



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS
LEGISLATION COMMITTEE

Estimates

MONDAY, 17 OCTOBER 2011

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

<http://www.aph.gov.au/hansard>

To search the parliamentary database, go to:

<http://parlinfo.aph.gov.au>

**SENATE
LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**

Monday, 17 October 2011

Senators in attendance: Senators Abetz, Brandis, Cash, Crossin, Furner, Hanson-Young, Humphries, Mason, Parry and Pratt

IMMIGRATION AND CITIZENSHIP

In Attendance

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

Senator Lundy, Parliamentary Secretary to the Prime Minister, Parliamentary Secretary for Immigration and Multicultural Affairs

Department of Immigration and Citizenship

Executive

Mr Andrew Metcalfe, Secretary

Dr Wendy Southern PSM, Deputy Secretary

Mr John Moorhouse, Deputy Secretary

Ms Jackie Wilson, Deputy Secretary

Mr Peter Vardos PSM, Deputy Secretary

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

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

Ms Jenny Hardy, Chief Lawyer, Governance and Legal Division

Mr Benjamin Neal, Acting First Assistant Secretary, People and Executive Services Division

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

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

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

Mr Sandi Logan, National Communications Manager

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

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

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

Program 1.1—Visa and migration

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

Mr Peter Speldewinde, Assistant Secretary, Labour Market Branch

Ms Paula Williams, Assistant Secretary, Education and Tourism Branch

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

Program 2.1—Refugee and humanitarian assistance

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

Ms Vicki Parker, Principal Advisor, Border and Humanitarian Strategies, Border Security, Refugee and International Policy Division

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

Program 3.1—Border management

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

Mr Phil Thurbon, Acting First Assistant Secretary, Risk Fraud and Integrity Division

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

Program 4.1—Visa compliance and status resolution

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

Program 4.2—Onshore detention network

Mr Greg Kelly, First Assistant Secretary, Detention Operations Division

Mr Ken Douglas, First Assistant Secretary, Detention Infrastructure and Services Division

Program 4.3—Offshore asylum seeker management

Mr Greg Kelly, First Assistant Secretary, Detention Operations Division

Mr Ken Douglas, First Assistant Secretary, Detention Infrastructure and Services Division

Ms Kate Pope, First Assistant Secretary, Community Programs and Children Division

Mr Stephen Allen, First Assistant Secretary, Offshore Initiatives Division

Mr John Lynch, CEO, Independent Protection Assessment Office

Program 4.4—Illegal foreign fishers

Mr Greg Kelly, First Assistant Secretary, Detention Operations Division

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

Program 5.1—AMEP and settlement services for migrants and refugees

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

Mr Peter Templeton, Assistant Secretary, Settlement Branch

Ms Fiona Lynch-Magor, Assistant Secretary, Refugee Support Branch

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

Committee met at 09:02

CHAIR (Senator Crossin): I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2011-12 and related documents for the Attorney-General's Portfolio and the Immigration and Citizenship Portfolio. The hearing today is supplementary to the budget estimates hearings held in May. The committee has before it a program listing agencies and outcomes relating to matters which senators have given notice. The committee has set 2 December 2011 as the date by which answers to questions on notice are to be returned and 25 October 2011 as the date by which senators should lodge written questions on notice.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. We have copies of those if you need them. I 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. We will incorporate that into Hansard.

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

Department of Immigration and Citizenship

[09:05]

CHAIR: We are going to commence with examination of the Immigration and Citizenship Portfolio and cross-portfolio, corporate and general questions for the Department of Immigration and Citizenship. We will essentially follow the order specified in the program you have been given. I welcome the minister, Senator Kim Carr, who is actually the Minister for Innovation, Industry, Science and Research, representing Minister Bowen, the Minister for Immigration and Citizenship. I welcome officers from the Department of Immigration and Citizenship. Minister, you do not have an opening statement as I understand it but, Mr Metcalfe, you do, so I invite you to make that opening statement.

Mr Metcalfe: Thank you very much. Madam Chair and senators, thanks for the opportunity to deliver an opening statement. Over recent months there has been considerable media and public interest in activities in which the department is involved. This is understandable given the recent issues relating to irregular maritime arrivals, the recent decisions of the High Court and parliamentary debates in relation to offshore processing of asylum seekers, and the inquiry being undertaken by the Joint Select Committee on Australia's Immigration Detention Network. Such scrutiny is clearly an indication of the

significance of the programs administered by the department. On this I refer you to my department's annual report for 2010-11, which I am pleased that the committee should have available to it. This report outlines the department's vast range of services and ongoing delivery of significant programs managing the entry and settlement of people in Australia.

The 2010-11 financial year was another very busy period for the department. We delivered a migration program of 168,000 places. I note that the top five countries of origin for migrants were China, the United Kingdom, India, the Philippines and South Africa. Significantly, the North Asia region now contributes almost a quarter of our migration program, due largely to growth in our caseload from China. Just over two-thirds of our migration program was delivered through the skilled stream, up by more than five per cent when compared with the previous year, and this equates to 113,000 places. As a result of our effective administration, our migration program was able to respond appropriately to changes in demand for skilled labour as the economy emerged from the global financial crisis.

Our student visa program continues to be large, with over 330,000 student visa holders in Australia at the end of the financial year. This is, of course, a sector undergoing significant reform, and I note the government's response on 22 September to the review of student visas undertaken by the Hon. Michael Knight AO. The government has agreed in principle to all of Mr Knight's 41 recommendations, noting, however, that some recommendations will be implemented in a modified form to enhance the performance of the Australian education sector and to better safeguard the integrity of the visa system. The majority of the recommendations are expected to be implemented between October this year and mid-2012.

Our visitor visa program continued to facilitate the travel of large numbers of visitors to Australia, with more than 3.5 million visitor visas being granted in 2010-11, a 2.8 per cent increase from 2009-10. While the UK, the US and Japan remain our principle source countries, I note that in the last program year an increasing number of visitors came from China and Malaysia—increases of 32 per cent and 16 per cent respectively. Our citizenship program continues to deliver very strong results. In 2010-11 over 95,000 people had Australian citizenship conferred on them. That is over 1,800 new Australians every week. We warmly welcome them.

I am pleased to report that, despite the significant operating pressures on the department, our 2010 audited financial statements report a small operating surplus if you exclude depreciation. This result was achieved through careful management of departmental resources, a focus on achieving value for money, and ongoing prioritisation of our business activities. I thank my staff for their significant efforts in achieving this outcome.

Chair, as you are aware, the department is particularly proud of its role as the lead Australian government agency charged with selecting, welcoming and settling refugees. Last year almost 13,800 visas were granted under the humanitarian program, which included over 8,900 visas granted to people outside Australia and over 4,800 visas granted to people in Australia. Of those people who were granted visas outside Australia, nearly 6,000 visas were granted for people determined to be refugees, plus close to 3,000 visas granted through the offshore Special Humanitarian Program. The top five source countries for these visas were Iraq, Burma, Bhutan, Afghanistan and the Congo. The committee would be aware that the offshore humanitarian program is under pressure, in part due to the number of onshore protection visas being granted. Last year over 4,800 onshore protection visas were granted,

with over 2,700 granted to irregular maritime arrivals and just over 2,100 visas granted to people through the onshore protection process. This left 2,973 places for the offshore Special Humanitarian Program, since each of these granted to a person in Australia means one less available for offshore applicants. Australia receives a large number of applications for humanitarian visas annually. In 2010-11, over 54,000 people outside Australia lodged applications for a humanitarian visa. More than 9,000 people lodged applications in Australia for a protection visa.

As the committee well knows, there are many more people in need of humanitarian assistance that Australia can assist. The UNHCR estimates that at the end of 2010 there were more than 43 million people in humanitarian need worldwide, including 15 million refugees. For many years now, governments have set the levels of the refugee and humanitarian programs and have indicated that visas granted to onshore asylum seekers would reduce the number of visas available to refugees offshore on a one-for-one basis. As a result, the recent increase of asylum seekers arriving in Australia has reduced the available offshore Special Humanitarian Program by 1,500 over the last three program years, and this trend is likely to continue. Arrivals under the Special Humanitarian Program are usually family members of people who have arrived under the humanitarian program. Between 25,000 and 35,000 people apply for Special Humanitarian Programs per year, and approximately 90 per cent of those applications are required to be refused because places are simply unavailable.

One element of the humanitarian program of which I am particularly proud, especially given my role as a White Ribbon Ambassador, is to stop violence against women, and that is the Women at Risk program. This program is for female applicants, and their dependants, who are subject to persecution without the protection of a male relative and who are in danger of victimisation, harassment or serious abuse because of their gender. Last year, over 750 visas were granted under the Women at Risk visa subclass, which was above the program's annual target of 12 per cent.

The issue of immigration detention continues to be an area of difficult administration for the department. I do not wish to comment greatly on this issue in this opening statement, as no doubt there will be a number of questions on the issue over the course of the day. I would, however, draw the committee's attention to the extensive support provided by the department to recent and ongoing inquiries into immigration detention, including hundreds of questions taken on notice over recent months. The department has put significant effort into preparing high-quality submissions to the Joint Select Committee on Australia's Immigration Detention Network and has provided the committee with substantial support. This includes facilitating hearings and/or visits to Christmas Island, Curtin, Darwin and Sydney, with further site visits or hearings scheduled for Adelaide, Canberra, Shergar, Perth and Melbourne. The total direct cost of responding to and supporting that inquiry is projected to be in excess of \$860,000 by the end of the 2011-12 financial year.

One of the portfolio's highlights for 2010-11 was the launch of the government's new multicultural policy, the People of Australia, which formalises Australia's longstanding commitment to social harmony and national unity. A key initiative of this multicultural policy was the establishment of the Australian Multicultural Council, officially launched by the Prime Minister on 22 August. The council is an independent body which will provide advice to the government on multicultural affairs policy. I am pleased that both the Race

Discrimination Commissioner and I, as secretary of the department, are ex officio members of the council. The council is also currently in the process of implementing a People of Australia program. These ambassadors will champion inclusion and provide grassroots advice to the council.

This opening statement provides me with the opportunity to comment on a briefing I and other senior colleagues from my and other departments provided to journalists on 7 September at the request of the government. We were also asked to provide briefings to the Leader of the Opposition and to some members of parliament. Unfortunately, there was significant misreporting in relation to the media briefing. I would like to reiterate that it is certainly not my role to comment on political debate, nor to be publicly involved in matters that are normally the subject of policy debate, but rather to simply provide advice on the facts as we see them based upon my personal and my department's extensive experience in administering these issues. Crucially this includes a process of ratiocination, evidence based policy development and advice.

I refer you to my recent opening statement to the Joint Select Committee on Australia's Immigration Detention Network, in which I stated in part:

Immigration detention has, for many years, been a very sensitive area of public policy and administration. The legislation enacted by this parliament, which underpins immigration detention, has been managed by my department for a number of years through successive governments.

In managing this issue, the department does not engage in any philosophical debate—we are professional public servants who are working hard to serve the government of the day—doing the best we can in, at times, very challenging environments.

I would like to make it very clear that in the media briefing in question I of course did not make predictions of wide social unrest similar to the recent riots in London and Paris. Media reporting to that affect written by a person or persons not present at the briefing was wrong. Anyone who knows me would attest to my cautious style. I would like to take this opportunity to restate my strong support for Australia's cultural diversity upon which much of our success as a nation has been built. I am disappointed that the misquoting occurred and I was pleased that the minister acted quickly to comment and advise that such statements were not made.

In closing I would like to make four quick points. Firstly, I would like to publicly congratulate Professor Brian Schmidt, who was recently awarded the 2011 Nobel Prize in Physics. As the committee may be aware, Professor Schmidt was raised in the United States before migrating to Australia. He joins countless thousands of migrants who have made and are making a great contribution to our country and our society and in his case to all of humanity.

Secondly, I would like to congratulate the department's chief financial officer, Mr Stephen Sheehan, who last Friday was awarded the Outstanding Contribution in Public Administration Award from the 2011 Leadership in Government Awards supported by the Institute of Chartered Accountants.

Thirdly, as you know, I am particularly proud of the work my department does in relation to our fundraising efforts for a variety of charitable causes. This includes our ongoing workplace giving scheme through which employees are able to make voluntary charitable contributions through their pay. Additionally, the department is regularly involved in events

to raise funds for charitable causes. I was happy that we recently presented a cheque for \$15,000 to the Starlight Foundation.

Lastly, I would like to take this opportunity to sincerely thank the department's leadership and staff, our adviser groups and other partners for their ongoing commitment to the valuable work we do and the programs we deliver for our nation.

Senator Carr: I would like to add a couple of comments to what has just been said by Mr Metcalfe, particularly in relation to the remarks relating to Brian Schmidt. As the minister for innovation, I have particular cause to commend Professor Schmidt. He is an example of what we have seen in this country many times before. Immigration has been such a boon to this country's economic and social development. It is sometimes overlooked just how important it is for innovation. Just under half—that is, 48 per cent—of doctorally qualified individuals in Australia were born in other countries and almost a quarter, or 22 per cent, of our annual supply of doctorates to the workforce is actually sourced through international channels.

Professor Brian Schmidt, our newest noble laureate, having been awarded the Noble Prize in Physics this week, is an example of the product that comes from that type of exchange. Professor Schmidt came to Australia from the United States. He came to Australia from Harvard in 1995 and continued his research at our world-class astronomical facilities at the Australian National University. Of course, I could not overlook the fact that his wife, Dr Jennifer Gordon, has played a very important role in his stay here and I concede no small part in his ongoing engagement. Another Australian who has won a Gruber prize in the same field is Professor Brian Boyle, another astronomer. He came here 15 years ago from Scotland to work at the Anglo-Australian Observatory, and he now leads our bid for the Square Kilometre Array. These are just two examples within the one discipline of the extraordinary contribution that people from overseas are making to the development of this country. There are literally tens of thousands of people who can replicate that type of experience—perhaps not at the Nobel prize level, but nonetheless the pattern is very clear.

As we take it, the search for new knowledge is very much a global business. It is the fact that we have this dynamic and flexible immigration system that has produced such extraordinarily good results for our country's performance in science and research, and it is a real benefit to the living standards of every Australian. There are real benefits in terms of productivity and the innovation that we need to sustain the quality of life that we have all come to expect as our due.

CHAIR: Thanks, Minister. That is quite an outstanding start to our estimates hearings today—hearing of the contribution of those people. But we have a program to get on with, and we are going to go to questioning. We have cross-portfolio, corporate and general questions.

Senator CASH: Mr Metcalfe, who prepared your opening statement today?

Mr Metcalfe: I did.

Senator CASH: Was anybody else involved in the preparation of it?

Mr Metcalfe: Yes.

Senator CASH: Who was involved in the preparation of it?

Mr Metcalfe: My executive officer largely took the thoughts and ideas I had and put them on paper, and routinely I circulate what is usually an advanced draft to senior colleagues—deputy secretaries and a number of other division heads—for their advice or input. That is quite a standard process.

Senator CASH: Was either the minister or the Prime Minister's office involved in the preparation of your opening statement?

Mr Metcalfe: Not the Prime Minister's office. I routinely circulated the copy to the minister's chief of staff, who advised that he had no comments.

Senator CASH: No comments at all?

Mr Metcalfe: No. His only comment was that he had no comment.

Senator CASH: Would you be kind enough to provide the committee with a copy of all drafts of your opening statement?

Senator Carr: Really, Senator, we do not normally provide drafts of documents—working drafts.

Senator CASH: Mr Metcalfe has just given evidence that there was a draft of the document which was amended. I have merely asked for a copy of that draft to be provided to the committee.

Senator Carr: Do you want any jottings?

Mr Metcalfe: I would be happy to provide a copy. There were probably two major drafts—one that was circulated to colleagues on Friday for any comment and then probably another version that was sent to them again late on Friday. There were a couple of jottings by me over the weekend—a word here, a word there or a typo. If you want every possible version, I will have to sort through and see if you can check my handwriting. But I am certainly happy to provide—

Senator CASH: A copy of the first draft.

Mr Metcalfe: The first draft.

Senator CASH: And obviously you will be tabling your opening statement today. Thank you.

Mr Metcalfe: Yes, I am happy to table that.

Senator CASH: In your opening statement you referred to the 2010-11 annual report. Obviously this is a supplementary budget estimates hearing. Given that the Department of Immigration and Citizenship's budget for asylum seekers in 2011-12 of more than \$1 billion was based on just 750 arrivals by boat and that I understand that in this financial year to date 942 people have arrived by boat, what will be the additional cost of the government's border protection failures this year?

Mr Metcalfe: I am unable to provide that figure at this stage. No doubt the figures will be updated through the additional estimates process.

Senator CASH: Why are you unable to provide those figures to the committee?

Mr Metcalfe: Because they are being prepared as part of the additional estimates process.

Senator CASH: So there has been an overrun already in this financial year and you are telling the committee that, at the supplementary budget estimates hearing, the head of the department does not know what the additional cost to the taxpayer is actually going to be.

Mr Metcalfe: What I have said is that those figures will be made available through the additional estimates process, which is the normal and appropriate way. You did base your initial question on the fact that the estimates were provided based on 750 arrivals this year. Of course, there is so much more that goes into the figures than simply the 750-arrival forecast figure. There is a very significant amount of those estimates which goes to the people who are already here in immigration detention or undergoing processing. Clearly the budget forecast will need to be estimated and re-estimated because of the arrival numbers that we have seen and that we will probably see in the future, and because of various other events that have occurred following the High Court decision.

Senator CASH: When did the department commence its revision of the 2011-12 budget?

Mr Metcalfe: I will ask the chief financial officer to come to the table and he can probably provide you with the information. I suspect the answer is that there is an ongoing process of the department doing its own work which then becomes more formal in view of an interaction with the department of finance as they formally go through an update process across all portfolios. Our award-winning chief financial officer Mr Sheehan will be available to assist to answer that question.

Senator CASH: I am not quite sure what award he is going to be winning this year.

Mr Metcalfe: In dealing with a large and complex budget.

Senator CASH: A large budget blowout, is that what you are referring to? A large and complex budget blowout.

CHAIR: Senator Cash, Mr Sheehan has won an award in recognition of his work, so I think we should at least acknowledge and honour that.

Senator Carr: A high level of grace being shown early in the day.

Mr Metcalfe: Senator, I was simply saying that it is a large and complex budget, as I am sure you are aware, and Mr Sheehan and his colleagues do an excellent job in providing services to the government in relation to its management.

Senator CASH: When did the department commence its revision of the 2011-12 budget?

Mr Sheehan: We will be starting that process in the coming weeks in the lead-up to Christmas, and we will be providing that information and negotiating those costings with the department of finance as we would in any other years.

Senator CASH: So you have not yet commenced a revision of the budget process even though the number of boat arrivals for the 2011-12 financial year has been exceeded within the first quarter of that financial year?

Mr Sheehan: As the secretary said, the formula that we use, as we have discussed many times, is quite complex.

Senator CASH: Could I just confirm that formula because the formula that was used for the 750 was a formula that disregarded the previous five-year rolling estimate and was merely based on the fact that the failed Malaysian solution would actually stop the people smugglers model.

Mr Sheehan: The costing includes the cost of clients in detention not just arrivals. It includes the overall number that are in detention during the year.

Senator CASH: I understand that Mr Sheehan, but in relation to the number of arrivals this department has already exceeded the amount that it budgeted for. Can I confirm your evidence to the committee that the department has not yet commenced the process whereby it will be revising upwards its budget for the 2011-12 financial period even though we are already significantly in excess of what was budgeted for?

