has the largest contingent of our onshore higher risk people, if you like. Logically, they would go to Sydney. If we are moving people out of Christmas Island, Perth has been a major transit point. But it depends where you are going and what the flights are. We have to negotiate with airlines about who will take certain clients, particularly if they are being removed involuntarily. So there is a negotiation with the particular airline, and some are more cooperative than others, as I understand it.

**Senator HUMPHRIES**—We escort the people who are returned. Did you say we usually provide an escort?

**Mr Metcalfe**—Yes. For involuntary returns. For voluntary returns, quite often we would not escort the person. We would see them leave Australia and they would continue on the travel themselves. But, for involuntary returns, we either take the person all the way home or to at least the last port of embarkation prior to their return home. The number of escorts and the types of escorts would vary very much, depending upon the person's own particular needs. Usually there would be an immigration officer or officers present, but there may be off-duty police and/or medical personnel as well.

**Senator HUMPHRIES**—I want to go back to the documents issue. The figures that were referred to before indicated that, I think, in the last financial year we had 160 IMAs who were classified as stateless, or it may have been the previous 18 months. It indicates there were 160 stateless people. How do we go about establishing their identity when they are stateless?

**Mr Metcalfe**—Mr Correll might be able to take you through the establishment of identity generally, which may lead to a conclusion that a person has or does not have a particular nationality. There are some quite substantial departmental processes and procedures around that. Just bear with us and we will get the right briefing in front of us.

**Senator HUMPHRIES**—There are 157 people in the list provided.

**Senator Chris Evans**—Mr Correll or Mr Frew might like to also take the senator through the identification of the biometric identity testing that we have brought in, which now has all unauthorised arrivals who have been subject to that biometric testing and checking against a database. So, in terms of our identity establishment procedures, we have recently introduced biometric checking, which does not solve all the problems in terms of someone's identity but does allow you to check against various databases as to whether or not they are a person of interest or have previously presented under another identity or what have you. That is another layer that is now being applied that was not there previously.

**Mr Correll**—I will work through the overall processes. This involves drawing on a range of different information sources to attempt to establish if a person is who they say they are, basically. In terms of irregular maritime arrivals at Christmas Island, there is a series of information. The first information is any document evidence of identity that is held by the individual. Then there is the question of how much reliability can be placed on that particular piece of evidence. Is there anything to suggest that it is either fraudulent in character or has been fraudulently obtained? Does the identity information provided in terms of any biometric information—and that includes facial images as well as fingerprint images—match with the client? All irregular maritime arrivals on Christmas Island are subject to fingerprinting. There are then matching processes with the fingerprint databases of the United Kingdom, Canada and, on a trial basis at the moment, with the United States. In the near future, we are looking to New Zealand to be added into that matching process.

That is a very important matching process. It establishes whether perhaps asylum claims have been sought in other countries, which can occur. Does the department have any record of the individual? For example, have we seen this individual before? All of that information is brought to bear to effectively in the end establish what is the probability that this person is who they say they are. If you have an anchor for identity, such as a biometric anchor, you can have a virtual 100 per cent level of satisfaction about the identity. If you do not have that sort of anchor, then you are relying on an assessment of the strength of the various indicators that you have in front of you. That is the judgment that is undertaken by the officers involved. Where there are serious questions about identity, we have within the identity management branch of the department a specialist area to which our staff make referrals. They then will undertake further specialised checks, depending on the circumstances of a particular case, to again establish the identity. So there is a fairly substantive range of measures that are applied.

The biometric matching is for fingerprints, but remember that biometric covers faces as well. But fingerprints are particularly important because they provide an anchor to the identity that you can then, if you like, rely on for matching purposes.

**Senator BARNETT**—I want to come in there, Mr Correll. I am just looking at the portfolio budget statement with regard to the biometric expenses. For the capital expenses I read it as a bit over \$1 million for this financial year. Is that right? It is on page 18 of the PBS.

**Mr Correll**—Yes.

**Senator BARNETT**—And then there are ongoing maintenance costs. So it is just a one-off capital expense?

**Senator Chris Evans**—No. There is a program which we announced which is rolling out biometrics testing to 10 selected overseas sites spreading biometric testing to visa applicants. That was announced some time ago, so there will be funding for that as well.