Ms Wilson: There are traditional timelines and processes for updating forward estimates every year, not just for our portfolio, but for all portfolios. The department of finance puts out a timeframe for these and we comply with all those timeframes. So, as Mr Sheehan and the secretary have just advised, the next update happens in the next couple of months as part of the additional estimates process and we participate in those processes at the time that everybody else does.

Senator CASH: Mr Sheehan, what items in the 2011-12 budget have already exceeded the budgeted amount shown in the budget papers to date?

Mr Sheehan: What items have exceeded the total amount for the year?

Senator CASH: Correct.

Mr Sheehan: None that I am aware of.

Senator CASH: Are there any that you would potentially not be aware of? Is there anybody else at the table who might be able to enlighten me?

Mr Sheehan: I would not expect so, Senator.

Senator CASH: Mr Sheehan, perhaps you could take on notice to confirm that as of today are there any budgeted items that have already exceeded the 2011-12 budgetary figure?

Mr Sheehan: The annual amount?

Senator CASH: Correct.

Mr Sheehan: We can do that for you, Senator.

Senator CASH: What items in the 2011-12 budget are anticipated to exceed the budgeted amount shown in the budget papers?

Mr Sheehan: As I just said we are looking over the next month or two at the additional estimates process and at this point I cannot give you an estimate of what those costs might or might not be. We have not calculated particular amounts yet, Senator, and we will do so over the next month or two.

Senator CASH: Again, that process has not yet commenced, is that what you are saying?

Mr Sheehan: Yes.

Mr Metcalfe: Senator, you have correctly pointed out that the estimate in the forward estimates was 750 arrivals next year, and clearly that figure will have to change. There will be a proper process associated with that. There are of course other elements of the budget that will have to change as well—for example, provision made for the additional thousand refugee places that will no longer proceed. So there are a number of significant moving parts in the budget as a result of the situation that we now find ourselves in.

Senator CASH: In relation to the 2011-12 annual report, can I confirm that your department was budgeted to spend \$1.2 billion and the actual spend was \$2.3 billion.

Mr Sheehan: There are two components to our budget, and one is for administered funding. The estimates are very similar; there is a departmental component of around \$1.23 billion and an amount for administered as well. The administered expenses are according to page 35 of the annual report, which you are probably referring to. The budget was \$1,034.943 million and the actual expenses were \$1,099.501 million. The departmental component was \$1,268.807 million and the actual expenditure was \$1,295.069 million. Are they the numbers you are referring to?

Senator CASH: I was referring to the total, the combination of them.

Mr Sheehan: The total for departmental and administered that was budgeted, according to our financial statements in the annual report on page 35, is \$2,303.750 million and the actual expenses were \$2,394.570 million.

Senator CASH: In relation to the 2011-12 budget, the estimate was based on the Malaysia solution working, and we went through that in detail at the budget estimates hearing. Given that the Malaysia solution has now failed, what will the impact on the budget be now that the government has taken on board the new Greens solution of onshore processing?

Mr Metcalfe: That is what we are currently working through with the department of finance. The additional estimates process is the appropriate way to report on that.

Senator CASH: How many applications by each visa category were made in the 2010-11 period and in the year to date?

Mr Metcalfe: Can you give us a little more specificity? We have 150 visa subclasses. Are you talking broadly about migration, students, visitors?

Senator CASH: Correct. You may have to take that on notice.

Mr Metcalfe: The annual report provides detailed information on the various categories and there is a very helpful summary page at the beginning of the annual report, but we might take it on notice in terms of progress, year to date, and realistically the best figure would be to 30 September.

Senator CASH: Could you also then provide the revenue generated by the applications for each visa category for 2010-11 and the year to date?

Mr Metcalfe: We could do that.

Senator CASH: If I could turn to the cost of the Malaysia High Court challenge, what was the cost to the department of defending the High Court challenge to the government's failed Malaysia proposal and challenge to the Immigration (Guardianship of Children) Act 1946?

Mr Metcalfe: I will see if Ms Hardy can add anything. I do not know if there is a figure that we currently have; we could presumably take that on notice if you want the detail. There would have been costs associated with own internal legal services. There would have been costs associated with the Solicitor-General, who represented the Commonwealth together with other senior counsel.

Senator CASH: What I would like to know is what was the cost to the department. I will be wanting to go through the breakdown of those costs, but what did the High Court challenge cost of the department and ultimately the people of Australia?

Mr Metcalfe: In terms of legal costs.

Senator CASH: Correct.

Ms Hardy: The legal expenditure for litigation which has been invoiced to the department was \$272,432. Of that, professional fees were \$201,872, counsel fees were \$63,850 and other disbursements were \$6,710. Internal legal expenditure is an estimate only, but that was estimated to be \$61,056.

Senator CASH: Were there any other costs associated with the action that were not legal costs?

Ms Hardy: Certainly, there would have been other expenses for the department in terms of policy input into the decision, but that is not included in those figures.

Senator CASH: So does the department actually know how much, in total, defending the High Court challenge has cost it—or have you not undertaken that exercise?

Mr Metcalfe: Senator, we know the legal costs; Ms Hardy has just provided them to you. Any costs associated with my time or Dr Southern's time or that of others from a policy perspective are costs that would have been occurred in any event because we are here doing our jobs and that is simply part of our job, and priorities change from time to time. So there is no calculation that has been made at this stage of the amount of time it took, managing it from a policy perspective.

Senator CASH: Ms Hardy, you referred to the cost of counsel as being \$63,850. Was there a cost of counsel for the defendants included in that?

Ms Hardy: No, there is not.

Senator CASH: So did the department pay for the counsel for the defendants?

Ms Hardy: No.

Senator CASH: Who paid for that?

Ms Hardy: I understand that was done on a pro bono basis.

Senator CASH: Pro bono. So there was no cost incurred by the department or the Australian taxpayer in terms of the defendants' action?

Ms Hardy: No.

Senator CASH: And the cost of \$63,850 was then the cost of counsel for the plaintiffs?

Ms Hardy: For the government, yes.

Senator CASH: For the government. So did the department have to pay those costs?

Ms Hardy: Yes.

Senator CASH: Were there any other costs in relation to the defendants' case?

Ms Hardy: Not that I am aware of.

Senator CASH: Okay. Do you know how much of the costs paid to the plaintiffs went to the Refugee and Immigration Legal Centre run by Mr David Manne?

Ms Hardy: No, I do not.

Senator CASH: Are you able to find out?

Ms Hardy: I can. I understand that the funding that is provided to the Refugee and Immigration Legal Centre is for IAAAS funding only, so funding for this case would not have been made available from those funds. For the purposes of the High Court case, they are not funded to those matters. So, again, it was on a pro bono basis.

Senator CASH: How much funding did the Refugee and Immigration Legal Centre receive in 2010-11?

Ms Hardy: From the IAAAS program? I am not in a position to advise on that but somebody else may be in a position to tell us that.

Mr Moorhouse: I do not have those statistics for IAAAS expenditure broken down by provider. We would have to take that on notice.

Senator CASH: How much funding has the Refugee and Immigration Legal Centre received from the department in 2010-11?

Mr Moorhouse: Similarly, I would have to take that on notice. It would relate to the number of cases that they have represented, and the presentation of their invoices. We pay on presentation of invoices. As I said, while I have figures here in relation to the total expenditure on IAAAS, I do not have a breakdown by provider.

Senator CASH: That is fine. If you could take that on notice, thank you very much. If I could now turn to the Serco contract. How much has Serco—

Mr Metcalfe: Sorry, Chair; are we still in general questions or are we moving into other areas?

Senator CASH: These are all just general questions that I have in relation to budgetary figures—

CHAIR: Still—

Senator CASH: I will be exploring in detail, obviously, under the outcomes.

Mr Metcalfe: Thank you.

Senator CASH: How much has Serco been paid to date in the 2011-12 period?

Mr Moorhouse: I do not have a breakdown of how much they been paid in this period. I can try and get that for you during the day and come back to you, if that is okay.

Senator CASH: Thank you. What are the anticipated final costs for the 2010-11 period?

Mr Moorhouse: I will check with my colleague Mr Douglas whether he has that figure; otherwise, we will try to get that for you in the course of the day. I am told that he does not, so we will get that for you during the day.

Senator CASH: How many variations were made to the Serco contracts during the 2010-11 period?

Mr Moorhouse: There are a series of variations that are underway. There is one variation that has been agreed and has been published on AusTender.

Senator CASH: And what variation was that?

Mr Moorhouse: I will see whether Mr Douglas can come and help me with the precise numbers; otherwise, I will have to look for you. Just a moment. While we are looking for that,

can I just clarify that the variations to the contract relate to additional services that are sought—

Senator CASH: Additional services sought by the department?

Mr Moorhouse: by the department from Serco. For example, if a new detention facility is stood up then Serco are asked to provide services for that detention facility. They construct a variation based on the data we have given them, the location, the projected numbers, the range of services that are required, and they put to us a variation to the contract reflecting those details. There are a number of variations that are currently being considered. The way the process works is that we work with Serco in an open-book manner to look at their expenditure over a period of time. They put forward a variation to us. If we agree with the bases for that variation we agree to pay 90 per cent of the figure that is put to us, if we agree with the assumptions, but we then work with Serco over a period of time, as I said in an open-book manner, to be able to determine the pattern of expenditure for each of those variations. As a consequence of that approach and also as a consequence of the changing nature of the detention framework we have a number of variations that are currently being considered. What we have is essentially the base contract and the initial variation, which we can provide you with.

Senator CASH: Thank you.

Mr Moorhouse: I will pause for Mr Douglas to give you that in a second. But we have a number of variations relating to the other detention facilities that have been established in recent times. Those have not yet been brought onto AusTender. They will be when they are finally agreed.

Senator CASH: Can you provide the committee with a list of those variations that are currently being considered by the parties?

Mr Moorhouse: I will see whether my colleague has the initial variation and then we will take the others on notice. We will come back to you with that in the course of the day.

Senator CASH: I would also appreciate the costs of the variations and the reason for each variation.

Mr Moorhouse: That detail I will need to take on notice, but I will come back to you with the initial variation in the course of the day.

Senator CASH: Has Serco at any time ever sought to renegotiate the terms of the contract?

Mr Douglas: No, there has been no attempt that I know of from Serco to renegotiate the base elements of the contract.

Senator CASH: When you say renegotiate the base elements, has there been an attempt to renegotiate any part of the contract?

Mr Douglas: Not to my knowledge, but I will undertake to check and advise for you.

Mr Moorhouse: Perhaps I can add a little bit more detail there. There are ongoing discussions with Serco on the provisions of the contract. A particular area of concern for us has been the management of incidents and what you might call the maintenance of public order, and we have been in ongoing dialogue with Serco, the AFP and the state police about the management of public order in the facilities. We are working with Serco and the police to

clarify whether or not all of the situations that we face are covered by the existing contract and whether or not there is a need to look at a potential variation to provide additional services. What I am trying to get at here is the issue of the contract being drafted in a particular environment. That environment has changed, and there is not only a wider range of facilities there is also a much larger range of cohorts of people who are kept in detention and as you would be aware from recent incidents the level of risk has increased, so we are actively in discussions with Serco at the present time. Some changes to approach have been made within the existing contract. For example, Serco have strengthened their emergency response team.

Senator CASH: Mr Moorhouse, because we only have limited time in this area perhaps you can take on notice to provide to the committee a concise summary of those changes that have been made and the reasons as to why.

Mr Moorhouse: No changes have been made. The question was whether we are discussing any changes and what I was attempting to do was give an account.

Senator CASH: No, the question was not whether we are discussing any changes. The question actually was: has Serco at any time ever sought to renegotiate the terms of the contract? It was not whether or not the department is currently in discussions. I understand Mr Douglas's advice to the committee was: 'Not to his knowledge'. Mr Moorhouse, what is your advice to the committee on that exact question?

Mr Moorhouse: My advice is that they have not approached us seeking a change in the contract. We are in discussions with them about the scope of the contract.

Senator CASH: Has anyone at Serco, including members of senior management, ever indicated to the department that the contract does not currently cover their costs?

Mr Douglas: No.

Senator CASH: And you are sure of that, Mr Douglas?

Mr Douglas: In my time, no.

Senator CASH: How long has your time been?

Mr Douglas: Approximately four months.

Senator CASH: Who was in your role prior to that?

Mr Douglas: The structure of the organisation has changed so that there is no particular person in my role. I will undertake to check if there was any prior notice, but to my knowledge from my incoming briefing there was none.

Senator CASH: Perhaps you would take it on notice to check that fact. Has Serco ever indicated to the department that it wishes to terminate the contract?

Mr Douglas: No.

Senator CASH: In your time?

Mr Douglas: And in any previous advice to me.

Senator CASH: Where was that advice received from?

Mr Douglas: My advice was received from former officers in the division in which I work.

Senator CASH: Chair, I have a point of clarification. How much time do we have left on this outcome? I can put questions on notice if I need to, but I do have a series of questions that I would like to go through before we move on.

CHAIR: That is technically up to you. You can keep going on cross-portfolio all day if you want.

Mr Metcalfe: If I could assist, my understanding was that we were currently in cross-portfolio general questions. We have not yet moved to the outcome structure.

CHAIR: No, we have not.

Mr Metcalfe: The first outcome is 2 and we then come back to 4, which will cover these sorts of questions. So there is more time later, depending on how you want to handle it.

CHAIR: We have allocated half an hour for cross-portfolio.

Senator CASH: I have a series of questions and then I will move on to outcome 2. Mr Sheehan, when will the Australian taxpayers know what the cost will be of the government's new Greens solution that was announced last Thursday? When do you anticipate that the government will be able to announce that?

Mr Sheehan: As I said earlier, over the coming couple of months we will have a better understanding of the financial impact of the decisions that were made in the last week or so.

Senator CASH: So your message on behalf of the department to the Australian people is that in another couple of months the lead department will have a better understanding of the budgetary blow-outs. Is that a satisfactory response?

Mr Metcalfe: No, Senator, he did not say that, and you know he did not say that.

Senator CASH: That is exactly what he just said. He said 'In a couple of months we will have a better understanding'.

Mr Metcalfe: What he was saying in a shorthand way was that the additional estimates process will provide the appropriate request for expenditure and, as we have indicated in earlier evidence, we are now working through the implications of those changes, as you would expect.

Senator CASH: Do you have any estimation at all as to how significant the budget blow-out in this portfolio is going to be?

Mr Metcalfe: I have an understanding of the broad parameters of change.

Senator CASH: What are those?

Mr Metcalfe: I described them earlier. Clearly, the adjustments will need to be made to the expected arrival figure.

Senator CASH: At this point in time, what is the expected arrival figure?

Mr Metcalfe: I have not publicly indicated the expected arrival figure.

Senator CASH: So please indicate it to the committee now.

Mr Metcalfe: What I would like to do is to draw to your attention long discussions we have previously had in which no-one has a crystal ball in this area and various processes have been undertaken to appropriately estimate for financial budgeting what arrival numbers could occur. It is a matter of public record that in the last six months of last year we did see an

average of around 600 people arriving per month. Whether that is the figure that is used for budget estimations, whether a five year rolling average is used, as has been used in the past or whether some other figure is used are matters currently under discussion. I indicated to you in earlier evidence that there are other factors that have to be taken into account. There was the withdrawal of the 1,000 places that had been budgeted for for overseas refugees which was a significant expenditure item because of the arrangement associated with the Malaysia arrangement together with other aspects of the budget. So that work is underway. Those are the broad parameters that are being worked on and clearly all of those issues will need to be taken into account.

One other thing that is important though is that one aspect of the government's announcement last Thursday would be an expectation that some people who otherwise would have been in detention would be on bridging visas—

Senator CASH: I will actually be canvassing that in detail in outcome 4.

Mr Metcalfe: Thank you, Senator. That obviously is an issue where the changing policy arrangements will have a financial impact.

Senator CASH: In relation to the budgetary process that you have been kind enough to outline, Mr Sheehan, has the minister asked for this process to be expedited to ensure that taxpayers to actually know what the cost to them will be?

Mr Sheehan: As Ms Wilson was saying earlier, the department of finance has a standard process for updating our estimates and we will be undertaking that over the coming weeks and months.

Senator CASH: That was not my question. My question was: has the minister requested that this process that you have so eloquently outlined to the committee be expedited so that both he and taxpayers understand what the actual cost in terms of this department's failures will actually be?

Mr Metcalfe: I do not accept that there is a departmental failure.

Senator CASH: Mr Metcalfe, you currently preside over one of the greatest political calamities of all times—

Senator Carr: That is a very big call.

Senator CASH: As the departmental head are you saying that you do not consider that your department has failed?

Mr Metcalfe: I consider my department provides excellent service in terms of policy advice and program administration in a difficult and contested area. I do not have ministerial responsibility for these issues. I am not suggesting in saying that that the minister has in fact undertaken any such action as well. I am simply saying that the department is seeking to go about doing a difficult job as well as it can.

Senator CASH: My question to Mr Sheehan is: has the minister asked for this budgetary process to be expedited?

Mr Metcalfe: Not to our knowledge at this stage but these matters are very recent.

Senator CASH: Mr Metcalfe, in relation to the Serco contract are you aware as to whether Serco has at any stage sought to renegotiate the terms or to actually cancel the contract?

Mr Metcalfe: No, I am not, but I would not ever be definitive on something like that because there are numerous conversations with numerous people. We have undertaken to check.

Senator CASH: Was the department asked to provide any advice to the government on the costs of the Green solution prior to their decision last Thursday evening?

Senator Carr: What solution is this?

Senator CASH: The Green solution of onshore processing.

Senator Carr: That is a political statement.

Senator CASH: Okay, was the department asked to provide any advice to the government on the costs of being unable to get the Malaysian solution through the parliament and the implications that would have for the Australian taxpayer?

Mr Metcalfe: Some broad information has been provided to the government.

Senator CASH: When was that information asked for?

Mr Metcalfe: I will have to check on that.

Senator CASH: Was it before last Thursday or after last Thursday.

Mr Metcalfe: I will have to check on that. Certainly, there have been conversations, briefings and understandings about the broad implications of these issues.

Senator CASH: When did that briefing occur?

Mr Metcalfe: I will check on that.

Senator CASH: Were you at that briefing?

Mr Metcalfe: I am present at some briefings but not all briefings.

Senator CASH: Were you present at the briefing you are referring to?

Mr Metcalfe: Which one am I referring to, Senator?

Senator CASH: That is a very good question, Mr Metcalfe. How many briefings have there been in relation to the cost implications of the failed Malaysian solution?

Mr Metcalfe: I have indicated that I will take that issue on notice. The minister and I have lots of conversations every day about lots of issues.

Senator CASH: If you would be kind enough to provide to the committee when the department was asked to provide advice to government on the implications of the failed Malaysian solution and thus the new process of onshore processing and who attended the briefings that you have referred to.

Mr Metcalfe: I will take that on notice.

Senator CASH: Has the department ever provided any advice to the minister on the Greens solution of onshore processing, community detention and bridging visas?

Mr Metcalfe: We have certainly provided advice on community detention, which I would not regard necessarily in the way you framed it as a Green policy; it is actually a policy of the Howard government. It was implemented by the same department that is sitting in front of you now and has been in place for several years. Its most recent expansion is a policy of this government, announced last year. Certainly there have been briefing and estimates provided

in relation to that. In relation to options for the greater use of bridging visas or detention in other forms, as you would expect, there are briefings in relation to those issues.

Senator CASH: Could you take on notice to provide to the committee when, since November 2007, the department has provided advice to the minister in relation to onshore processing, community detention and bridging visas, and why this advice was provided?

Mr Metcalfe: I will take that on notice, but I will just flag that that is a very big question. Bridging visas are used by tens of thousands of people.

Senator CASH: Bridging visas in relation to onshore processing following the collapse of offshore processing, and whether advice has ever been provided in that regard.

Mr Metcalfe: I will take that on notice.

Senator CASH: At the detention centre inquiry, Mr Metcalfe, you canvassed the prospect of what is now the government's policy on onshore processing. Has the department ever prepared any costings on this option?

Mr Metcalfe: Again, you are attributing actions to me that I do not agree with. I simply asked the committee some questions that it should perhaps consider in fulfilling its terms of reference. It is misreporting to say that I called for certain things or had a certain policy position. As I am sure you are aware, as a public servant it is not my place to publicly debate policy, and I did not on that occasion call for the end of mandatory detention or any such thing. I simply asked that the committee should look at the lessons of history and current practice and ask some questions of itself, which I hope it is doing.

Senator CASH: Has the department ever prepared any costings on this particular option?

Mr Metcalfe: Which particular option?

Senator CASH: Onshore processing.

Mr Metcalfe: We have been through that quite extensively this morning; I think the answer is that we have provided broad advice to the government as to the implications of various policy measures, but detailed costing work is now underway.

Senator CASH: Can I clarify that the costs I am looking for are the costs of bridging visas, community detention and onshore processing as a package of measures of formulas?

Mr Metcalfe: Thank you, Senator. We will address that in our response.

Senator CASH: How many people were in detention and were arriving by boat when the coalition introduced community detention and removals pending visas?

Mr Metcalfe: Back in 2005?

Senator CASH: How many were in detention then?

Mr Metcalfe: A very small number of people. From memory, it was less than 1,000 and probably less than a couple of hundred.

Senator CASH: Sorry, less than a couple of hundred?

Mr Metcalfe: That is my recollection. They were mainly compliance cases. They were community detention cases.

Senator CASH: And how many are in detention at the moment?

Mr Metcalfe: A very large number.

Senator CASH: And what is that number?

Mr Metcalfe: Mr Moorhouse will give you the precise figure.

Mr Moorhouse: The most recent numbers in relation to community detention were 1,145. I am quoting the minister's figure because he used that figure on Thursday. The numbers I have are based on 10 October, when there were 1,158. Clearly, some people have been granted bridging visas in that period. The total number of people in detention on 10 October was 4,835, including 63 crew.

Senator CASH: For the purposes of time, I will conclude my questions in this outcome, but I will be putting a number of questions on notice for the committee.

Mr Metcalfe: We will be coming back to some of those areas later anyway.

[09:59]

CHAIR: All right. Then let us move on to outcome 2, Protection, resettlement and temporary safe haven for refugees and people in humanitarian need.

Senator CASH: Mr Metcalfe, I refer to page 68 of the *Hansard* of the 2011-12 budget estimates hearing of 23 May, in which I asked you:

What contingency plans does the department have in place in the event that the Malaysia deal falls through? Is there a contingency plan that has been worked through?

Your response to my question was:

You know I always have proven contingency plans.

Given that you assured the committee that you had a 'proven contingency plan'—they obviously are your words—would you please now state that plan to the committee.

Mr Metcalfe: It is not really a matter for me to talk about government policy, and ultimately—

Senator CASH: No, but at that hearing you said you had a proven contingency plan. What was the proven contingency plan?

Mr Metcalfe: That is a matter for the minister to discuss as to contingency planning. That is an issue that goes directly to policy.

Senator CASH: We went through this in quite a bit of detail in relation to you and your role as departmental secretary and the fact that you liked 'proven contingency planning'—they were your words, said a number of times throughout a number of estimates. Were you misleading the committee when you said that?

Mr Metcalfe: No, absolutely not.

Senator CASH: Was there no contingency plan?

Mr Metcalfe: I would certainly reject any suggestion that I would mislead the committee. I am just not going to talk to you about what the contingency planning is.

Senator CASH: So you do not want to talk about what the contingency planning is. Are you telling me that the government of Australia, in the absence of the Malaysia solution, had no contingency plan and that there was no plan B?

Mr Metcalfe: No, I am not saying that.

Senator CASH: So what was plan B.

CHAIR: Senator Cash, I think that what Mr Metcalfe is indicating is that he is not obliged to answer questions about matters of policy, and a contingency plan would be pivotal to the government's policy.

Senator CASH: Minister, perhaps you would like to enlighten the committee: in the absence of the failed Malaysia solution, what was the government's plan B?

Senator Carr: I have indicated on numerous occasions that our approach was to put before the parliament legislation which would have made the position the High Court rendered to be illegal legal. For whatever reason, the Liberal Party has chosen not to support that legislation. That legislation remains on the books. It is on the *Notice Paper*.

Senator CASH: Do your coalition partners, the Greens, support that legislation?

Senator Carr: We do not have coalition partners.

Senator CASH: Do your partners in your formal alliance support that legislation?

Senator Carr: We have legislation which was placed before the House of Representatives. It remains on the *Notice Paper*. As the Prime Minister has made perfectly clear, we are looking to the Liberal Party to actually establish what is their position over the long term. Our view is that the offshore processing arrangements are appropriate. As part of the Bali processes we intend to pursue those questions, but in the immediate term we obviously need to look to alternative arrangements, which we are doing at the moment.

Senator CASH: Thank you. With all due respect, Minister, my question to Mr Metcalfe, in quoting to him the evidence that he gave to the Senate Legal and Constitutional Affairs Legislation Committee on 23 May, actually predated the High Court decision. So, at that point in time, the government's solution—the government's border protection policy—was the Malaysian deal. Mr Metcalfe's evidence to the committee was:

You know I always have proven contingency plans.

So I ask you: as at 23 May 2011, was there a contingency plan in the event that the Malaysian solution failed?

Senator Carr: I think I have heard Mr Metcalfe indicate on a number of occasions now that future policy announcements are questions for the minister to answer, not for the secretary of the department.

Senator CASH: I am not asking for future policy announcements. I am asking: in May of this year, when you brought down your budget, was there a plan B in the event that the Malaysian solution failed? Mr Metcalfe's evidence to the committee was:

You know I always have proven contingency plans.

Was there a proven contingency plan? Yes or no?

Senator Carr: I think the secretary has indicated on numerous occasions the position of the government on this matter. There is not much more I can say on that.

Senator CASH: I am going to have to take that as a no. This government had no plan B, there was no proven contingency plan, there was only the Malaysian solution. If I am wrong, Minister, please tell me what your proven contingency plan was?

Mr Metcalfe: Senator, I would certainly reject any suggestion that I misled the committee. I said that the answer to your question is yes in relation to part 1.

Senator CASH: So there was a proven contingency plan?

Mr Metcalfe: Yes, I have said that several times now.

Senator CASH: And you provided advice to the government on this proven contingency plan?

Mr Metcalfe: Yes, Senator.

Senator CASH: When did you provide the advice to government in relation to the proven contingency plan?

Mr Metcalfe: I have numerous discussions with the minister, as do other senior officials. The answer to your question is: yes; and in relation to the second part the answer is: it is not appropriate for me to discuss that with you.

Senator CASH: That is why I am referring my question to the minister. What was the proven contingency plan?

Senator Carr: The minister for immigration is the person who will be announcing further policy initiatives in this area. I will not be announcing them on his behalf.

Senator CASH: I am not asking you to announce anything, Minister, I am asking that as at May—

Senator Carr: I cannot take it any further than that.

Senator CASH: what was the proven? You sit in cabinet, you represent the Minister for Immigration and Citizenship. You were here sitting next to Mr Metcalfe at the budget estimates hearing when Mr Metcalfe gave evidence to the committee that he had a proven contingency plan. To quote him properly:

You know I always have proven contingency plans.

What was Mr Metcalfe referring to?

Senator Carr: I am afraid we have been through this, Senator Cash, and I am not certain that I can add anything further to what Mr Metcalfe has indicated to you. As the secretary of the department he is within his rights to put the position he has put to you.

Senator CASH: He is, and that is why I am now referring my questions to you.

Senator Carr: As the minister representing the minister I am not going to provide you with additional information other than that provided by the minister and he will be the one making future policy announcements in these areas.

Senator CASH: In other words your proven contingency plan was always to adopt the now Greens' policy of onshore processing.

Mr Metcalfe: No, Senator, I certainly have not said that. I said that the answer to your question is yes. The answer to the second part of your question is: it is not appropriate for me to canvass what the contingency plan may be.

Senator CASH: Mr Metcalfe, my questions are now to the minister, not to you.

Mr Metcalfe: You were verballing me, Senator.

CHAIR: Senator Cash.

Mr Metcalfe: Senator Cash was verballing me and I refuse to allow myself to be verballled.

CHAIR: Senator Cash, let us put in context Mr Metcalfe's answers and that is, if a contingency plan goes to a matter of policy, under our Senate standing orders he is not obliged and, in fact, he is not able to answer questions of matters of policy. They are to be asked of the minister.

Senator CASH: That is why I have directed my questions to the minister, Chair.

Senator Carr: I have answered them, Senator Cash.

Senator CASH: Can you confirm, Minister, whether or not as at 23 May, when the proven contingency plan was referred to in evidence to the committee, was that proven contingency plan offshore processing?

Senator Carr: I think I have indicated to you in answer to that question already, Senator. No matter how many ways you ask it, the answer will not change.

Senator CASH: Was there another plan put forward by the department not announced by the minister last Thursday? Is there another plan floating around?

Senator Carr: I am not going to go to those matters which are the ongoing work of government.

Senator CASH: Mr Metcalfe, did you advise the government in 2008 not to close Nauru?

Mr Metcalfe: Those issues are confidential between me and the government.

Senator CASH: Have you ever provided the government with advice in relation to the closure of Nauru?

Mr Metcalfe: I certainly gave advice in relation to the mechanics of the closure of Nauru.

Senator CASH: When did you first provide the government with that advice?

Mr Metcalfe: In the incoming government brief.

Senator CASH: If I could move on, at page 80 of the budget estimates *Hansard* you stated in relation to the Malaysian deal:

The whole idea is to change the people smuggling business model. It is clearly designed to work. It has been formulated on our many years of experience in dealing with these issues.

... ..

One of the issues in estimating costs is actually how many people would, in fact, be subject to the arrangements, and time will tell.

Could you tell the committee the substance of the past policies that you based the Malaysia solution on?

Mr Metcalfe: If you have a few hours, Senator, we could talk about that. In summary the department has, of course, been involved in administration of these issues, both at an Australian national level and internationally for many decades. Most recently our experience dates back to the late seventies. Some of us have worked for the department for that entire period. Mr Moorhouse and I are probably two of those. Other people have joined us much more recently and brought new thinking and fresh ideas to the mix. The basis of the historical awareness of these issues dates from the waves of irregular migration by boat that occurred in the late seventies, in the late eighties, in the nineties, about a decade ago and in this most recent wave. There are some clear lessons of history associated with those.

Senator CASH: You said at budget estimates:

The whole idea is to change the people smuggling business model.

You were obviously referring to the Malaysian solution. You went on to say:

It is clearly designed to work. It has been formulated on our many years of experience in dealing with these issues.

Given that that comment was made prior to the High Court overwhelmingly rejecting the Malaysian solution five to one—

Mr Metcalfe: Six to one.

Senator CASH: thank you for that clarification—how were you able to make such a categorical statement at that time?

Mr Metcalfe: Because, essentially, we had high confidence, as we expressed at the time, that the arrangement was quite lawful in Australian law. It relied upon exactly the same law as had been used for the Nauru processing arrangements and the PNG processing arrangements several years ago. The clear lesson from history is that the single most effective way, if a government wishes to pursue a significant reduction in irregular maritime arrivals, is to find a way consistent with our obligations under the refugee protection convention for the person to access determination processes in safety in a country other than Australia. That is the experience of the seventies, the eighties, the nineties and the 2000s. It was upon that basis that the Malaysia arrangement was conceived and was sought to be put into effect.

Senator CASH: How much, to date, has the department spent on the failed Malaysian solution?

Mr Metcalfe: We can provide some information on that. Dr Southern can assist.

Dr Southern: The expenditure on operational arrangements for Malaysia to the end of September is in the range of \$4.6 million. We have further accrued costs in the range of about \$200,000.

Senator CASH: Are there any further anticipated costs in relation to the failed Malaysian solution?

Dr Southern: I do not believe so but I will defer to my colleague Stephen Allen, who may have some further detail.

Mr Allen: We have a very small residual commitment concerning the properties in Malaysia.

Senator CASH: What properties are they?

Mr Allen: There are two properties. There is a motel called the Crescent Peak—'crescent' spelt without the second 'c'—and a property called R&R bungalows.

Senator CASH: What is the residual expense?

Mr Allen: The rental of those properties.

Senator CASH: How many people were to be placed in those properties?

Mr Allen: At present, obviously, the department is not in a position to place anyone there.

Senator CASH: Obviously. I said 'how many people were to be placed'.

Mr Allen: I would probably need to take that on notice. I believe that the actual accommodation capacity of both properties was in the vicinity of around 140 beds, but I would need to check that.

Senator CASH: 140 beds each?

Mr Allen: No, combined.

Senator CASH: In terms of the dollar amount outstanding, how much is it?

Mr Allen: I am sorry, Senator?

Senator CASH: How much is owing?

Mr Allen: For the two rental properties?

Senator CASH: Correct.

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

Senator CASH: Okay. What work has been undertaken on those two properties?

Mr Allen: There has been some basic fit-out, provision of furniture, to prepare the properties for occupation.

Senator CASH: Do we have a lease on these properties?

Mr Allen: We have a tenancy agreement, but at the moment my understanding is we do not have long-term leases.

Senator CASH: Are you able to provide the committee with a copy of the tenancy agreement?

Mr Allen: I will take that on notice.

Senator CASH: Thank you. How long was the tenancy agreement signed for? What is the period of time it covers?

Mr Allen: Again, I would need to provide the details on notice. They were for periods of some months.

Senator CASH: When you say 'some months', are we talking one month, six months, 12 months, 18 months, 24 months?

Mr Allen: The figure of three months comes to mind, but, again, I would have to check that.

Senator CASH: When was the tenancy agreement signed?

Mr Allen: I would need to take that on notice also, Senator.

Senator CASH: Okay. And that is in relation to both the Crescent Peak property and the R&R bungalows?

Mr Allen: There are separate tenancy agreements for them.

Senator CASH: Okay. Would you please provide the committee with a copy of both tenancy agreements. When did you say those tenancy agreements were signed?

Mr Allen: I said I would take that on notice.

Senator CASH: Okay. What was the cost of the tenancy agreements?

Mr Allen: To date, we have spent a total of \$49,529. That is to 30 September.

Senator CASH: What was that made on?

Mr Allen: That was the rental.

Senator CASH: What have we spent on the refurbishment of those properties?

Mr Allen: Most of the refurbishment has been undertaken through a facilities management contract. To date, that contract has resulted in approximately \$360,000 in expenditure.

Senator CASH: What are the anticipated future costs or outstanding costs?

Mr Allen: I would have to take that on notice.**Senator CASH:** Who is the facilities management contract with?

Mr Allen: It is a firm in Malaysia. The name of the firm is JTI facilities management.

Senator CASH: Was there a tendering process undertaken?

Mr Allen: There was.

Senator CASH: Does the \$4.6 million and the \$200,000 or so include any capital items, or is it all just recurrent expenses?

Mr Allen: This is all operational spending, Senator; it is not capital.

Senator CASH: Are there any capital costs associated with it?

Mr Allen: I do not believe so, but I will take that on notice and confirm it for you.

Senator CASH: Okay. Do we have any other obligations in relation to motel accommodation under the failed Malaysian solution that we still have to honour?

Mr Allen: There are no other property arrangements.

Senator CASH: At budget estimates, we canvassed the funding that had been set aside in the budget that was going to be provided to the IOM and the UNHCR. Has any money in relation to the failed Malaysian solution been provided to either of those bodies?

Mr Allen: We have expended approximately \$21,000 in payment to IOM.

Senator CASH: So \$21,000 to IOM?

Mr Allen: Yes.

Senator CASH: And when was that money paid?

Mr Allen: I would need to take that on notice.

Senator CASH: What was that money paid for?

Mr Allen: I would also need to take the purpose on notice. There have been some preliminary discussions and some preliminary arrangement-making, I believe, with IOM, but I would need to get the detail of that for you.

Senator CASH: Are you able to just confirm with me what amount was budgeted for to be provided to IOM and the UNHCR in conjunction with the Malaysian solution?

Mr Allen: No. We would need to take that on notice.

Senator CASH: Was it approximately \$75 million?

Mr Allen: I would not be able to tell you without checking.

Senator CASH: If you could have someone check, that would be appreciated. I believe it was \$75.9 million. So, in relation to that \$75.9 million, \$21,000 has been given to the IOM?

Mr Allen: Senator, I have also just been advised by Ms Parker that the \$21,000 was split between IOM and UNHCR.

Senator CASH: Have any other funds been provided to the IOM or the UNHCR in relation to the failed Malaysian solution?

Mr Allen: I understand that there are some outstanding invoices, so there may be some additional expenditure for the future.

Senator CASH: Can you please provide to the committee what those outstanding invoices are and how much they total? Will the money that was set out in the budget to be provided to these agencies still be provided to them?

Mr Allen: Where they have already undertaken expenditure and will submit invoices, obviously we will pay for expenditure already undertaken. Beyond that, I would suspect, no.

Senator CASH: Can you please provide to the committee exactly how much of the money that has been allocated in the budget will be expended even though the Malaysian solution has failed?

Mr Allen: We will take that on notice.

Ms Wilson: Just a point of clarification: you mentioned the 75 figure earlier. That was actually the forward estimates cost, not just the single year cost. We are talking about a subset of that within 2011-12 expenditure.

Senator CASH: Thank you very much. I was just reading from the *Hansard*. What are the accommodation facilities at Port Dickson in Malaysia?

Mr Allen: I think as I suggested they are both commercial rental type properties.

Senator CASH: So they are the Crescent Peak and the R&R Bungalows?

Mr Allen: That is correct, yes. They are the only ones we have.

Senator CASH: Mr Metcalfe, I want to go back to the comment you made in relation to the advice that was provided to the government on Nauru. You said you provided advice in relation to the mechanics of closing Nauru. Was that view expressed to the incoming government in 2007?

Mr Metcalfe: That was my recollection. The government had a clear policy position in respect of that. As you would expect, one of the primary purposes of the incoming government brief is to provide advice to the government as to how it could go about implementing its clearly expressed policies.

Senator CASH: How long has the department held its current view that the Nauru option would not work?

Mr Metcalfe: Our view is not simply that the Nauru option would not work but that the combination of circumstances that existed at the end of 2001 could not be repeated with success. That is a view that we held for some time—and it is of course not just a view of my department; it is the collective view of agencies involved in providing advice in this area.

Senator CASH: When you say the 'combination of circumstances at 2001 could not be repeated with success', what is the combination of circumstances you are referring to?

Mr Metcalfe: When we have a look at the events of 2001 there was an awful lot going on. Of course we had previously had in 1999 temporary protection visas introduced but, as is well known, temporary protection visas led to, in my view, a change in the passenger groups on vessels. Of course there was a very large increase in arrival numbers following 1999. So

temporary protection visas, in my view, of themselves were not a factor. We now know of course that in 2005 those people on temporary protection visas were allowed to stay in Australia permanently—some 8,000 or so.

The second factor was the very high-profile and successful action taken in relation to the group who were rescued by the *Tampa*, the passage of several pieces of legislation relating to excision of arrangements for people arriving on certain offshore islands and the ability to take those people to third countries, regardless of whether that country was a signatory to the refugee convention, enacted in section 198A of the Migration Act. That dramatic, high-profile effort, together with the processing that occurred on Nauru, was very much unknown to people. The people who were subject to it and the people smugglers who were organising it were not able to predict what would occur. A point that I have often made is that what was unknown prior to the events of 2001 becomes known in hindsight; it becomes the certainty. We all know what happened with the people who were taken to Nauru. We know that Nauru filled up very quickly. We know that the government needed to establish new facilities at Manus because people kept coming. In fact, 1,700 people came after the *Tampa* arrived.