**Senator BARNETT**—Can you clarify those costs?

**Mr Metcalfe**—If you look at that table 1.2, Senator, you will see right at the top the very first departmental expense is border security biometrics for borders and visa processing. Program 3.1 shows \$28.7 million next year and \$15.5 million in 2011-12. So that is the departmental expenses aspect of the \$69 million program that the minister has indicated. If you go down under departmental capital down the bottom, you will see they are the capital costs associated with it. Mr Correll can brief you in more detail on that if you wish.

**Senator BARNETT**—I am just looking at program 3.1 on page 42. It talks about the expenses for security and biometric measures and then the ongoing maintenance expenses. I think I can follow that. What I do not follow on page 42 is the gap after total administered expenses. It concludes in 2010-11. It is \$4.469 million, and then there is nothing after that. I am wondering if you can explain that. I am looking at it. It says there is no funding for administered expenses beyond 2010-11. Why is that?

**Mr Correll**—The reason for that is that it was a one-year initiative, not ongoing funding. So the funding that was made available for those initiatives was for one year—the budget year only.

**Senator BARNETT**—It is for two years, is it not? It says it is implemented over a two-year period.

**Mr Metcalfe**—It is 2009-10 and 2010-11. If we seek to continue those measures, we would need to come back to next year's budget.

**Senator HUMPHRIES**—This might be a question for outcome 4. How many unlawful non-citizens have been located working in the insulation installation industry in the last 12 months?

**Mr Metcalfe**—That is definitely program 4.

**Senator Chris Evans**—Even though I put them on notice, I do not expect to be able to give you an answer tomorrow.

**Senator BARNETT**—Were you at the rally two days ago, greeting them? They did see many Labor ministers there, or the Prime Minister.

**Senator Chris Evans**—We had very few complaints in Western Australia. I think it is because of the nature of the installation.



**Senator HUMPHRIES**—Again, I think this is the right area, but if it is not, tell me. I want to ask about the asylum status or the visa status of those people who were on the SIEV36. Is that for here or for somewhere else?

**Mr Metcalfe**—It would probably be back in outcome 2, actually, but I think we are all here, so we can cover that if you wish.

**Senator HUMPHRIES**—I want to know at the moment where the people are who were on the SIEV36. I accept that there are three who are subject to further investigation by the Director of Public Prosecutions, those identified by the coroner as having been complicit in the blowing up of the boat.

**Senator Chris Evans**—I stand to be corrected, but I think the coroner referred those three names in his report to the Northern Territory Police for further investigation. I think that is the status.

**Senator HUMPHRIES**—So do we have an outcome—

**Senator Chris Evans**—They will decide whether or not a brief goes to the DPP, as I understand it. But I stand to be corrected if that is not right.

**Mr Metcalfe**—What I am advised, Senator, is that the Northern Territory coronial inquiry into the explosion was completed on 19 February this year. The coroner found that three individuals were part of a plan to cripple the boat and that crimes may have been committed with the explosion. The coroner indicates in his report that he proposes to refer his findings to the Northern Territory commissioner of police and the Northern Territory DPP to determine whether criminal charges can be laid. We understand that at this stage no criminal charges have been laid. But obviously we are closely monitoring the situation and remain in touch with the Northern Territory Police in relation to the matter.

**Senator HUMPHRIES**—Has the department been asked to provide any information to the Northern Territory Police to assist them with their inquiries?

**Mr Metcalfe**—I ask that, if I am incorrect, we can correct this tomorrow. But I understand that we have written to the Northern Territory Police reiterating our undertaking to assist in relation to these matters, including if we need to assist in relation to the location of the three people. We have provided information about the general laws relating to visa cancellation should a person be convicted of a very serious offence, noting that of course these people have been found to be refugees. We also encourage ongoing contact with other government departments as well.

**Senator HUMPHRIES**—Is it possible at this stage to say what would happen to those three people with respect to the visas that they have been granted should they be charged and convicted?