The third factor was the significant activity associated with what is regarded in shorthand terms as a tow-back action but was, in fact: the seizure by the Navy of a number of vessels in the contiguous zone of Australia; the transfer of the passengers of those vessels to the Australian naval ship; the securing of the fishing vessel, or the vessel that people had come from, by Navy personnel and, if necessary, the repair of the engine; and the return of the people on the Australian ship, together with their mode of transport from Indonesia, to waters immediately adjacent to the Indonesian territorial sea. That happened on a number of occasions and, in my view, it had a salutary effect upon people smugglers, because they had several hundred people returned to Indonesia who had been promised arrival in Australia, who did not get it, and who were looking for the large sums of money that they had paid to the people smugglers.

Senator CASH: Can I just confirm—

Mr Metcalfe: I was just answering your question, Senator. No doubt we could explore that issue in more detail, because it is my view the key point is that it could not be replicated.

The fourth point, which I think is also a salutary and a very sad point, is the sinking of the SIEVX in waters adjacent to Indonesia, 10 years ago this week, where 363 people died. There were many bereaved families and the small number of people rescued from that ship, and that sent a shockwave through the group of people who were travelling. Combined with the fact that soon after, given the events of September 11 and its aftermath, there was a significant return of over two million refugees to Afghanistan, this and other international events meant that the push and pull factors and the clear risk of the journey, together with Australia's actions—which were unknown in prospect but now, 10 years later, are understood well—combined to have a dramatic effect, and following 2002 we had only a very small number of people coming by boat.

Senator CASH: Can I confirm that you said that you provided advice to the government only on the mechanics of closing Nauru, not on whether or not it should be done?

Mr Metcalfe: No, I did not answer that part of the question.

Senator CASH: I just want to confirm what your evidence was.

Mr Metcalfe: My evidence in response to your question was that, on the issue of the policy question, 'Did we give advice or not?' I said that I was not prepared to discuss what policy advice we may have provided the incoming government. However, I did confirm that we provided advice to the government as to how it would go about bringing the Nauru facilities and the PNG facilities to a close, which was clearly in accordance with government policy at the time.

Senator CASH: On page 77 of the budget estimates *Hansard*, you stated:

The government has made it clear and the minister has made announcements on several occasions that the persons who have arrived since 7 May will not be processed in Australia, that they will be removed pursuant to migration law to another country, that any issues they have in relation to asylum claims will be dealt with there ...

My questions are: how many persons have arrived since 7 May 2011, how many of these people have been removed to another country and how many are still in Australia?

Mr Metcalfe: You know the answer to the second part, which is zero. I will have to check on the numbers that have arrived since 7 May.

Senator CASH: So zero have been removed, despite that statement you made at budget estimates?

Mr Metcalfe: Yes, and that was a perfectly accurate statement at the time it was made. But I think I will take on notice the first part of your question, which was how many people have arrived.

Senator CASH: You need to take on notice how many people have arrived? You do not have a running list?

Mr Metcalfe: I do not have the figure sitting in my head. Perhaps someone here will add it up for you.

Senator CASH: Perhaps someone here will provide that to you.

Mr Metcalfe: Several hundred people.

Senator CASH: Several hundred? So the statement you made that they will be removed pursuant to migration law to another country and that any issues they have with asylum plans will be dealt with there is no longer correct?

Mr Metcalfe: It is no longer correct.

Senator CASH: It is no longer correct?

Mr Metcalfe: Since then the High Court has overturned existing law and the parliament has failed to pass any remedial legislation.

Senator CASH: How many of those people will be processed in Australia?

Mr Metcalfe: All of those people will be processed.

Senator CASH: All of those people? And you are just getting for me the figure of how many have actually arrived since 7 May when the Malaysian solution was 'going to break the people smugglers' models'.

Mr Metcalfe: Mr Allen can give you the figure now.

Mr Allen: I have the figure. Since 7 May a total of 1,293 clients and 49 crew have arrived at Christmas Island.

Senator CASH: And, just to confirm, none of them have been removed?

Mr Metcalfe: I think you know the answer. I think it is zero.

Senator CASH: I am just confirming, because I would not like to misquote you, Mr Metcalfe.

Mr Metcalfe: That is very kind of you.

Proceedings suspended from 10:31 to 10:46

Senator HANSON-YOUNG: I would like to get some base-level information. Is it correct that between 2009 and February 2011, 518 visas were granted to people as part of the resettlement program between Malaysia and Australia?

Mr Metcalfe: We have granted refugee visas in Indonesia. The numbers sound about right, but Mr Fleming might be able to provide more detail.

Mr Fleming: If I could double-check, those were the program figures for last year?

Senator HANSON-YOUNG: The figures I have are from 2009 to February 2011, 518 visas for people resettled from Malaysia.

Mr Fleming: That is either the right figure or very close to it.

Senator HANSON-YOUNG: Could we also get the figures for the people settled from Indonesia for that same period?

Mr Fleming: Yes, we can get that.

Senator HANSON-YOUNG: Since February, how many people have been resettled from Malaysia?

Mr Fleming: I do not have the figures broken down in that way, but we can take that on notice and get them for you.

Senator HANSON-YOUNG: Since 7 May, how many people have we resettled from Malaysia?

Mr Fleming: Not since 7 May.

Senator HANSON-YOUNG: We have not taken anyone since 7 May?

Mr Fleming: No, I just do not have the figures since 7 May broken down in that way.

Mr Metcalfe: I think you are asking for figures for people who have been brought to Australia from Malaysia under the Refugee and Humanitarian Program since February and the figure since 7 May. We will take that on notice and we might be able to give you those figures later in the day.

Senator HANSON-YOUNG: How many people taken since May have been part of the official arrangement with Malaysia as part of the people swap?

Mr Metcalfe: Effectively we had an underlying number of people, several hundred people per year, who we normally would have brought from Malaysia. The 1,000 places on top of that mean that we have accelerated the number of people departing over the last few months. From recollection, we are around pro rata across the program year. In the previous year we probably would have brought 1,400—we will check on that and give you that figure. This year we are bringing an additional 1,000 persons and we are on track to bring that combined figure over the course of the financial year.

Mr Fleming: I can add to that. As the secretary pointed out, we are effectively treating the 1,000 as an additional 1,000 places this program year, so it will end up being somewhere in the vicinity of around 1,300. As at Friday, 30 September, 304 refugee category visas had been granted by Kuala Lumpur—that is, since 1 July.

Senator HANSON-YOUNG: For those 304, can you tell me what their country of origin is?

Mr Fleming: I will have to take that on notice.

Senator HANSON-YOUNG: Do you think you could get back to us today on that?

Mr Fleming: I will try to do that.

Senator HANSON-YOUNG: Thank you. For those that have been resettled from 2009 to February 2011—the 518 figure—could you also give me the breakdown of their nationalities.

Mr Fleming: Yes.

Mr Metcalfe: I think we will find that the majority are from Burma, but there may be some other categories. But we will give you that on notice.

Senator HANSON-YOUNG: Okay. I would like to know the countries of origin of the 518 up to February and then the 304 from this year—the breakdown of their nationalities as well.

Mr Metcalfe: Yes, sure.

Senator HANSON-YOUNG: Can you go through what the process is for determining who will become part of that resettlement process and whether it is simply the same process that it has been already for the last however many years—for the group of 518 people, for example—or whether there are additional processing and protocols for the additional 1,000.

Mr Fleming: It is effectively the same process, reliant on referral of refugees from the UNHCR. The only difference is that they will be referring more than they have in previous years.

Senator HANSON-YOUNG: Step us through the process.

Mr Fleming: Generally an asylum seeker will register with UNHCR; UNHCR does its refugee status determination, determining whether the person is a refugee or not; and then over time UNHCR adds to that an assessment of which refugees are most in need of resettlement as the durable solution, and it refers those to resettlement countries for consideration of resettlement.

Senator HANSON-YOUNG: Is there any option for Australia to say, 'We will take people who've satisfied these criteria'?

Mr Fleming: We can certainly have ongoing dialogue with UNHCR. The other factor is that UNHCR tends to look at the existence or extent of ties to a resettlement country that they are proposing, so that issue can come into play as well.

Senator HANSON-YOUNG: Does Australia set down other criteria that we like to look at before we resettle people?

Mr Fleming: No, UNHCR is well aware of our health and character criteria, which are rarely an issue. We just have ongoing discussion. That tends to be informed more by

UNHCR's assessment of global resettlement need. It is actually more driven by the groups that UNHCR thinks are most in need of resettlement.

Senator HANSON-YOUNG: Mr Metcalfe, this might be a question for you: what did the Prime Minister mean on Thursday afternoon when she referred to the fact that the 1,000 people would still be resettled within the existing intake?

Mr Metcalfe: My understanding from what both the Prime Minister and the minister have advised is that the government, for a little while now, has had an annual refugee and humanitarian program of 13,750. The 1,000 additional places that were announced as part of the budget were contingent upon the reduction in arrivals in an irregular manner that the Malaysia arrangement would have facilitated. Therefore the government's position is that the annual total of resettlement will remain 13,750. However, in order to honour the undertakings and the excellent cooperation that we have had with Malaysia, we will continue to increase our resettlement from Malaysia by the 1,000 places. That will inevitably mean a lower number of people coming from other parts of the world to fit within the 13,750 total.

Senator HANSON-YOUNG: Just to clarify, we will not see the increase to the 14,750; it will remain what it was last year except that around 1,300 of those will be coming from Malaysia.

Mr Metcalfe: That is precisely right.

Senator PRATT: I note that there has been some discussion on the reintroduction of temporary protection visas in relation to the onshore management of humanitarian visas. I want to ask for some of the history of that visa category which clearly we no longer have. When was it first introduced?

Mr Metcalfe: My recollection—and Mr Fleming will have more detail on this—is that temporary protection visas were introduced as a category in 1999.

Senator PRATT: What is the relationship of temporary protection visas to boat arrivals, if any?

Mr Metcalfe: When I was talking earlier with Senator Cash I indicated that, notwithstanding the introduction of temporary protection visas in 1999, we had a very large number of irregular maritime arrivals in 1999, 2000 and 2001. It was my educated view that temporary protection visas of themselves did not reduce the number of people coming by any measure—a large number of people arrived after their introduction. There were a number of other impacts associated with temporary protection visas but, as you will recall, the previous government effectively granted permanent residence to all of the TPV holders in 2005 and the visa category was wound up following the change of government in 2007.

Senator PRATT: What was the average length of a temporary protection visa?

Mr Metcalfe: Mr Fleming will correct me if I am wrong. My recollection is that the temporary protection visa was issued for a 36-month period—a three-year period—and that it prevented a person from lodging an application for permanent residence until no longer than six months prior to the expiry of the visa. In other words, 30 months in, the person could then apply for permanent residence and that would require a fresh consideration of any claims that the person had. The reality is that a large number of people on temporary protection visas in 2005 were granted permanent residence without there being any particular assessment of their claims but on the basis of decisions of the government back then.

Senator PRATT: What was the articulated purpose of a temporary protection visa?

Mr Metcalfe: The articulated purpose was twofold: firstly, to enable the further consideration of claims, should there be a material change in circumstances in the country the person was seeking protection from or in the person's own circumstances; and, secondly, the TPV was quite deliberately designed to be not as advantageous to the person as a permanent protection visa in that it did not carry with it the same full range of settlement service rights a permanent resident would obtain. It did not provide for re-entry to Australia if the person left and, importantly, it did not provide sponsorship rights for family reunion or proposers under the humanitarian program.

Senator PRATT: So, in reassessing the original country of citizenship people were seeking asylum from, was there ever in general any material change that would have changed the status of those applicants within those 36 months?

Mr Metcalfe: That would have been a case-by-case situation. I am not sure if Mr Fleming can provide a more detailed understanding as to what actually happened as a result.

Mr Fleming: I would have to take the precise numbers of any who were found not to be refugees when their protection status was reassessed on notice.

Senator PRATT: In other words, what proportion of protection visa holders went on to get permanent visas is another way of looking at that question.

Mr Fleming: There were 11,206 temporary protection visas granted—9,690 of them were granted permanent protection visas, 151 others were granted a range of other visas and 377 still have protection visa processes in train, 26 are deceased, 379 departed Australia and the residual are still in various processes.

Senator PRATT: I think Mr Metcalfe has outlined the different visas in terms of the restrictions on them. What was the nature of those restrictions?

Mr Fleming: The two biggest restrictions were, first, that you did not have travel rights, so if you left Australia you were not authorised to come back. The second was that you were not eligible to sponsor or propose family to come to come and join you in Australia.

Senator PRATT: Who paid for the welfare needs of temporary protection visa holders?

Mr Fleming: They did have access to basic Centrelink and Medicare benefits but certainly the civil society, the NGO sector, did state for an extended period and still do today that much of the burden fell to support from NGOs.

Senator PRATT: If you are looking at a cohort of people who essentially in the main were going to end up as refugees that were resettled here in any case, what is the impact on those people of having had, I suppose, 36 months extra time inserted on being told, 'You're now here to be integrated and settled'? I think we all recall the impact of that long period of limbo that people were in.

Mr Metcalfe: I would make a couple of responses to that. Firstly, as I indicated to Senator Cash before what was in prospect unknown when TPVs were introduced is now in hindsight well understood. We know what happens and therefore one of the key pieces of advice I have consistently given over many years is that people smugglers are highly adaptable and they will keep changing their techniques and efforts. While it may have been uncertain in 1999, we

now know what actually happens—that is, the vast majority of people stay here permanently. Whether that was in prospect in the design of the policy in 1999 I am not too sure.

Senator PRATT: In terms of any disincentive to arrival by this method of boat as opposed to any other form of asylum it would have to be well recognised now that 9½ thousand out of 11,000 remained in the country and that, essentially, any deterrent effect is only whether or not you are prepared to see out that waiting game.

Mr Metcalfe: One of the other things that is very clear is that not only are people smugglers very adaptable and will advise their clients as to what is likely to happen and to adjust their plans accordingly, but that the people themselves are ordinarily very determined people. This is not a criticism. It is simply a comment that someone who is prepared, required or forced to travel, usually through Indonesia, and get on a boat to come to Australia is very determined to come to Australia to stay here. They will take a view of the issue that is not limited to a week, a month or a year. This is a life-changing decision not only for them but for their future generations. Whether or not a person being told that they have three years temporary residence would deter someone from coming, we can see what history shows.

Senator PRATT: Notwithstanding that there were significant impacts on people because of that.

Mr Metcalfe: One of the other issues, if you look at this from a high policy perspective, is that, if we are accepting that Australia does have a protection obligation to the person, we are accepting, ultimately, that the person will join us as an Australian citizen. Therefore, the circumstances of their settlement are presumably something that policy makers need to take into account.

Senator PRATT: I suppose there are almost two contradictory streams.

Mr Metcalfe: This is a very complex area, as you know. There are no easy answers.

Senator PRATT: Can you outline the nature of the changes to the TPV regime which occurred in 2005 under the Howard government, and why they were made?

Mr Metcalfe: Yes. Again, Mr Fleming might add to this. I was not in the department at the time. I was in the Prime Minister's department but was involved with the former Prime Minister in some of the discussions with a number of government backbenchers. Mr Petro Georgiou and others were involved in advocacy concerning this particular group. Effectively, it was decided as one of a range of policy decisions relating to detention that, largely, people currently in Australia on temporary protection visas would be granted permanent residence without there being a formal reassessment of their refugee status. I suspect many of those 9,000 people would have been people who were subject to that particular 2005 arrangement.

Senator PRATT: Is it a fair observation that the introduction of TPVs changed the composition of boat arrivals; and, if so, in what way?

Mr Metcalfe: It is true that, as we saw tragically illustrated with the SIEVX disaster, we did see irregular arrivals move largely from comprising single adult men to comprising family groups. One of the views that have been expressed is that that occurred because one of the restrictions on a temporary protection visa was the inability to sponsor family members and, therefore, people brought their families with them.

Senator PRATT: So they were more prepared to get on the boats.

Mr Metcalfe: Or there were no lawful means for people to come and therefore they chose irregular means. In other words, they could not get a visa and therefore they got on a boat because that was the only way to get a visa. That, of course, is a policy issue facing us now.

Senator PRATT: So, naturally, when you have had one family member arrive by boat and they are found to be a refugee but are denied any other kind of reunion with their family, then all the other members of the family, who may also be refugees, will come?

Mr Metcalfe: That would appear to be one of the effects.

Senator PRATT: With respect to some of the international work that the department has been doing relating to humanitarian settlement—and I am pretty sure it does belong in outcome 2—I note that your findings from the 2009 internal evaluation of your AUSCO services are about enhancing the AUSCO communication strategy and improving integration with the onshore settlement program. What client focused changes are being implemented as a result of that review?

Mr Metcalfe: That question is probably better placed in outcome 5.

Senator PRATT: I am referring to your report on performance outcome 2. You can answer it in outcome 5 if you wish me to deal with it later.

Mr Metcalfe: Okay. I stand corrected, Senator.

Mr Fleming: AUSCO refers to our Australian Cultural Orientation courses that we provide or contract through IOM to provide. It is basically pre-departure settlement and cultural information for humanitarian entrants coming to Australia. One area that we have been focusing on, as indicated by what you are reading from, is to better link up the information and connectedness, if you like, with the humanitarian entrants that we build before they depart to better integrate them with the settlement services and other support that they will receive after they arrive in Australia. In fact, our annual conference of AUSCO trainers is coming up in November, and a very heavy emphasis in that is a workshop style of having onshore settlement providers work with the AUSCO trainers so that they can work out how best to better support clients' predeparture.

Senator PRATT: How much of that feedback comes from clients themselves in terms of the support that they identify with?

Mr Fleming: Particularly in the initial period post-arrival, the humanitarian entrants are in very close, regular and frequent contact with their settlement service providers. That is a very good, if you like, evaluative point for working out how much information has been provided and understood by the entrants prior to departure for Australia.

Senator PRATT: In international engagement with collaboration between participating states I am a little unclear as to how much of this belongs in outcome 2 and how much might be in some of the later outcomes. I note in the annual report that a report on the performance under outcome 2 list participation in the Global Forum on Migration and Development from last December where it was decided that the focus of the forum would evolve towards encouraging greater practical collaboration between participating states. Notwithstanding our recent difficulties in our collaboration with Malaysia, can you give an outline of the kinds of collaboration that are currently taking place in relation to humanitarian settlements?

Dr Southern: The Global Forum on Migration and Development is one of several multi-party forums that DIAC is engaged with on humanitarian and other migration issues alongside the GFMD. Obviously the work that we are doing through the Bali process with regional countries is a really important aspect of international humanitarian engagement. I would also mention the intergovernmental consultations on migration and development, the IGC, which is another forum that we regularly participate in. Those forums vary from quite high-level dialogue on policies and practices, particularly best practice around the world, down to quite a technical working level where we run and participate in workshops both in source, transit and destination countries around the world. While they have discrete purposes, if you like, and involve different sets of countries, taken together they allow Australia to participate globally in relation to humanitarian best practice.

Senator CASH: I turn now to the Afghan-Australia memorandum of understanding. In respect of the memorandum of understanding between the Australian government and the government of Afghanistan that was signed on 17 January 2011, what numbers of failed Afghan asylum seekers have been returned to Afghanistan?

Mr Fleming: There have been five removals under the MOU.

Senator CASH: Have they been voluntary or non-voluntary?

Mr Fleming: They have all been voluntary.

Senator CASH: How many are awaiting return?

Mr Fleming: I can give an overview. There are 734 Afghans who are on what we would call a negative pathway at the moment.

Senator CASH: The 734 on the negative pathway are basically awaiting removal from Australia.

Mr Fleming: Yes. Obviously judicial review is the biggest issue there. To clarify: 584 of those are at merits review. There are 30 Afghans who have received a negative decision, are not yet at judicial review and may yet do so. There are 118 with active matters with the Federal Magistrates Court, and two have active matters with the Federal Court, so it is probably more accurate to describe it as the cohort that are potentially available for removal in the future but are still undergoing merits and judicial review.

Senator CASH: And who pays in relation to the 734 who have received a negative pathway and are currently at varying stages of appeal? Who pays for those appeals? Is it the Australian taxpayer?

Mr Fleming: The Australian government pays for migration agent assistance for both primary and merits review but does not fund any support for judicial review.

Senator CASH: Given that the agreement provides for forced returns, why have there been none returned by way of that pathway?

Mr Fleming: Essentially, because of the ongoing merits and judicial review they are not yet available for removal.

Senator CASH: Okay. What legislative steps could be taken to strengthen the position and enable forced returns to be conducted?

Mr Fleming: Probably a constitutional referendum would be the only option because of the High Court's finding that the refugee status determination for IMAs is subject to judicial review. That then opens the door for the courts to provide injunctions.

Senator CASH: Has the department been asked to advise on what legislative measures could be introduced?

Mr Metcalfe: Following the M61 High Court decision last November, which I am sure we have discussed and which substantially clarified the law in relation to the excision laws passed by the government in 2001, it has become quite plain that access to the Australian legal system and judicial process is something that is available regardless of whether a person has excise status. You will recall that the minister announced a review in relation to that issue. That work has proceeded, and no doubt the minister will make announcements about that in due course. But, given the constitutionality—I know you are a lawyer like several of us here—section 75(v) of the Constitution makes it very clear that a person can seek prerogative writs. The High Court has developed substantial jurisprudence in this area. So, as Mr Fleming says, short of a constitutional amendment, which is obviously an extremely grave matter, it would appear that there is no legislative option to respond.

Senator CASH: So at this point in time, based on the evidence that has been given, the only thing holding up the returns is the access to the courts?

Mr Metcalfe: Some people are at merits review. They are working their way through the process. Some people are in the judicial process. When they have no matters that are before the courts that would prevent their departure, we will obviously be implementing the non-voluntary aspects of that arrangement.

Senator CASH: So basically we are in the core process and that is what is holding the return process up.

Mr Metcalfe: That is correct.

Senator CASH: Has the UNHCR referred any appropriate cases of Afghan refugees offshore for consideration under Australia's refugee resettlement program for 2010-11 and the year to date?

Mr Metcalfe: Are we talking about UNHCR referring to us overseas?

Senator CASH: Correct.

Mr Metcalfe: I am sure the answer is yes.

Mr Fleming: I am confident the answer is yes and I will seek figures at the same time as I try to get those other figures for Senator Hanson-Young.

Senator CASH: Thank you. If so, how many and from which post? How many have been granted visas to Australia in the 2010-11 financial year and the year to date? Would you also be able to provide the information in relation to Iranians, Sri Lankans and Iraqis?

Mr Fleming: I might not be able to get all of that for you today, but I will get whatever figures I can.

Mr Metcalfe: We will do what we can today and take the rest on notice.

Senator CASH: In relation to the 734 Afghans who currently have a negative pathway of some form, does the department have any estimation of how long these people will be in the judicial process?

Mr Metcalfe: I think the answer is we would have a general idea. If we are going down questions in that area, we might get the chief lawyer to join us. She can talk about the fact that the magistrates courts are now moving into substantial decision making in this area and are devoting substantial resources to it. But with appeals and other processes it is probably an indeterminate period at this stage. But I will see if we can add anything to assist you.

Ms Hardy: I am sorry; could I have the question again?

Senator CASH: Certainly. It was in relation to the 734 Afghans who are currently on a negative pathway of some form. Does the department have any estimation of the length of time that will be seen throughout the core process?

Ms Hardy: After following the M61 decision the estimates that we were working on was that, by the time people can work through—there are three levels of review available—it could be between 18 months and two years.

Senator CASH: So it is 18 months to two years before there is any opportunity—

Ms Hardy: Before they exhaust the process of reaching the High Court it could be up to two years.

Senator CASH: And we can take action under the memorandum of understanding and have a forced return if it is not a voluntary return.

Ms Hardy: Once that process has been exhausted, yes.

Senator CASH: So 18 months to two years. Okay. In relation to the 734, are you able to take on notice and provide the committee with an analysis of how long each one of those people have actually been in the court process to date?

Mr Metcalfe: Not all are in the court process. I think we said the larger number was in the merits review process. A smaller number is in the courts. To do an individual assessment would be fairly time consuming.

Senator CASH: Perhaps just on the core process, then, not the merits review process.

Mr Metcalfe: We will give you some advice as to what that period appears to be, but I would be reluctant to have 200-whatever files examined. I may be less reluctant to have 120 files examined.

Senator CASH: Will any of these Afghans that we have referred to be eligible for bridging visas under the new arrangements?

Mr Metcalfe: That is a matter for the government to make announcements about. Clearly the minister's announcements and the Prime Minister's announcements last Thursday will be the subject of further, detailed announcements. I think the minister has made it clear that the overall arrangements of initial mandatory detention, the availability of community detention and the availability of bridging visas will be looked at in relation to not only future arrivals but also the current group. Therefore, one would expect that, if there is no good reason to detain a person while they are going through a process, that is the sort of issue that will be looked at in the detailed implementation.

Senator CASH: So it would be fair to say, then, that there may be a cohort of people who have received a negative pathway but have not yet exhausted the merits review or the judicial process and may well be able to get bridging visas going forward?

Mr Metcalfe: I think that is a correct statement.

Senator CASH: If they are unable to access bridging visas, does that mean that they will be held in detention for 18 months to two years?

Mr Metcalfe: By definition, if a person does not have a visa they must be detained, so we are really talking about the broad spectrum of held detention in detention centres, community detention or a form of bridging visa. Those are the sorts of broad areas that you have to choose from.

Senator CASH: I return now to Pacific solution returns. I understand that 30 per cent of asylum seekers processed through the Pacific solution returned to their home country. Were those all voluntary returns?

Mr Fleming: Yes, they are all voluntary.

Senator CASH: What percentage of those found not to be refugees in the Pacific solution were returned to their home country?

Mr Fleming: That 30 per cent that you talked about would comprise people who had been determined not to be refugees or had decided to return home prior to a decision being made, so I would have to check to see if we could get that broken down for you.

Senator CASH: I understand that it would be close to 100 per cent. How does this compare to onshore processing, in terms of the return agreements? Basically, 30 per cent of asylum seekers processed through the Pacific solution were returned to their home countries, and they did so voluntarily. My understanding is that the percentage of those found not to be refugees under the Pacific solution who were returned to their home countries—you will provide the committee with that information—will be close to 100 per cent.

Mr Metcalfe: I think you are right; it will be close to 100 per cent.

Mr Fleming: Yes.

Mr Metcalfe: In terms of the current cohort, we have of course seen quite a few people voluntarily return home, particularly to Sri Lanka. But the fact that people are moving through the various processes means that there is not much data yet on whether people ultimately, having accepted the decision that they should not stay in Australia, will volunteer to go home or whether a forced return will occur. So it is probably too early to tell at this stage. But, clearly, people are pursuing the opportunities that they have available to them to seek to stay in Australia.

Senator CASH: Are you able to provide a comparison, though, between those who were returned under the Pacific solution—I understand it was 484 asylum seekers—and onshore processing?

Mr Metcalfe: Are you talking about contemporaneous onshore processing, Senator—

Senator CASH: Onshore processing, currently.

Mr Metcalfe: or previous onshore processing, prior to the Pacific solution?

Senator CASH: No, no—contemporaneous.

Mr Metcalfe: We will give you an answer on notice, but I suspect the response is going to be that, in some respects, it is difficult to draw a comparison at this stage between those people we saw voluntarily return home—and I would note that that was the sort of time when many Afghans were returning home from Pakistan, Iran and elsewhere, following the fall of the Taliban—and the maturity of the current caseload, where a large number of people are still contesting decisions about their refugee status. So it would be difficult, I suspect, to draw reasonable comparisons between the two phenomena.

Senator CASH: Okay. If it is difficult to undertake a recent comparison, can we compare it to the last three years, since the Pacific solution was abolished? That would be a fair comparison.

Mr Metcalfe: Again, many of those cases are working their way through the system. If you wanted a fair comparison, you would probably compare those people who arrived prior to the *Tampa*, and we had—

Senator CASH: Mr Metcalfe, I will tell you the comparison that I want—and I do not necessarily need that comparison—

Mr Metcalfe: I was trying to help you with a fair comparison.

Senator CASH: Well, the comparison I would like is with the last three years since the Pacific solution closed.

Mr Metcalfe: We have taken that on notice.

Senator CASH: Thank you. That would be appreciated. I now turn to return arrangements to other countries. In his press conference on 13 October, the Minister for Immigration and Citizenship indicated that it was 'difficult' to return failed asylum seekers to Iran. Has the department tried to return failed asylum seekers to Iran or remove them to a third country?

Dr Southern: We will just get Mr Illingworth to come to the table to assist with that, but my understanding is that we have not attempted any involuntary returns to Iran—nor has any other country been successful, I believe.

Senator CASH: The minister indicated that 'returns are very difficult' to Iran, which would indicate to me that an attempt had been made and that it failed. So has the department tried—I want to make sure I am not misquoting—

Dr Southern: Yes. Sorry, I will clarify.

Senator CASH: to return any failed asylum seekers to Iran or another third country?

Dr Southern: We have certainly returned people who have been failed asylum seekers voluntarily to Iran. The difficulty arises where an Iranian does not agree to return voluntarily and does not have travel documents. That is where the difficulty arises.

Senator CASH: So what has been the result of that?

Dr Southern: Well, as I said, we have been able to return people voluntarily but we have generally not been able to return people involuntarily. One example—

Senator CASH: Have you tried to return anybody involuntarily?

Mr Metcalfe: I think the answer is no, Senator. The reason for that, and the reason it is difficult, is that the Iranian government has made it clear it will not accept the return of people unless they volunteer to return.

Dr Southern: I think—Mr Illingworth can correct me if I am wrong—that there was one involuntary return by the UK or by us—

Mr Illingworth: Yes.

Dr Southern: where there were travel documents available; the person had an expired passport. But there were no other involuntary returns.

Senator CASH: How many voluntary returns have occurred?

Dr Southern: There were 45 in the 2010-11 financial year and 11 so far this financial year, to 30 September.

Senator CASH: Has the minister ever been to Iran to discuss return arrangements with the Iranian authorities?

Mr Metcalfe: No.

Senator CASH: Mr Metcalfe, have you been to Iran to discuss return arrangements with the Iranian authorities?

Mr Metcalfe: No, but senior officers of my department and the Ambassador for People Smuggling Issues have been there.

Senator CASH: Has the minister any plans to travel to Iran?

Mr Metcalfe: Not that I am aware of, but he is currently considering his forward travel program and no doubt that will be one issue he considers.

Senator CASH: To whom did the Iranian government indicate that it would not accept failed asylum seekers who would not return voluntarily?

Mr Metcalfe: That has been their settled position for a long time, not just with Australia but with all countries, but it was recently reconfirmed in discussions involving the Ambassador for People Smuggling Issues.

Senator CASH: When did those discussions occur?

Dr Southern: I am not sure of the exact date, but it was earlier this year. April-May comes to mind.

Senator CASH: Has the minister instructed any departmental officers to engage in discussions with Iranian authorities to facilitate the return of failed asylum seekers?

Mr Metcalfe: Yes, that resulted in those discussions that we have referred to.

Senator CASH: Has the department provided the minister with any advice about how the Australian government can facilitate the return of failed asylum seekers to Iran?

Mr Metcalfe: It is certainly an issue that we have discussed with the minister and briefed him on. But, in view of the attitude of the Iranian government, it is a difficult area. This is one of the many difficult issues associated with this where we have failed asylum seekers—noting that Iranians last year were, I think, the largest arrival group. If people arrive without travel documents and are not prepared to seek travel documents and their government is not prepared to have them return without travel documents, it is a very difficult area. That is why I think we all believe offshore processing may present some options that onshore processing does not.

Dr Southern: If I could just clarify, the discussions with the Iranian authorities occurred in March.

Senator CASH: March 2011?

Dr Southern: Yes.

Senator CASH: Thank you. Has the minister ever travelled to any country of first asylum to discuss with those authorities ways to prevent secondary movements?

Mr Metcalfe: I will have to take that on notice. I know that the minister, as portfolio minister, has certainly travelled to a number of countries in our region, but we will need to check with him on whether he has ever travelled to any of those countries or had those discussions.

Senator CASH: Could you also check whether he has any plan to travel to any countries of first asylum.

Mr Metcalfe: We will take that on notice.

Senator CASH: Has he asked departmental officials to engage with any countries of first asylum?

Mr Metcalfe: Yes.

Senator CASH: What countries were they?

Mr Metcalfe: I will get Mr Fleming or Dr Southern to go into it in detail, but we have regular discussions with countries of first asylum like Thailand. I would note that the minister, of course, has been to Malaysia, which is a country of first asylum, and Indonesia, which is a country of first asylum for some people. Not only do we engage with countries like Pakistan, Iran and other countries in the Middle East, but we do so in a variety of international forums, particularly through the good offices of the UNHCR. But if there is more detail then we will add that now or take that on notice.

Mr Fleming: At this stage I have nothing to add to what you have said.

Mr Metcalfe: All right. We will take the specifics on notice.

Senator CASH: Has the department ever been able to remove failed asylum seekers to Iran?

Mr Metcalfe: I would have to check on that. I certainly know that, when we had Iranian clients 10 or 12 years ago, the then minister was actively engaged on the same problem. As to whether we actually asked them to take failed asylum seekers, I think the answer is probably yes. I think the question is, 'Did they agree?' and the answer is no.

Senator CASH: But were they returned—that is my point—even though the answer was no?

Mr Metcalfe: Were they returned? I think the answer is almost definitely no, but I will double-check on that, because I do know that we had a memorandum of understanding with Iran for work and holiday and related issues, but I do not think it was ever put into effect in the sense of failed asylum seekers returning home. But my memory is a little vague on that, so let me check. I will take that on notice.

Senator CASH: In relation to the question, if the answer is yes, the Australian government has been able to remove failed asylum seekers to Iran, how many, under what circumstances and when did that occur?

Mr Metcalfe: We will take that on notice.

Senator CASH: In the event that we are only able to return failed asylum seekers to Iran voluntarily, does that mean that every failed asylum seeker that refuses to cooperate with Australian authorities to return to their country of origin will be allowed to stay in Australia and potentially be offered a bridging visa?

Mr Metcalfe: That is one of the policy issues that faces us. It is very clear that there is an expectation that failed asylum seekers who have had appropriate opportunity to seek review of that decision should return if there is a view that Australia has no requirement to offer them protection. The practicality of removing a person who is unwilling to go and is unwilling to cooperate to a country that is not prepared to take them is enormous. We have seen that.

Senator CASH: But Iran is prepared to take people who return voluntarily. My point is, if a person only has to indicate to the department that they refuse to go it would automatically become an involuntary return when for all intents and purposes every other box is ticked and that person can be returned to Iran. What is the status of that person? Do they remain in detention for the rest of their time in Australia which could be for ever? Do we give them a bridging visa, put them into a community and give them work rights and welfare?

Mr Metcalfe: All of those things are possible, apart from the fact that it would be unconstitutional to detain a person indefinitely.

Senator CASH: Exactly. Therefore the question does arise: do we give them a bridging visa and off they go into the community?

Mr Metcalfe: The previous government developed a visa category called the return pending bridging visa associated with some people who had been in long-term detention and were unable, unwilling or not prepared to return to their country of origin and it was impossible for them to do so. The potential use of return pending bridging visas or other bridging visas are all policy options available to the government of the day.

Senator CASH: Is a return pending visa still in use?

Mr Metcalfe: It still exists.

Senator CASH: When was the last time the return pending visa was utilised?

Mr Fleming: I would like to make a technical correction. There was a visa called the return pending visa which was granted to some temporary protection visa-holders who were found not to be refugees to give them time to put their affairs in order before going home, or if they were eligible for another visa et cetera. That one was abolished as part of abolishing the temporary protection visa regime. The bridging visa that Mr Metcalfe was referring to was the removal pending bridging visa. That does remain on the books, but I will leave it to Mr Illingworth to talk about recent use of it.

Mr Illingworth: The removal pending bridging visa is still in use and is used on occasions.

Senator CASH: On how many occasions has it been used since November 2007?

Mr Illingworth: I will have to get those figures for you.

Mr Metcalfe: We can get that material brought forward and we will answer that as soon as we can.

Senator CASH: Has the department been asked to provide any advice to the government in relation to the return pending visa that Mr Fleming said had been abolished?

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

Senator CASH: In a press conference on 11 October, Dr Andrew Leigh MP claimed that there were somewhere between 500 and 1,000 people who had drowned while trying to reach Australia. Can the department confirm the accuracy of that figure? What was the figure based on?

Mr Metcalfe: My understanding is that that is a correct figure. We know what we know. We know that 363 people on SIEVX drowned. We know that scores of people on SIEV223 drowned 10 months ago. There have been a number of other tragic incidents that involved deaths over the years which collectively add up to around 500 or so people. If you would like a more detailed listing of those particular tragic incidents that we know of, I could probably have that material made available to me to provide to you.

We also know that there are reports of other boats that have gone missing. It would appear there is reasonable information that people did set out to Australia and never arrived. Quite often it is known that people are setting out because family members or contacts in Australia or elsewhere provide that information. So the figure of up to another 500 people possibly having drowned I would regard as reasonably accurate. As I am sure you and I would agree, this is one of the evils associated with this method of travel. It is a very risky way to come to Australia. I know there are other views, but to work in a public policy area where hundreds of people die and have died is very confronting for us. That is why we are so determined to find ways to prevent people having to risk their lives in this way.

Senator CASH: In relation to the figure of between 500 and 1,000 people, over what period of time are we referring to?

Mr Metcalfe: We are talking about the last 15 years or so—really before the last big wave that commenced in 1999. The last 12 or 13 years is where that sort of information has come from. We do know of course—it is a matter of record—that there were numerous drownings and deaths of Vietnamese boat people travelling in the 1970s and 1980s but the best recent information of the Middle Eastern and Sri Lankan caseload travelling to Australia a decade ago and presently would indicate that we know of about 500 people dying and suspect another 500 may well have died.

Mr Illingworth: I had some further information in response to the senator's question about the RPBVs. This data goes back to the creation of this visa in May 2005. Since that date until 14 September there have been 80 of these visas granted.

Senator CASH: Since May 2005?

Mr Illingworth: From May 2005, when the visa came into being, until 14 September, 80 visas have been granted and of those eight were granted in 2009-10, seven were granted in 2010-11 and three have been granted in the year to date to 14 September.

Senator CASH: Can you give a breakdown of the years from 2005 to 2009-10?

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

Senator CASH: Thank you.

Senator PRATT: I want to ask about the removal arrangements. Once a person is found not to be a refugee what steps are taken to remove that person? Clearly they may or may not have other appeals.