**Mr Metcalfe**—I could talk in general terms but I would be very careful to not speculate upon a matter where there could well be charges laid. That is clearly a matter for the police. In general terms, if a person is convicted of a serious crime in Australia and they are the holder of a visa, then there are grounds for consideration under section 501 of the Migration Act as to whether that visa should be cancelled. Those cancellation grounds go to whether or not the person has a substantial criminal record, whether they associate with criminals, or they go to

their past and present criminal conduct or their general conduct. In relation to people who have been found to be refugees and thus owed Australia's protection, another aspect that has to be taken into account is the formal obligations in relation to the refugee convention. They can be superseded if a person is guilty of, I think, in article 1E of the convention what are described as serious crimes. It would therefore be a matter for close consideration, were a refugee to be convicted of murder or manslaughter, as to whether (1) their visa should be cancelled and (2) the impact that might have on their refugee status. But I hasten to add that that is a general briefing and it in no way is a comment on this particular matter.

**Senator Chris Evans**—I think you can also be assured, Senator, that we have sought all the appropriate legal advice at every stage on this particular issue. We have taken that advice into consideration. So it is a matter that is under active consideration, and we have been seeking legal advice on all matters related to this issue.

**Senator HUMPHRIES**—I have another question for you, then, Minister. I note the argument you have placed before the Senate about the inappropriateness of making a final decision about the visas of the three persons who were identified by the coroner as having been principally responsible for the explosion on the boat. But I am also aware that the coroner said in his findings:

It is quite apparent when one compares the evidence of the Afghani witnesses to that which is depicted on the video, none of them are telling the truth. All of them are denying knowledge of events about which they must have some knowledge.

I am surprised in these circumstances that you would consider that, given the finding of the coroner, the other passengers on the boat are actually of sufficient character to warrant being conferred with visas, which I understand is a decision that ultimately you make.

**Senator Chris Evans**—Senator, I think you have it around the wrong way. Those people were holders of visas before the coroner made his findings.

**Senator HUMPHRIES**—So you had the power to cancel the visas in light of—

**Senator Chris Evans**—You are suggesting now I cancel the visas of all 42, are you?

**Senator HUMPHRIES**—Well, I am asking—

**Senator Chris Evans**—So the previous claim of the Liberal Party was that I ought to immediately cancel the visas of the three men named. Are you now suggesting I cancel—

**Senator BARNETT**—Just answer the question.

**Senator HUMPHRIES**—I am not making a claim that—

**CHAIR**—Senator Barnett, we do not need any comments from you, I think. I think these two are going all right.

**Senator Chris Evans**—Senator Barnett, Senator Humphries is asking me a question. I am clarifying whether or not he thinks I ought to cancel the visas of all 42, because that is not what you have argued previously. I am just checking.

**Senator HUMPHRIES**—I have not argued anything previously, Minister. I have simply asked questions.

**Senator Chris Evans**—I thought you had asked me questions with a certain angle in them, Senator, and spoken on this matter in the Senate, but I must be wrong.

**Senator HUMPHRIES**—I asked you a question in the Senate about the three who were subject to police investigation. I am now asking you a quite separate question about the other 36 people, or whatever the number is.

**Senator Chris Evans**—As I made clear to you, I sought and am acting on legal advice in relation to these matters. We will await any decision by the police or the Director of Public Prosecutions on the question of prosecutions.

**Senator HUMPHRIES**—But that investigation by the coroner is into the three who were implicated in the explosion. It is not into the other 36 or 32—how many people are we talking about?

**Senator Chris Evans**—I think 42 is the total I have.

**Senator HUMPHRIES**—So there is no investigation into the other 42.

**Mr Metcalfe**—The coroner did not reach the view that criminal charges should be considered.

**Senator HUMPHRIES**—Indeed. But, as you know, Mr Metcalfe, I am sure, the evidentiary test for cancelling a visa is not the criminal test; it is a civil test on the balance of probabilities—whether these people satisfy the good character test for the granting of a visa or the continuation of their visa. That question is now before, with respect, the minister, I would have thought, given the findings of the coroner. If there was an applicant who was seeking a visa to migrate to Australia and there was a finding of that kind by a coroner overseas, I dare say you would not grant them a visa. These people—

**Senator Chris Evans**—I am not sure that is right, Senator.

**Senator HUMPHRIES**—Well, maybe you would. I would be very surprised if you did.

**Senator Chris Evans**—What are you suggesting? This is the point about the rule of law. What we are discussing here is a statement by a coroner not in relation to three. You are talking about the other 42?