Mr Metcalfe: Mr Fleming can add to this, but essentially, as I am sure you are aware, the process is that if a person evidences an indication that they are seeking Australia's protection then our obligations under the refugee convention are enlivened. The department is responsible for an initial decision as to whether or not we believe they are a refugee. If we refuse that request from the person they have review rights, which are presently to what is known as the independent merits review. Mr Fleming can update you as to some enhancements that the minister put in place, known as the protection obligations determination process. Following any merits assessment of the case there are then the various layers of judicial review. In addition to that, some people make use of complaint mechanisms through the United Nations, although they of themselves do not necessarily prevent removal. Of course, we have now seen a significant development in the law as a result of the M70 High Court case in August in relation to minors, people under the age of 18, where the respective roles of the minister as the guardian of the minor and as the person ultimately responsible for their immigration status and presence in Australia have been interpreted by the court as placing certain limitations on the minister's power. So in combination there is a fair bit there, but to fully answer your question, Mr Fleming might provide some more detail about the protection obligations process, which is the merits process for refugee status.

Mr Fleming: Certainly. Prior to 1 March this year, the primary process for irregular maritime arrivals was that their claims were assessed and then, if they were found not to be a refugee, they would have that primary refusal, if you like, and then they applied for review. Eventually pretty much all of them did, but there was an air gap while they applied for review. A key component of changes effective from 1 March was that at the end of the primary process, if they were found not to be a refugee, we would instead automatically flow the person on to review so that we did not have that air gap, the idea being to speed up the process from beginning to end.

Another key element of the change we made is that we had been doing the front end of the process in a quite a speedy, fast way which was seeing a large number of cases where their claims were not being well articulated early on because the migration agents did not get to spend very much time with the clients to get their full story and then document it in their applications.

Senator PRATT: It does have to be a written application, doesn't it?

Mr Fleming: We do ask for their claims in writing. We also interview them. Ultimately, if they are found to be a refugee, they do have to formally apply for a protection visa on the correct form to allow us to grant the protection visa, if that is appropriate.

In respect of another key element, the secretary referred to non-refugee conventions and non-refoulement obligations. Currently you cannot do an ordinary protection visa grant on the basis of assessing that non-refoulement obligations are owed under the UN convention against torture or the International Covenant on Civil and Political Rights, as the primary examples. You have to wait until the end of the process and the minister can use his non-compellable

intervention powers to grant a protection or other visa on that basis. Once the recent package of the complementary protection legislation comes into effect early next year you will be able to, at the same time as you do the refugee assessment, integrate the assessment of other claims so that the consideration of those will come on earlier rather than towards the end when you might be getting near a removal process.

Senator PRATT: Can you step me through the removal arrangements and, in particular, what needs to be negotiated with the return country. I assume, for example, that a return country does need to accept that that person is a citizen.

Mr Metcalfe: The normal expectations are that, firstly, the country accepts that the person is a citizen of that country. Of course, we have seen some very public and high-profile cases in the past where there has been a debate as to whether or not the person is in fact a citizen of Afghanistan or Pakistan, for example. So engagement with the other country is always important because international aircraft carriers will not carry people unless there is an expectation that the person will be able to get off at the end of the trip. Were we to, as we have done in the past on occasion, arrange an aircraft charter, again, there is no point in doing it unless you know the person can be returned in conditions of safety and dignity and be accepted upon the other side of the equation. Some countries are very open to that. They will engage in that process and not require that their nationals or claimed nationals complete forms if the person is unwilling to do that, but rather accept material or other travel documents the department may provide. Some countries take a long time to go through that process and other countries—and we have talked about one already—simply indicate that it is not their position to accept the return of their nationals unless that person of their own free will voluntarily applies and completes travel documentation requests. There is a spectrum of issues depending upon the particular country of origin: firstly, what country it is and, secondly, what arrangements they are prepared to accept for the return of their nationals. The often heard phrase, 'Well, just send them home' is an easy phrase to come up with but the practical administration of that, given that we are talking about living, breathing human beings, is sometimes quite a complex issue.

Senator PRATT: Are there circumstances in which a person can be found not to be a refugee, but their return is complex because the way they left their country to start with causes difficulty for their return? How does the department manage those issues?

Mr Metcalfe: Mr Fleming may elaborate on that point, but normally, were there to be an issue associated with that, it would be picked up and considered as part of the determination of their refugee status application.

Mr Fleming: That is correct.

Senator PRATT: Thank you.

Senator CASH: Prior to turning to PNG, I want to turn to the fact that the government arranged for members of the opposition to be briefed on the proposed legislation for the now failed arrangements. You would recall that, Mr Metcalfe. I believe you may have referred to it in your opening statement as well.

Mr Metcalfe: Yes, I talked more about the media briefing and incorrect comments, but I was certainly very happy to be able to brief the Leader of the Opposition and others on the issue.

Senator CASH: Whose idea was it to brief the media on those arrangements prior to the briefing being provided to the Leader of the Opposition?

Mr Metcalfe: I am not sure whose idea it was. I know that I was asked to provide that briefing, and I was asked that by the minister's office.

Senator CASH: When were you asked to provide that briefing to the media?

Mr Metcalfe: From recollection the briefing occurred on Wednesday, 7 September. I think the initial discussions about a possible background, off-the-record briefing to the media emerged about a week before and there was some discussion over the next few days as to the timing and involvement of people in that briefing. It eventually occurred, from memory, at about nine o'clock on the seventh. Around the same time or slightly later—I think it may have been over the weekend prior to the seventh—I was advised that the Prime Minister had made an offer to the Leader of the Opposition for a briefing by departmental officials and, as you know, such briefings are not uncommon to either the leader or more commonly the opposition spokesperson. I was advised that Mr Abbott had accepted that briefing and I was subsequently told that he had indicated that it should occur on 7 September in Brisbane at three o'clock in the afternoon.

Senator CASH: It was not your idea to brief the media prior to the opposition. It was the minister's office?

Mr Metcalfe: It is not my role to brief the media or interact with the media unless I am asked to.

Senator CASH: On this particular occasion you were asked to provide an off-the-record, background briefing to the media by the minister's office?

Mr Metcalfe: That is correct.

Senator CASH: Who in the minister's office asked you to do that?

Mr Metcalfe: From memory it was a discussion I had with the Chief of Staff.

Senator CASH: Is it normal practice to brief the media on a briefing that the Leader of the Opposition is going to receive before the Leader of the Opposition has actually been briefed?

Mr Metcalfe: I do not think so and that was not what happened on this occasion. The two issues were separate and certainly I did not brief the media as to what I was going to tell the Leader of the Opposition. Indeed, as I think the leader, Mr Abbott, or Senator Brandis may have commented, there were certain things that appeared in the media out of the media briefing where the confidentiality was breached which I did not talk about with Mr Abbott because my brief for him was quite focused on particular issues.

Senator CASH: So you gave the media a lot more information than you gave the Leader of the Opposition?

Mr Metcalfe: I was asked to give the media a detailed historical analysis of the issue of irregular maritime arrivals, which I did.

Senator CASH: But off the record. This was not something that the media were to print.

Mr Metcalfe: It was off the record, the fact that they were active in commenting and reporting on this issue and it was decided that I and others—I was not the only person

involved in the briefing—should provide them with that contextual historical material. The issue of the briefing for Mr Abbott was to provide him with more specific advice as to the advice I was providing to the government on this issue.

Senator CASH: Mr Metcalfe, I think it is fair to say that there was a substantial overlap between the two briefings.

Mr Metcalfe: That is a fair point.

Senator CASH: Why would you have agreed to be compromised in this way? Did you make a suggestion that it may have been more appropriate to brief the media?

Senator Carr: Senator Cash, that is a pejorative comment that you have made to Mr Metcalfe. There is no point at which you could say that Mr Metcalfe has been compromised. I have listened carefully to what he was saying and the secretary has indicated that there were two briefings. There was some overlap, but one briefing was not a relation to the second briefing. It was a question of timing arrangements of which the Leader of the Opposition determined insofar as he allocated the time at which he was available to receive Mr Metcalfe.

Senator CASH: In hindsight, Mr Metcalfe, do you think it would have been more appropriate to brief the Leader of the Opposition before the media was briefed?

Mr Metcalfe: It is probably not appropriate for me to comment on that, Senator. I did what I was asked and I saw no problem with that. I was asked to provide what I would regard as a fairly detailed briefing of a number of media representatives to assist their understanding of a complex issue. I was also asked to be available to brief the Leader of the Opposition. I did both things and I did them professionally. There were others with me—the Ambassador for People Smuggling Issues and a number of other senior officers were present. It is unfortunate, I think, that the media attempted to regard the one briefing as indicating what I was going to be saying to the Leader of the Opposition. The Leader of the Opposition has been proper, professional and cordial on the two occasions I have met him, and I am very pleased that that is the approach he has taken.

Senator CASH: The purpose of the briefing to the media was a political one. The request came from the chief of staff to the minister. Why would you agree to give a political briefing?

Senator Carr: There is an assumption built into your question, Senator Cash.

Mr Metcalfe: I did not see it as a political briefing.

Senator CASH: Even though it was an off-the-record discussion with the media. If you wanted to be so upfront why not hold a press conference and be transparent?

CHAIR: Senator Cash, I think Mr Metcalfe has already indicated he was requested to do that and he has, on transcript, already specified that he was doing what he was asked to do.

Mr Metcalfe: That is correct, Senator.

Senator CASH: I will direct my question to the minister then. Minister, would it not have been more appropriate that rather than an off-the-record briefing by the head of the department, a public servant to the media, that the minister not hold a press conference and openly and transparently, as this government likes to tell the people of Australia how it likes to behave, actually provide the information upfront to the media?

Senator Carr: I was not there at the briefing but I think you will find it is not an uncommon practice for there to be much lengthier conversations in a background briefing of a

factual nature, which help people appreciate the complexities of an issue, which sometimes are not available through a formal press conference structure, including the types of questions that are asked and we are demonstrating where journalists do not always immediately appreciate the complexities of an issue. This is a widely accepted process.

Senator CASH: Minister, with all due respect, that is contrary to the evidence that the department's secretary gave when he said that it was actually uncommon for the media to be briefed.

Senator Carr: No, I have indicated to you that it is a common practice in this building for there to be background briefings on complex issues before formal press conferences have occurred, and it is certainly common after formal press conferences are held.

Senator CASH: Mr Metcalfe, I understand that you were requested by the chief of staff of the minister's office to provide this off-the-record background briefing to the media prior to briefing, formally, the Leader of the Opposition. Why did you agree to provide such a briefing as a public servant to the media?

Mr Metcalfe: I saw that it was perfectly appropriate for me to provide information to the media on that basis noting carefully what I describe as the quite different nature of the two briefings as I indicated earlier. As Senator Carr has indicated it is not uncommon for officials or experts to provide contextual information to the media on the basis that they are not identified. Mine is not normally a public media role—Senate estimates tends to be the highest profile I take. On any of these issues it is absolutely proper. I consulted, I must say, with senior colleagues to ensure that they were comfortable about me undertaking such a briefing and it being completely appropriate in terms of APS values and responsibilities. I was advised that it was quite proper to do so.

Senator CASH: I want to turn back to the discussion that we had today. I have had a look at my notes over the break and I need to confirm a few of the issues that were raised. Has the department ever provided advice to government on the cost of moving to bridging visas, community detention and onshore processing—what I have personally described as the Green solution—as a package of measures for IMAs that was announced last Thursday evening?

Mr Metcalfe: I am going to say yes in relation to the way that you have quite carefully phrased that question.

Senator CASH: When was that advice provided?

Mr Metcalfe: I will have to take that on notice as to the timing of that advice.

Senator CASH: Did you provide the advice personally?

Mr Metcalfe: I have certainly had conversations with the minister but there would have been other officers who were involved in providing the advice as well.

Senator CASH: Was the advice provided prior to the announcement last Thursday evening?

Mr Metcalfe: Yes.

Senator CASH: How far prior to last Thursday evening?

Mr Metcalfe: I have taken that on notice.

Senator CASH: I have to say in relation to such a major policy announcement I find it very surprising that you are unable to advise the committee when the advice was actually given.

Mr Metcalfe: I have indicated that—

Senator Carr: He will check the date. It is a simple request and a simple answer has been given.

Senator CASH: On the basis that your evidence to the committee is that you have provided that advice and it was provided prior to the announcement last Thursday evening what then was the cost?

Mr Metcalfe: The cost of providing the advice?

Senator CASH: No, the cost of moving to bridging visas, community detention and onshore processing.

Mr Metcalfe: I have said that the advice that was provided was in relation to broad parameters. We discussed earlier, I think, with Mr Sheehan the process for firming up the cost in a way that is able to be presented through the initial estimates process. Just to go back on some of the points that I raised earlier, clearly, there are a range of issues that go to the funding of the portfolio that are now in place that were not in place at the time of the budget. There is the issue of arrival numbers and the issue of whether people are detained for long periods or whether they are provided with bridging visas and whether the form of detention is held detention in detention centres or whether it is community detention. Another factor is the reduction by 1,000 places of the original 14,750 number that was in the budget for offshore humanitarian arrivals to return to the long-term number of 13,750—that is a couple of hundred million dollars in savings. There is the fact that costs that were to be expended for Malaysia will no longer be expended because that arrangement cannot proceed under the law as it currently stands. So there are a number of ons and offs. Of course, the general working view is that for people in community detention centres there is less cost than if they are in detention centres where there are high security and other costs associated with that. All of those matters are now the subject of detailed work.

Senator CASH: You have confirmed that the government did ask for the advice prior to Thursday.

Mr Metcalfe: The minister did, yes.

Senator CASH: And that the department provided the advice. Was there a cost estimate provided in the advice and what was it?

Mr Metcalfe: I have indicated that there were general estimates and that the detailed estimation work, now that the government has arrived at a policy position, has been done. I think I have explained quite expansively the various factors that are being taken into account in that.

Senator CASH: The government sought the advice. You provided the advice. It was prior to last Thursday evening, and you have taken it on notice to provide exactly when that advice was to be provided. The government have known for a number of weeks now that their legislation in relation to the Malaysian solution was not going to pass the Senate. Was this the plan B? Was this what the government was working through as plan B?

Mr Metcalfe: I said earlier that it was not appropriate for me to talk about policy issues, and in confirming or denying that I think I would be straying into that territory. So I will respectfully decline to answer your question.

Senator CASH: But certainly the cost estimates have been provided to the government.

Mr Metcalfe: Broad indications of the variations that are likely with—

Senator CASH: In relation to those broad estimations of the variation, is there likely to be an increase in the costs to this department as a result of the failed Malaysian solution?

Mr Metcalfe: That will ultimately depend upon the actual arrival numbers that we see. Clearly there are significant savings. Sadly in my view, we are bringing 1,000 fewer people from overseas than we otherwise would have, and we will need to be spending more resources on people who arrive through a self-selection process. The decision that some people in detention should be able to support themselves by being on bridging visas clearly represents some more savings than if they were in held detention. So it becomes a factor of arrival numbers. As you know from Mr Sheehan's evidence, that is a process that is now being worked through with the Department of Finance and Deregulation.

Senator CASH: But certainly my understanding is that both the department and the minister have said that they anticipate that an additional 600 IMAs a month will arrive in the wake of the failed Malaysian solution. On that basis, if we are looking at an extra 600 a month times 10—6,000—

Mr Metcalfe: I have made no comment as to that issue other than to say in my briefing to a number of media representatives that, in the absence of an effective offshore solution, we could see a return to the sorts of numbers that we saw last year.

Senator CASH: Did you mention the number 600?

Mr Metcalfe: I did. I said that that was—

Senator CASH: So what I said was actually fair: you have estimated that—

Senator Carr: It is context; it is all about context.

Mr Metcalfe: Senator, I think that, if I had not responded in the way I did just then, you would have been suggesting that I had given advice about that arrival number subsequent to the decision last week or as part of the decision last week. I have simply said that if you have a look at all of the issues—the push factors, the disruption issues and the fact that some people in the region are clearly indicating that they plan to come to Australia because the Australian parliament has been unable to put the law back in the way that it was in 2001—then we could see a return to the sorts of numbers we saw last year.

Senator CASH: Which were 600 a month.

Mr Metcalfe: On average.

Senator CASH: Yes. You have now said in evidence that you have provided advice to the government in relation to the costs of the potential onshore solution, including the bridging visas and the community detention.

Mr Metcalfe: Broad advice.

Senator CASH: When, then, will the cost of this new combination of measures be known and advised?

Mr Metcalfe: We have covered that already, but the formal process is that there will be across all portfolios a standard budget update, and the cost will be known then.

Senator CASH: So the minister has the information in front of him.

Mr Metcalfe: The minister has broad information.

Senator CASH: Yes, and there is a process to be followed.

Mr Metcalfe: We are going through detailed work at the moment.

Senator CASH: Just confirming the evidence that I was given this morning, the minister has not asked for this process to be expedited?

Mr Metcalfe: I have not spoken to the minister this morning, and clearly he has been pretty busy in the last few days. It is up to him as to whether he wishes to vary from the standard process.

Senator CASH: But to date—if you have not spoken to him this morning—he has not requested that this process be expedited?

Mr Metcalfe: Not that I am aware of.

Senator CASH: Did the government seek advice on the alternative of adopting the coalition's proposed approach when you were providing this overall advice to the government prior to last Thursday?

Mr Metcalfe: That goes to an issue of policy advice. It is really not appropriate for me to get drawn into all of that. I am sure the government looks carefully at all of its various options and issues and it has come to the conclusions that it has.

Senator CASH: Has the department provided any advice on the coalition's costings? You have advised that you have provided advice to the government of the cost of moving to bridging visas, community detention and offshore processing for the IMAs. Did the department provide any advice on the coalition's proposal?

Mr Metcalfe: The department was asked to provide some broad advice in terms of re-establishing processing on Nauru and the cost of processing people on Nauru. I think that material was released by the government some weeks ago.

Senator CASH: So you did provide advice to the government on the reopening of Nauru.

Mr Metcalfe: That is correct.

Senator CASH: Just on the capacity of detention centres—and it may be that this is outcome 4—how long will it be before the detention centres are full under the new Greens solution, as I refer to it as, adopted by the government last Thursday?

Mr Metcalfe: It is probably best covered under outcome 4, but I think my answer later will be that there are many moving parts. It depends on arrival numbers; it depends on acceptance rates; it depends on processing times; it depends on the availability of new facilities coming on stream—you are well aware of new facilities coming on stream in the near future; and it depends on the number of people granted bridging visas or moved into the community. So there are so many variables in that factor.

Senator CASH: Just in relation to the cost process and the additional estimates process, the next set of estimates is not until February. Is that when you intend to make the announcement on the additional costs?

Mr Metcalfe: No, I think Mr Sheehan or Ms Wilson can tell us about the mechanics. I think the next estimates in February are to examine the additional estimates that have been previously published. So my expectation is that the budget update or the additional estimates would be some time before February because of the fact that those estimates hearings are to look at what is in those documents and so forth.

Senator CASH: Can I just confirm again that, when the government were weighing up their option last Thursday, the department had been asked to provide advice on the Greens solution which was the onshore processing but there had been no request for advice on the coalition's solution—the advice that you referred to on the reopening of Nauru had been previously provided?

Mr Metcalfe: No, I have not said that.

Senator CASH: Could you confirm with me exactly what you said so I do not misquote you?

Mr Metcalfe: I said we were given a range of policy advice and I do not intend to go into that policy advice. I did indicate in relation to your particular question that we were asked for some figures on the cost of resuming processing on Nauru. That work was done by our financial and other experts. That was provided to the minister, who has then made that information publicly available.

Senator CASH: When I have been asking you about potential increased costs, you have referred to potential savings that will be made as a result of the failed Malaysian solution. Would you be able to provide to the committee on notice the quantification of the savings that you are referring to?