**Senator HUMPHRIES**—Yes.

**Senator Chris Evans**—And it is a statement by the coroner. It is not a conviction.

**Senator HUMPHRIES**—It is a statement by the coroner that these people lied. They lied to a coronial process. That was his clear finding. I would have thought that goes directly to character. Why would you not as minister refuse them visas or cancel their visas on the basis that they have been found by a coroner of the Australian court system to have lied to a coronial process?

**Senator Chris Evans**—Senator, I think the answer is first of all that these people hold valid visas. They have been found—

**Senator HUMPHRIES**—Which you can cancel. Which you can cancel if you wish to.

**Senator Chris Evans**—Can I finish the sentence? You have put your point of view. These people hold valid permanent visas in this country. They were found to be refugees and

allowed our protection. Those decisions were taken and visas were granted so they are now permanent residents of this country. When the coroner's decision came down, it particularly focused on those three persons. On the basis of that, I sought legal advice about our options under section 501 and the grounds possible et cetera for dealing with those clients. That advice effectively indicated that the prudent legal course would be to await the outcome of any criminal proceedings before making any move on these issues. The advice also talked about, if you like, the test that would be applied on character grounds. You are aware of the Federal Court decision in the Haneef matter and what test has now been set for those things. The strong advice to me was to await the proceedings of the Northern Territory police.

**Senator HUMPHRIES**—Your advice was to await the outcome of the police investigation in the Northern Territory before making a decision about whether to cancel the visas of the other 42 passengers?

**Senator Chris Evans**—No, Senator. The advice was focused on the other three. But the advice more generally was to see whether criminal proceedings occur. The police may well want to charge all 42. I do not know. You make the point that there were findings that they may have misled. I do not know whether the police are considering any charges in relation to those. I do not know. Our advice was to await the investigations of the Northern Territory police and any criminal proceedings that they may pursue.

**Senator HUMPHRIES**—I can understand that advice. If you are saying to us clearly, Minister, that you are awaiting that outcome of the police investigation before making a final decision about any of the passengers on the SIEV 36, including the other 42, are you saying that you will consider in light of that outcome the fate of the three specifically in the fire plus the other 42?

**Senator Chris Evans**—Senator, what I am saying to you is that the focus is obviously on the three, but the advice was to await those proceedings.

**Senator HUMPHRIES**—For what? Wait, what, for those proceedings?

**Senator Chris Evans**—Because the coroner had referred these matters back to the police.

**Senator HUMPHRIES**—In respect of three people.

**Senator Chris Evans**—Yes. But you are talking about his general findings. My advice was that we ought to await the Northern Territory police investigations. I point you to the established tests, if you like, of who passes the character test. They need to come within one of the grounds set out in 501(6), which are substantial criminal record, association or past and present criminal conduct and/or past and present general conduct. I think it is fair to say that recent interpretations—and the courts have made that test a fairly higher level test than used to apply in the past. We will consider our next steps after we have seen what happens with the Northern Territory police.

**Senator HUMPHRIES**—I would have thought that a failure to prosecute the three concerned does not indicate that these three people are of sufficient character to remain in Australia because there is a criminal test to be applied about whether a prosecution will be successful or not.

**Senator Chris Evans**—Clearly, Senator, you would not expect me as potentially a decision maker to enter into a conversation with you like that. You are free to throw around accusations and make judgments in a way that I am not.

**Senator HUMPHRIES**—I am asking you questions, Minister, that I am entitled to ask you, with respect.

**Senator Chris Evans**—No. You make judgments and say I cannot do that. I may well have a decision before me in relation to any one of these men so I am not going to discuss with you those matters, as you would expect.

**Senator HUMPHRIES**—I just want to know what the parameters of your decision were. That is all I was asking. I think you have answered that question.

**Mr Metcalfe**—I will repeat what I said before. This sort of situation throws up a critical intersection between immigration law, criminal law and international refugee law. Leaving aside the particular circumstances, there is an issue as to if a refugee is to be returned to a place of persecution, then international law only permits that if they have been convicted of serious crimes. So, while there may be a power under the Migration Act for visa cancellation that applies to any visa holder, there are particular considerations that would have to be taken into account under the refugee convention as well. So that is something that immigration ministers have had to grapple with over many years.

**Senator BARNETT**—I would like to follow up on that issue. When you say you have received legal advice, I would like to know whether it was one or other. Was it one advice recommending you not proceed with action under section 501 or was the advice to offer a number of options, which you then considered and considered what you thought was in the best interests to accept?

**Senator Chris Evans**—Senator, it is not our habit to discuss the detail of legal advice, but I guess I can say to you that I am confident I am operating in accordance with the advice I have received.

**Senator HUMPHRIES**—Lastly, I want to touch on the issue which I think was discussed at the last hearings about the Saatchi & Saatchi campaign in Sri Lanka to discourage people boarding boats. Is that an issue for this area?

**Mr Metcalfe**—That is an initiative of the Australian Customs and Border Protection Service.

**Senator HUMPHRIES**—All right. I shall ask them those questions.

**Senator Chris Evans**—We have much more modest budgets. We would be using Brown and Brown of Civic, I think, would we not?

**Mr Metcalfe**—We have done some work in relation to information campaigns. Indeed, on our ImmiTV website, we have various messages about the risks associated with trusting a people smuggler and that type of thing. But it has been in-house work that we have done in this area.

**Senator BARNETT**—I want to clarify. I thought this had come up in previous estimates—the Saatchi & Saatchi matter?

**Mr Metcalfe**—I suspect it has, but it would be in relation to Customs, Senator, not us. We are not involved in that program. That is a function for Customs.

**Senator Chris Evans**—I think we answered some questions in general, Senator. I think it came out in discussion. But the program and the responsibility and the funding are all with Customs. I think we tried to be helpful in terms of general information, but it is their program.

**Senator BARNETT**—So you cannot share any information tonight and be helpful?

**Senator Chris Evans**—I do not know any more about it than I learnt through last estimates.

**Mr Metcalfe**—No. I have not heard about it recently.

**Senator HUMPHRIES**—Your own campaigns do not involve volleyball or street theatre, I take it, Mr Metcalfe?

**Mr Metcalfe**—No. As I have said, we have done some work in relation to our own YouTube site, where there is quite a lot of material—videos—about departmental programs. I am pretty sure we now have a small in-house production that we have done which essentially is a re-enactment of a compendium of stories about a person whose family perished at sea and the sorts of risks that people run in undertaking people smuggling. But it was done in-house for a very modest budget.

**Senator BARNETT**—Where is that one running?

**Mr Metcalfe**—It is on our YouTube website, Senator. It is not being run on radio or television. YouTube, without seeking to advertise the product, is clearly accessed by millions of people. We are increasingly using it as a medium to transmit messages. Mr Vardos is there talking about changes to occupations and various other lists. We have a series of material on there. This is one thing that our communications area has produced using our own facilities.

**Senator BARNETT**—So you are not planning any campaigns within Australia in terms of that topic—people smuggling—apart from through your website or YouTube?

**Mr Correll**—The division of responsibility in this area is that the Customs and Border Protection Service has responsibility for any offshore information campaigns and manages that. We have responsibility for any onshore information campaigns. We have had an information campaign operating onshore in ethnic media et cetera to inform people of the perils associated with people-smuggling activity. That has been something that we have managed. So there is close collaboration between Customs and ourselves in this area, but the division of responsibility is offshore is Customs and onshore is ourselves.

**Senator BARNETT**—Is the level of effort with respect to your education and information campaigns onshore about steady, or has it increased or decreased over the last couple of years and into the next 12 months?

**Mr Correll**—There has not been a significant effort until more recent times. In more recent times, there has been more active use of the various different media and magazines that are used in the various different forms of the ethnic press. So that has been certainly increasing in recent times.

**Senator Chris Evans**—But modest, Senator Barnett. We are not running glossy TV campaigns.

**Senator BARNETT**—I want to clarify what ‘recent times’ means and what the level of expenditure on these education and information campaigns is with respect to anti-people-smuggling messages?