Mr Metcalfe: That is probably a little more easily done because we know that we will not be bringing the extra thousand people from overseas and there is a figure in the budget associated with that. We know at this stage, unless the law changes, that the transfer arrangements to Malaysia will not take place and there was an amount set aside for that, so you can take that out of the budget estimates as well. We know that, unless the law changes, a processing centre in Papua New Guinea is not possible, so you can take that money out as well. So we are happy to provide that on notice.

Senator CASH: Do you think that those savings will outweigh any potential further expenditure or do you think that we will actually see further expenditure that, unfortunately, outweighs the savings?

Mr Metcalfe: That comes down to the critical point you have identified properly and that is what is the expected number of arrivals factored in. That work is underway, so I no doubt will be able to talk about this in due course.

Senator CASH: In relation to the evidence you gave that you were not able to comment on the nature of the advice sought prior to last Thursday and, in particular, in relation to the coalition's solution, can I confirm that, when the government were weighing up their options last Thursday, the department had been asked to provide advice on the Greens' solution and was then asked to provide advice on the coalition's solution?

Mr Metcalfe: What I can confirm is that we have never been asked to provide advice on the Greens' solution. We have been asked to provide advice on—

Senator CASH: Onshore processing.

Mr Metcalfe: onshore processing, given the failure of the parliament to pass laws restoring the legal position to that understood prior to the High Court decision in M70. What I should say for the sake of completeness, though, is that of course the department has been providing some general advice to the government on options and policies, as the Prime Minister has publicly indicated on a number of occasions, and I can confirm that the Prime Minister's characterisation of that advice is correct and I can confirm that that is the same advice that I provided to Mr Abbott.

Senator Carr: And there have been publicly released figures on the question of Nauru, at something like \$1 billion over four years, so it is quite clear that the advice has in fact been made available to anyone with eyes to see. It would have been \$1 billion over four years for an initiative that had no possibility of succeeding and was, in the government's view, illegal.

Senator CASH: I will take it from that, Minister, that you have just confirmed that you were not the source of the cabinet leak that stated that Mr Bowen actively, during cabinet—

CHAIR: Senator Cash—

Senator CASH: pursued the Nauru option—

CHAIR: Senator Cash—

Senator CASH: and that remains his preferred option.

CHAIR: Senator Cash, I am going to rule that question out of order.

Senator Carr: Don't be silly, Senator Cash. I do not discuss cabinet proceedings.

CHAIR: Senator Cash, Senator Furner has some questions he wanted to ask before we break for lunch so—

Senator CASH: I have some questions on PNG. They will be my final questions, bar one question that I have in relation to costs.

CHAIR: All right. Let us see if we can get them done in a couple of minutes.

Senator CASH: In relation to the estimates process, Mr Metcalfe, can you confirm when we will actually know the costs of the onshore solution?

Mr Metcalfe: That is when the—

Senator CASH: We will be examining them in February, but when will we know, prior to that?

Mr Metcalfe: I will have to get some technical advice as to when those bills would normally be presented, or when the mid-year economic update is provided. It is normally late in the year, and there may well not be a decided date at this time. We will work in accordance with proper guidance from the department of finance, and no doubt it is something we will know about in the next few months.

Senator CASH: Thank you. Minister, in relation to the \$1 billion over four years for Nauru that you referred to, you said that there had obviously been considerable discussion of that \$1 billion—

Senator Carr: Public discussion.

Senator CASH: public discussion—can you please provide to the committee a breakdown of that \$1 billion over the four years.

Senator Carr: I think that has already been done, Senator. I referred to this in the Senate in parliamentary question time—

Senator CASH: Well, then, it will not be difficult to provide that information again to the committee through the Senate estimates process, will it?

Senator Carr: I understood that they have already been published.

Mr Metcalfe: It may be on the public record. We will let you know—

Senator CASH: If you could endeavour to provide this committee with that, that would be appreciated.

Mr Metcalfe: Yes, we are happy to advise you where on the public record it is.

Senator CASH: Ms Wilson, are you going to enlighten us as to when we can expect the costings?

Ms Wilson: I was just going to answer your question about the timing for the additional estimates. We are still waiting on advice from the department of finance, but it is normally the last week of sitting in December or the first week of sitting in February. As I said, we are waiting for formal advice.

Senator CASH: But basically it will be public in February, unless you change the timetable. That is the point in time at which this committee will get to examine the costings—in February.

Mr Metcalfe: That is the whole idea of the February estimates.

Ms Wilson: It is not our timetable, Senator; it is a whole-of-government timetable issued by the department of finance.

Senator CASH: Okay. If I could briefly turn to Papua New Guinea, what is PNG's status as an offshore processing centre?

Mr Metcalfe: Well, nothing is proceeding, given the failure of the parliament to pass legislation, Senator.

Senator CASH: So absolutely nothing is proceeding. Has the government sought advice in relation to Papua New Guinea as an offshore processing centre, following the High Court decision?

Mr Metcalfe: Yes.

Senator CASH: It has. When did it seek that advice?

Mr Metcalfe: I will have to check, but the Solicitor-General, I think, has provided advice on that issue, and I think that has been made publicly available.

Senator CASH: What talks have occurred between the Australian government and Papua New Guinea on the asylum seeker processing centre announced on 14 March?

Mr Metcalfe: There were considerable discussions in the lead-up to that announcement and then subsequent discussions to formalise a memorandum of understanding that was signed soon after the announcement. I was involved in some of those discussions, as was Dr Southern, as were Parliamentary Secretary Marles and other ministerial colleagues. The

Australian High Commission in Port Moresby have done a fabulous job in this area. Subsequent to the M70 decision, we have obviously stayed in touch with Papua New Guinea in relation to the changing state of Australian jurisprudence on the issue. And, of course, subsequent to the announcement on Thursday, there has been contact. Indeed, Prime Minister O'Neill was here around the time these things were happening last week.

Senator CASH: Can I just confirm: at this stage, there has not been a failure of the parliament itself to pass the failed Malaysian solution legislation because the legislation was not actually brought before the parliament.

Mr Metcalfe: It is clear that the legislation is not proceeding at this stage.

Senator CASH: That is a governmental decision. That is not a decision of the parliament.

Senator Carr: Don't be so cute, Senator.

Senator CASH: I am not being cute, Minister. It is a failure of the government not to bring the legislation—

Senator Carr: Are you embarrassed now, are you?

Senator CASH: forward and test it on the floor of the House.

CHAIR: Senator Cash, have you got some questions—

Senator CASH: Is it a failure of the parliament—

Senator Carr: Are you now saying you will pass it?

Senator CASH: Has the legislation been tested on the floor of the parliament?

CHAIR: Senator Cash.

Senator Carr: Is this a new policy from the opposition? You will now pass the legislation?

Senator CASH: Minister, has the legislation been tested on the floor of the parliament?

Senator Pratt interjecting—

CHAIR: Order, Senator Pratt and Senator Cash! If you have got questions about PNG, let us continue; otherwise, I have Senator Furner who wants to ask some questions in this area before lunch.

Senator CASH: Has the advice that has been received by the government on PNG been made public?

Mr Metcalfe: My understanding is that the Solicitor-General was asked to provide advice on the implications of the M70 case, and that opinion from the Solicitor-General has in fact been made public.

Senator CASH: Is PNG as a processing centre still on the table, or is it completely off the table and are we now merely looking at onshore processing?

Mr Metcalfe: Our understanding of Australian law, as interpreted by the High Court of Australia in the M70 case, is that a foreign country essentially must be able to replicate the same adherence to the refugee convention, not only in being a signatory but in practical effect, by having developed domestic laws in the area, and neither PNG nor Nauru are able to fulfil those criteria. That would appear to be the advice of the Solicitor-General. If there is doubt on that, it is a very small doubt. The view of the government has been that you could

therefore not responsibly expend tens or hundreds of millions of dollars on an issue that could well be in severe legal doubt.

Senator CASH: Could the government's proposal for PNG, based on the evidence you have just given on the decision of the High Court, actually be implemented if the government was to accept the coalition's amendment? Would that legislation then allow PNG to be utilised as an offshore processing centre?

Mr Metcalfe: I think that there is real doubt in that sense, because PNG, while it is a signatory to the refugee convention, does have a number of important reservations. The key fact from the M70 case is that the court regards it as an objective fact to be determined by the court—I repeat, 'to be determined by the court'—as to whether or not another country meets the requirements the court has discovered in section 198A of the Migration Act. The court regards the legislative developments 10 years ago as in fact having imported into Australian law adherence to all aspects of the convention and as requiring any action taken in relation to removing people from Australia to meet all aspects of the convention. I think the Solicitor-General canvasses that in his opinion in far more eloquent terms. The practical effect is that there would be very few other countries in the world where, under the current law, one could responsibly go about extending offshore processing without the amendments to the legislation that have been proposed.

Senator CASH: Has the government sought advice of the department in relation to the coalition's amendment and its effect on PNG and offshore processing?

Mr Metcalfe: I think I answered earlier that ordinarily I do not provide to this committee details of policy advice.

Senator CASH: The coalition's amendment simply requires that a country has signed the convention and the protocol, as confirmed by Mr Bennett QC. So where is the actual doubt, then?

Mr Metcalfe: If you read the current Solicitor-General's advice, he has worked through the issue. Of course, it is not just his advice; he has advised on these matters in the company of Mr Stephen Lloyd SC and with the benefit of extensive knowledge in the area. I think the key point is that mere signature or ratification of the convention and protocol is not sufficient; the court requires substantially more than that.

Senator CASH: Based on that evidence, would it be fair to say that, unless the legislation goes through the parliament, PNG as an offshore processing option has been effectively abandoned by the government?

Mr Metcalfe: That is right—PNG and Nauru.

Senator CASH: PNG and Nauru have been abandoned by the government? So the policy position is onshore processing.

Mr Metcalfe: The current state of Australian law—the same law that was used to implement the Pacific strategy in 2001—would, now that it has been examined by the High Court, no longer be able to sustain those arrangements.

Senator CASH: Is your evidence that there is doubt about PNG being able to be used as an offshore processing centre under the coalition's amendment based on specific legal advice that the department has received?

Mr Metcalfe: That is going back to another way of asking the same question. What I have said is that the Solicitor-General has provided written advice to the government which has been made public, and I think that provides the answers to the questions you are asking.

Senator CASH: What I am looking for, though, for the purposes of the evidence is—so I do not misquote you—whether, under the coalition's amendment, PNG could proceed. Do you have definitive legal advice that it cannot?

Mr Metcalfe: I understand—and I would refer you again to the Solicitor-General's opinion—that the Solicitor-General believes that there are very substantial doubts.

Senator CASH: But that advice was presented before the coalition's amendment was actually put forward, so the Solicitor-General himself has not actually commented on the coalition's amendment.

Mr Metcalfe: I just do not have knowledge of that. But, as I have said, whether or not a particular amendment would overcome the views of the court—which clearly is applying a very high test of adherence to all aspects of the convention in terms of signature and ratification as well as practical implementation—appears to relate to the issues associated not only with asylum seekers but also with persons who have been found to be refugees. That is where there are some important exceptions to the ratification of the convention by PNG.

Senator CASH: You have referred on several occasions to the Solicitor-General's advice that was received by the government. Has there been any subsequent advice from the Solicitor-General?

Mr Metcalfe: I would have to check on that.

Senator CASH: As head of the department, you are not aware of whether subsequent advice has been received from the Solicitor-General?

Mr Metcalfe: I am aware of lots of things, but I have just said that I will check on that.

Senator CASH: If the only advice that you are referring to is the initial advice received from the Solicitor-General, it would be fair to say that the government then has no legally based opinion on whether or not the coalition's amendment could actually proceed, and under that PNG could be used as an offshore processing centre.

Mr Metcalfe: I do not think it is appropriate for me to respond to that.

CHAIR: Senator Cash, have you finished in that area?

Senator CASH: Could I just ask this: to date, what has the Australian government actually spent on pursuing the PNG option?

Mr Sheehan: It has spent \$60,807.

Senator CASH: Is that the absolute total, taking into account everything that could possibly fall into the PNG offshore solution?

Mr Sheehan: I would say they are direct costs associated with expenditure to 30 September.

Senator CASH: What would be the indirect costs?

Mr Sheehan: There would be management costs, obviously, which would not be allocated at this point. The majority of costs would be for travel in charter flights and that type of expenditure.

Senator CASH: Thank you.

Mr Metcalfe: I know we are very close to lunch, Chair, but I can add some information to a question I took from Senator Cash earlier. I will leave it to you but given that it might be getting late for Senator Furner to start a new line of questioning.

CHAIR: It is. If you want to give us that answer, we will then break for lunch.

Mr Metcalfe: Senator Cash asked me earlier about mortality rates associated with irregular maritime arrivals. I can indicate that we have had two recent waves of arrivals. In 1999-2001 we had around 12,000 people arrive in Australia. In 2009 to current we have had just under that, about 11,500 so far. We know of the following documented tragedies. There was SIEVX, of course, in 2001 with a loss of 353 men, women and children. We know that several elderly asylum seekers near Ashmore Reef died in 2001 when their boat sank, we think as a result of sabotage. We know of SIEV36 in 2009 when an onboard explosion resulted in five men dying. Several suffered serious injuries and burns and several Australian personnel received injuries narrowly avoiding death. We know that as many as 12 Sri Lankans died in 2009 in the Indian Ocean when their boat sank before they could be rescued by a commercial tanker sailing towards it in response to a distress call. We know that up to five men died when they left their stricken vessel in the Indian Ocean north of Cocos Island in 2010 and set sail atop an inner tube in an attempt to reach land, which was unsuccessful. We know that SIEV221 in December 2010 crashed into the rocks at Christmas Island with a known death of 30 men, women and children and possibly as many as 20 more people.

There are also strongly credible reports of up to 100 people dying in 2009. Those reports are from refugee advocates regarding a people-smuggler vessel that sank shortly after departing Indonesia. That is around the 500 or so figure, Senator Cash, that I was talking about. We do know from broader rumours and reports that there are other vessels that have left or have not arrived, and I think that is where the figure of 1,000 comes from. Certainly, this is a very tragic area to work in, and that is why I think there has been strong commitment from many people to try and find other ways of responding to these issues.

CHAIR: We will now break for lunch.

Proceedings suspended from 12:32 to 13:33

CHAIR: We will now resume this hearing of the Senate Standing Committee on Legal and Constitutional Affairs and our inquiry into the supplementary budget estimates. We are still on outcome 2 as far as I am aware.

Senator HANSON-YOUNG: The bulk of my questions are probably more aligned with outcome 4, which is what I thought what we were going to. I realise the last 45 minutes or so of Senator Cash's questions had veered from outcome 2 anyway.

CHAIR: Senator Hanson-Young, we will proceed with your questions.

Senator HANSON-YOUNG: I want to start with getting some details around the media protocols of the department. Is there a specific policy that you have in relation to media access to detention centres?

Mr Metcalfe: Deputy Secretary Moorhouse, who is responsible for detention issues, and Ms Wilson, who is responsible for the media issues, will answer the questions.

Mr Moorhouse: The department has been preparing a protocol for media visits to detention facilities and my colleague Ms Wilson can talk about that particular protocol. If there are journalists who wish to visit detention facilities, their visits would normally occur under the same guidelines that would apply to any other visitor. In other words they would be required to nominate the person they wish to visit and that person would have to consent to meeting with them. It is possible for journalists to visit detainees in the normal way that any other person would do so. They are also subject to the general restrictions on entry such as not being able to bring recording devices and cameras into the facility. That may be varied under the media protocol that is being developed, but I will leave that to my colleague to talk about.

Ms Wilson: I will add to Mr Moorhouse's comments. We did have a policy in place but that was developed in the time when there were low numbers of people in detention. In managing privacy of clients and all of that, that could be more easily achieved. We are in the process of finalising a policy which reflects the current pace of detention which takes into account operational needs, the privacy of the clients and how we facilitate access and do it in a way so that people do not feel they are on a public show every time a group of people come through the centre. We are in the process of finalising that and, as Mr Moorhouse said, there will be some agreements reached with the media being taken through a facility such as not filming an individual person's face, not filming certain features of a centre, the department having access to view the film that is taken prior to any agreement for it to be released. There is a whole range of things like that that will be considered.

Senator HANSON-YOUNG: When did the protocol start being drafted?

Ms Wilson: Probably about six to nine months ago.

Senator HANSON-YOUNG: There is currently no protocol; is that what you are telling me?

Ms Wilson: The current protocol, as I said, reflects an old protocol which was in place with a limited number of clients in detention.

Senator HANSON-YOUNG: How old is old?

Ms Wilson: Several years old but I can get that for you on notice.

Senator HANSON-YOUNG: Was that a formal protocol and a formal policy?

Ms Wilson: It was a departmental document that has been cited in the press before.

Senator HANSON-YOUNG: At the moment that is what currently stands because nothing has replaced it, or have you withdrawn that policy?

Ms Wilson: We are in the process of releasing our new policy. We are in the final checks of doing that.

Senator HANSON-YOUNG: If media went to the detention centre today, what policy would they have to abide by? What would your staff use to manage that incident?

Ms Wilson: As I said, we are actually trying to improve access for media to centres but it is also subject to operational requirements. We will try and implement some of the new things we are talking about as part of any engagement that happens now.

Senator HANSON-YOUNG: When was the last time media was given access to a detention centre?

Ms Wilson: Earlier this year to Inverbrackie, is my understanding, is the visit that comes to mind.

Senator HANSON-YOUNG: What about the Villawood Detention Centre? When was the last time media were allowed access to Villawood?

Mr Moorhouse: There has been a media tour of the Pontville facility. I would add, Senator, that there have been a number of journalists who have visited detainees in detention facilities on the same basis, which I mentioned earlier, that any other individual would visit a facility.

Senator HANSON-YOUNG: As an individual?

Mr Moorhouse: That is correct.

Senator HANSON-YOUNG: When was the last time there was an official media inspection or visit to Villawood Detention Centre?

Ms Wilson: We will have to take that on notice.

Senator HANSON-YOUNG: When was the last time the media had access to any of the Christmas Island detention facilities?

Ms Wilson: Again, we will have to take that on notice.

Senator HANSON-YOUNG: Were there people in the two facilities you visited—that is, Pontville and Inverbrackie?

Ms Wilson: Not in Pontville, but in Inverbrackie there were.

Senator HANSON-YOUNG: Who has unfettered access to detention facilities?

Ms Wilson: In what way do you mean unfettered?

Senator HANSON-YOUNG: Mr Moorhouse said a journalist can go to a detention centre, but all they can do is register to visit an individual. They have to know the individual's name and boat number and they have to fill out a visitor form. They then get into the visitor section as they are not allowed beyond that. Who does have access beyond the visitor centre?

Mr Moorhouse: There are a number of bases for having access. Generally it is whether a person has business there. For example, Serco staff and DIAC staff would have relatively free access to the facility because they have business reason to be there. For other contractors, such as Life Without Barriers which deals with unaccompanied minors and IHMS which provides health services to people, the Serco contract specifies that the Australian Human Rights Commission and the ombudsman, from memory—I am not sure if others are specified—should have visits facilitated. Essentially we do want to make it possible for people to visit. The concern is issues relating to privacy, security and refugee status or refugee claims. Those are the reasons why the access to the facilities is restricted.

Senator HANSON-YOUNG: The 2009 Joint Standing Committee on Migration report into immigration detention facilities recommendation No. 11 specifically talked about the need to increase transparency in immigration detention facilities, provide media greater access, publish regularly updated information and develop a set of media protocols to apply consistently across all detention facilities. Government has not responded to this report, let alone this recommendation. When do you think there will be an official response?