**Mr Correll**—I would have to take the latter question in terms of the expenditure on notice, Senator. In terms of what is recent times, we are talking over the last two to three months.

**Senator BARNETT**—Are we talking about less than a couple of million for the expenditure?

**Mr Correll**—We are not talking about multimillion-dollar budgets here. We are talking in the thousands. I will not attempt to estimate whether it is tens or hundreds of thousands, but it is certainly not multimillion.

**Senator BARNETT**—What caused the department to decide to commence such an education and information campaign?

**Mr Correll**—To ensure that the various different target audiences that may have knowledge that they could impart to potential groups who would wish to participate in people-smuggling ventures have a full awareness of the perils involved in those types of ventures. So it was focusing on the key groups where there may be some level of contact that is relevant in Australia.

**Senator BARNETT**—Are you worried about Australian residents funding and supporting people smuggling overseas?

**Mr Metcalfe**—It is about ensuring that people understand that there are penalties associated with supporting illegal activity but also about the risks that people take in this area. As Mr Correll said, Senator, it is very targeted into the Afghan, Sri Lankan and other communities in their languages, so it is quite targeted through the relevant ethnic newspapers or radio that may be directly accessing those groups of people.

**Senator BARNETT**—It is interesting that it started two or three months ago, and not in 2008 or 2009.

**Mr Metcalfe**—Mr Correll has indicated that it is a very recent initiative.

**Senator BARNETT**—That is why I was wondering why it has just started, and why it was not running previous to that.

**Senator Chris Evans**—Senator, I think it is fair to say that there is ongoing work. But there has been a bit of a lifted effort in terms of some targeted messages. As you know, we recently put some people-smuggling legislation through the parliament with opposition support. We are just trying to make sure we reinforce messages to Australian communities that we take a very serious attitude against people-smuggling activities and there are very strong penalties and risks involved. So it is just part of reinforcing a message that has been out there for a while.

**Mr Metcalfe**—And it is in support of the quite significant community contact work that we have done. We have a network of community liaison officers. Our state officers and our

community liaison officers have been engaging with people in Australia of the same origins as those people using people smugglers. That is part of our ongoing community contact as well. We have provided information about key contacts to the Federal Police so that they in fact can also explain the penalties that have recently been enacted by the parliament. So we have a strong engagement at the community level and now through this very targeted campaign.

**Senator BARNETT**—I think we are coming to an end. I wonder if you have the answers to the questions about that chart we had of Christmas Island.

**Mr Metcalfe**—The updated figures from the earlier question, Senator?

**Senator BARNETT**—There were two. That was one of them, yes. I understand we have one here. Did you want to refer to that, Mr Correll?

**Mr Correll**—Yes. Senator, during the earlier meal break we tabled the updated version of that document. However, we have discovered that both in the original version and translated into the updated version there is a typographical error with, I think, the third and fourth boat arrivals. It does not accurately list the dates. So we apologise for that.

**Senator BARNETT**—What are those dates, Mr Correll?

**Mr Correll**—That is what we need to check to retable the document in the morning. We would like to retable this document in the morning. It is either October or it is November. It is a question of whether the one is missing or the zero is missing from that date.

**Mr Metcalfe**—It is not January.

**Mr Correll**—It is certainly not January. We would like to retable in the morning. However, all of the updated information remains with that document you are looking at there.

**Senator BARNETT**—Were you going to get back to us on these figures for Christmas Island—department staff, contract staff and the clients, including the crew, and the differential between the 2,295 and 2,437?

**Mr Metcalfe**—That was the discrepancy between the Attorney-General's Department figure and our figure and 21 May and the other figure.

**Senator BARNETT**—That is right—19 May. You were checking on that.

**Mr Metcalfe**—Yes.

**Mr Correll**—We do not have the answer to that as yet. The officers concerned will all be here tomorrow morning.

**Senator BARNETT**—Thank you.

**CHAIR**—We have finished outcome 3. Thanks, everybody. We will close for the night an hour early and we will see you in the morning for outcomes 4, 5 and 6.

**Mr Metcalfe**—Thanks very much. Thanks, Chair.

**CHAIR**—Thanks, everybody. The committee is suspended until tomorrow.

**Committee adjourned at 9.59 pm**