Mr Moorhouse: First, from the department's perspective we are keen to be as open and transparent as possible within the parameters of the concerns I mentioned earlier relating to privacy, security and the claims to refugee status—in other words, not allowing the development of sur place claims. Those are the three things that cause us to adopt an approach that is not entirely open. The development of the media protocol is a reflection of our desire to have a greater degree of openness, as well as the recommendations of other bodies if that should occur. As Ms Wilson mentioned, we are in the final stages of developing that protocol. It essentially exists in a draft form. It is now a matter of it being applied to facilitate visits. My understanding is that we are looking at facilitating visits to Villawood in the near future. There are some discussions in that regard.

Senator HANSON-YOUNG: Where is the protocol up to? Is it with the minister's office?

Ms Wilson: A final version is being circulated for comment. We are trying to make sure it reflects the operational needs as well as enabling us to deliver access to all the centres in a consistent manner. We are looking at things like whether it needs to be slightly different for an IDC as opposed to an IRH as opposed to an ITA. Can we provide equal access? How does that work? How will we manage the operations and the operational tempo while we are doing that?

Senator HANSON-YOUNG: Is the protocol with the minister's office?

Ms Wilson: I understand it is with the department. As I said, we are just putting the final touches to it.

Senator HANSON-YOUNG: Has it been to the minister's office?

Ms Wilson: We have consulted with the minister's office on it.

Senator HANSON-YOUNG: Who will finally signed off on it? Will it be Mr Metcalfe or will it be the minister?

Mr Metcalfe: It will be the minister. The minister has made it very plain he wants to finalise this matter and we are right at the final stages of it in terms of having something that can be put into operation.

Senator HANSON-YOUNG: So it has been to the minister's office, it has come back, you might tweak something and then it will go back to him for final—

Mr Metcalfe: Final dotting of i's and crossing of t's. I expect the minister will be making some announcements or unveiling it fairly soon.

Senator HANSON-YOUNG: Ms Wilson, you spoke about the fact that the currently existing protocol—do you call it a protocol or do you call it a policy?

Ms Wilson: I think we have been calling it a protocol.

Senator HANSON-YOUNG: The old protocol was in place at a time when there were not as many people in detention, so will the new protocol have more restrictions or fewer restrictions on media access?

Ms Wilson: I think what we are trying to do is enable some of the things we have just been talking about, such as people filming in the centre and taking recording devices into the centre—the kinds of things that journalists use in the course of their activities—but building in appropriate arrangements to manage privacy, confidentiality and all of those things as well.

Senator HANSON-YOUNG: So they may be able to have more access in some regards.

Ms Wilson: That is right.

Senator HANSON-YOUNG: I would like, on notice—I assume you will need to do it on notice—to know when that access was last given to media at the Christmas Island detention facility, both North West Point and Construction Camp; Villawood; the Darwin immigration detention centre; Curtin; and Maribyrnong. You can include the two that you have already included as well.

Mr Metcalfe: We will take that on notice.

Senator HANSON-YOUNG: Thank you. I assumed you would have to. Does the department keep a record of when a media breach has occurred—if these protocols have been breached at all or there has been an incident?

Mr Moorhouse: One of the requirements of Serco is to identify or report to us when there has been an unauthorised media presence at a DIAC facility. It is important to understand that the reason for that is not that we are trying to stop the media or the community from knowing what happens in detention facilities. It is for the reasons that I mentioned before: that there are significant issues relating to individual privacy, to the security of the facilities and to the integrity of the immigration program—in other words, trying to avoid the creation of sur place claims. It has been the subject of some media interest that unauthorised media visits are seen as a critical incident in certain contexts within a facility. That label is what it is within the contract, but essentially what it reflects is that the contractor—the detention services provider—is required to notify the department in all instances where there has been unauthorised media access.

Senator HANSON-YOUNG: Has there been any unauthorised media access in the past six months at any of the facilities?

Mr Moorhouse: There have been a number of reports. I see the situation reports, and I have seen a number of situation reports of people taking film or camera shots from outside the fences inside the facility. There has also been the reported incident—

Senator HANSON-YOUNG: Just so this is clear for *Hansard*, photographers outside the perimeter were shooting—

Mr Moorhouse: Shooting inside—correct. Also, there was the incident on Christmas Island that resulted in quite a lot of media interest where one media crew attempted to use what people have described as a drone—an automated helicopter with a camera—to fly over North West Point and take photographs of North West Point.

Mr Metcalfe: That is a highly dangerous undertaking, because I understand that that drone subsequently crashed into the cliffs at Christmas Island when they were attempting to, essentially, get footage of what it would have looked like for the people who were drowning—what they would have been seeing. Fortunately it did not crash and hurt anyone. So it was quite an irresponsible thing to do, frankly—to fly an unmanned vehicle, even if it was fairly small, over a place where people are present.

Senator HANSON-YOUNG: What happens when there is a breach in terms of unauthorised media access? Who is notified?

Mr Moorhouse: It would be notified in an incident report. That would form the basis of a situation report to the department and also an inquiry within the facility to make sure it had been handled properly. So Serco are notified, the department are notified and the recipients of situation reports—and there is quite a wide circulation list within the department and some other relevant agencies—are notified.

Senator HANSON-YOUNG: Is the minister's office notified?

Mr Moorhouse: They are the recipients of situation reports, yes.

Senator HANSON-YOUNG: So they would find out pretty much straight away?

Mr Moorhouse: The minister's office would be aware of it pretty quickly, yes.

Senator HANSON-YOUNG: How many requests for media access has the department received in the past six months?

Ms Wilson: We would have to take that on notice.

Senator HANSON-YOUNG: Is that something you would log?

Ms Wilson: We would probably have it in on a file or in an electronic format.

Senator HANSON-YOUNG: Could you also take on notice how many requests were made and how many were approved in the past six months?

Ms Wilson: Yes.

Senator HANSON-YOUNG: Thank you. What happens when there is a request? Where does it go?

Ms Wilson: A request is handled by our national communications area, who would then talk to relevant people affected, like Mr Moorhouse's operational area and the centre manager, to get advice on what is going on in relation to the centre and what the operational pressures are and talk broadly about the terms of the request.

Senator HANSON-YOUNG: Is the minister's office asked to sign off on any request for media access?

Ms Wilson: The minister's office is certainly consulted in that process.

Senator HANSON-YOUNG: Does the department have a protocol regarding the use of Twitter by department staff?

Ms Wilson: We do have a policy in relation to social media in general. It specifically mentions access to Twitter as well.

Senator HANSON-YOUNG: Can the committee have a copy of that protocol please?

Ms Wilson: Certainly.

Senator HANSON-YOUNG: Has there been a breach of that protocol in the past 12 months? Has anyone had to receive any disciplinary action?

Ms Wilson: Not to my knowledge.

Senator HANSON-YOUNG: I would like to move on to some other areas within outcome 4. I see we have had an immigration detention statistics report released in the last couple of weeks for September. There did not seem to be a report for August. It went July and September. Is there a reason for that?

Mr Moorhouse: I would need to consult with one of my colleagues in relation to that. The report is not published by my group. We could look into the reason why was not published in August.

Senator HANSON-YOUNG: I want to go to the statistics report. Rather than getting you to read them all out again, I will look at the areas that you have not included. There are no statistics in relation to unaccompanied minors. Is there a reason why you log the numbers of men, women and children, you log the nationalities and you log how long people have been in there for but you do not actually give us any breakdown of the statistics for unaccompanied minors?

Mr Moorhouse: The publication of the immigration detention statistics summary is an attempt to provide information that is accessible to people who are interested and provide them with reliable information about people in detention. The reason why it would not have been published in August I guess would have been because of the need to ensure we have reliable information, the capacity to publish it and so on. I am not aware there is any specific reason why particular data fields are not included. If there were a request to include them then we could report on that.

Senator HANSON-YOUNG: Is anyone else from the department able to give an answer as to why you do not include unaccompanied minors?

Mr Metcalfe: I am not familiar with the reason why they are not included. I am happy to look at whether that should be included.

Senator HANSON-YOUNG: Thank you. Given that it is not, can I get you to give us a run-down? I assume you have them.

Mr Moorhouse: Yes.

Senator HANSON-YOUNG: Can give us a run-down of the numbers of unaccompanied minors in the various facilities?

Mr Moorhouse: I will give you the headline numbers and leave it to Ms Pope to give you the detail. Essentially, as at 10 October, we had 397 minors in immigration detention facilities. That 397 is split into 106 on Christmas Island—so they are people who have arrived relatively recently—and 291 on the mainland. Again, most of those would have arrived relatively recently. As at 10 October, we had 459 minors in community detention. I will leave it to Ms Pope to give you more precise details.

Ms Pope: I have some updated figures from Mr Moorhouse's. As of today there are 393 children recorded as being in detention facilities. But 57 of those are in the process of transferring into community detention. When you subtract those, the total is 336.

Mr Metcalfe: Just for the record, you know that none of those are in detention centres? They are in alternative places of detention—

Senator HANSON-YOUNG: It is an argument we will continue to have forever I think, Mr Metcalfe.

Mr Metcalfe: —according to the classification we have.

Ms Pope: Of those, 180 are unaccompanied minors and 156 are children in families. I can give you the breakdown by location.

Senator HANSON-YOUNG: Yes, please.

Ms Pope: These are the unaccompanied minors I have the figures for, and they are without the adjustment for those currently transferring. There are 49 on Christmas Island, 45 in Darwin—in the DAL—73 in Leonora, 33 in Port Augusta and one in the Sydney IRH.

Senator HANSON-YOUNG: Thank you. What compound are the 49 on Christmas Island being held in?

Mr Moorhouse: As far as I am aware, all the minors are in the construction camp.

Senator HANSON-YOUNG: So no-one is in Lilac?

Mr Moorhouse: No, not at the present time. There were people held in Lilac for a short period of time during the period when people were arriving who were potentially subject to the Malaysian agreement.

Senator HANSON-YOUNG: Okay. But Lilac is not currently being used?

Mr Moorhouse: No.

Senator HANSON-YOUNG: The 57 minors you said were currently being transferred, is that 57 who have signed their forms or is that 57 who are on a bus or a plane somewhere?

Ms Pope: That 57 have been approved by the minister and now are in the process of being transferred. It can take a little while to put arrangements in place to actually move them into their accommodation. But they have addresses they are moving to and the minister has approved their placement.

Senator HANSON-YOUNG: Could I ask for a breakdown on the logged incidents of self-harm since July?

Mr Moorhouse: From 1 July to 30 September there were 288 incidents of actual physical self-harm, not taking account of voluntary starvation, by people in immigration detention or in community detention. I can give you a slightly greater breakdown of that. Did you just ask for the total number or were you—

Senator HANSON-YOUNG: If you have got the breakdown.

Mr Moorhouse: I have additional figures. There were 639 cases of threatened self-harm, 48 cases of attempted serious self-harm and 289 cases of actual self-harm up to 30 September.

Senator HANSON-YOUNG: Where did the majority of those incidents occur?

Mr Moorhouse: Approximately 50 per cent of the actual self-harms occurred at North West Point—140—and 343 of the threatened self-harms occurred there. The next most significant was at NIDC in Darwin where there were 77 actual self-harms and 136 threatened self-harms. The next one, by some distance, was Curtin with 31 actual and 41 threatened self-harms.

Senator HANSON-YOUNG: In relation to the numbers of people that have come from different places that you have in detention, the statistics from 30 September talk about 101 Vietnamese nationals being held in immigration detention: 20 females under the age of 18, so 20 female minors, and 26 male minors. I presume the rest are adults. Where are the bulk of those 46 children being held?

Mr Moorhouse: I will ask my colleague Ms Pope to give you precise details. Most of them are held either in the Port Augusta facility or they are in community detention. They are in the community.

Ms Pope: There are 39 Vietnamese minors being held in alternative places of detention at the moment. There are six in the DAL in Darwin and 33 in Port Augusta. Those six are in the process of being moved to Port Augusta. There are 12 in community detention, although only seven of those are now considered to be minors. Five have been found to be adults. In the total number that originally arrived there have been a number of clients abscond from that Vietnamese case load, 10 from community detention, seven from the MITA in Melbourne and two from Port Augusta.

Senator HANSON-YOUNG: So the whole 39 will be in Port Augusta?

Ms Pope: Yes.

Senator HANSON-YOUNG: When are those six transferring from Darwin?

Ms Pope: I will have to take that on notice.

Senator HANSON-YOUNG: So out of those 39—currently 33 in Port Augusta—what is the youngest age of the children in that facility?

Ms Pope: I believe the youngest is six.

Senator HANSON-YOUNG: Could I have a breakdown of the age range?

Ms Pope: Yes. I do not have it at the moment, but I can take it on notice. In relation to the Vietnamese case load, it might be worth my giving a bit of an explanation about how we are trying to manage that group because it is quite different to the profile of the other cases in detention at the moment. As I have noted, we have had quite a number of children abscond. They are among the older clients, not the younger ones, so we have had some issues with managing them both in community detention and in the more open facilities. We have also had quite a few issues with age and difficulties in determining which amongst them are adults and which are children.

In addition to that, there is quite a lot of interrelationship claimed between the members of that cohort and, indeed, informal relationships and connections between the younger ones and the older ones.

Senator HANSON-YOUNG: Informal what?

Ms Pope: Relationships and connections. In other words, the older ones are looking after the younger ones and bonds have been formed between them, even though they may not be formally related.

All of those issues make it quite difficult to determine the best way to manage that case load and we are still trying to figure out the best way to deal with that. The 10 that have absconded from community detention have not been found, and we have seven minors and five who were found to be adults still living in community detention now. But because of the rate of absconding we are concerned about placing the other minors into community detention. We were looking at trying to place some of the younger children in foster care, initially, and considering them for community detention, but because they are connected to the older minors, about whom we have some concerns in terms of absconding, we have not moved to do that at this point and we are still working on the best solution for that case load. For those who have absconded, we are concerned about their welfare and we are trying to look at the best way to manage that group.

Senator HANSON-YOUNG: How many children in Port Augusta are under the age of 10?

Ms Pope: I do not have the number exactly. I will have to take that on notice, but it is quite a small number.

Senator HANSON-YOUNG: But there is a six-year-old?

Ms Pope: Yes, and I think there is a seven-year-old, but I will have to get the accurate numbers for you.

Mr Moorhouse: I can add a little bit of context to that. This is an issue that presents the department with a genuine dilemma. There was a boat arrived that almost entirely comprised children. The background to that boat is of concern to the department and the Australian authorities generally, and so we have had to make some careful and considered judgments in terms of how we would handle the children on that boat. It is our normal practice when we have young children to try to place them in community detention as soon as possible. Indeed, that was the practice that we undertook with this group.

It is not normal for people in community detention to abscond. It is relatively rare for that to occur, and so the fact that people did abscond from community detention causes us concern. It raises the issue of whether we should take them back into facilities or leave them in community detention. In particular, given that we do not fully know the circumstances of this group, we have tried to consult with community organisations to try to identify the best way forward. We are still considering that. The reason there are people in Port Augusta is that, while we would normally have moved them into the community, we are not certain that is in their best interests at the present time.

Senator HANSON-YOUNG: I have some other questions around them but I will either put them on notice or come back.

Ms Pope: One other point I will add is that the 10 who have absconded from community detention are the only clients who have absconded from community detention. There are 10 Vietnamese; one in Western Australia and nine in Victoria.

Senator HANSON-YOUNG: In relation to the announcement last week, where is the unused capacity in the detention centres located?

Mr Moorhouse: We have been attempting to reduce the population within detention facilities across the network. We have also been attempting to ensure that people are placed in what you might call the most benign or the least harmful—or the least challenging, if I can put it that way—facilities that we have. We have been attempting to make use of APODs and ITAs for single adult males. At the moment we are trying to reduce the population on Christmas Island in North West Point and in Curtin, NIDC and Sherger. If you wish I can run through some of the places, but they are just numbers. Essentially, what we are trying to do is take the pressure off the network across the board, not to utilise the surge capacity but to bring it back down to the core capacity across the network.

Senator HANSON-YOUNG: Does the unused capacity include the soon-to-be opened new detention centre in the Northern Territory?

Mr Moorhouse: No. The numbers that were quoted at the Prime Minister and the minister's press conference on Thursday reflected the unused capacity within our existing

network. There are a number of things that were not included there—for example, the Lilac and Aqua compounds were not included, nor was the reduced amenity as a result of the fires in Villawood—so it was capacity in centres that we are currently utilising.

Senator HANSON-YOUNG: And the 1,500 beds in Wickham Point were not included?

Mr Moorhouse: No, they were not included, nor was the recent increase in Pontville, which will be coming online in the next week or so.

Senator HANSON-YOUNG: So if you look 12 months ahead the capacity is much bigger?

Mr Moorhouse: It will be bigger. If you look 12 months ahead it will also have come to the point where the leases on some of our properties will have expired as well.

Senator HANSON-YOUNG: So do you have a plan for what you think the overall capacity will be in 12 months time?

Mr Metcalfe: That is a factor of how many people arrive.

Senator HANSON-YOUNG: Let me put it this way: come 12 months time, how many beds do you think we will have across the network?

Mr Metcalfe: Okay. Mr Moorhouse might be able to advise on that.

Mr Moorhouse: It is very much a moving figure. In 12 months time we will have seen the expiry of the lease on Scherger. We will have seen the expiry of the lease on Pontville in 12 months time. We will have had Wickham Point and Yongah Hill come online, so I would need to take the total capacity on notice rather than trying to do the calculation while you are waiting here.

Senator HANSON-YOUNG: If you could take it on notice.

Mr Moorhouse: There are other decisions we need to make in terms of what capacity we will utilise in particular places. For example, the MITA has a notional capacity of 144 but at the present time we are trying to change the nature of that facility to make it a more pleasant and reasonable place to live. We have 76 people in that facility. Seventy-six is the target that we are seeking to use. If we come under pressure then we have the capacity to move it back up to 144. So there are a number of complex issues like that that we need to consider as we move forward. We want to make sure that the detention network, to the extent that we are utilising any facility, is sustainable and healthy for the people who are included. In particular there is the Northern Immigration Detention Centre was initially developed as short-term accommodation for illegal foreign fishers. It has been used as part of our surge capability, and we would need to evaluate the use of that facility in the same way that we are doing with the others that I mentioned.

Senator HANSON-YOUNG: How many people have currently signed their community detention application but are still in immigration detention?

Mr Moorhouse: I will have to get Ms Pope back. She may get to stay here for a while.

Ms Pope: That is a reasonably difficult question to answer. We receive a large number of referrals, as they are called, from case managers. Those do not include at that stage the clients' signing of consent forms. We only move to signing of consent forms when we have accommodation available for the person and their referral is going to go forward. Case managers may have sent advice about clients that they think should be moved into community

detention that we have not accepted and processed yet. This is particularly in relation to single adult men who might be vulnerable. In relation to children and families we would expect to have referrals for all of those cases, and we are working on them at the moment. The number would be for those that are still in APODs as opposed to moved into community detention. I can give you an indication of those numbers based on the number of children we were discussing earlier. But there is no real upper limit on the number of single adult men who could be referred. It is really a question of our capacity to manage them appropriately in the community and to provide the services that they might require.

Senator HANSON-YOUNG: What is the current length of time between somebody signing their consent form and being released?

Ms Pope: That is a relatively short time. I would have to check with my staff to get a clear indication for you, but it is at the stage where we have accommodation provided for them. The remaining step is to put the request to the minister. The turnaround on those is very quick. Then there would be the time it takes to move them into the new accommodation. So a wild guess would be perhaps two to three weeks, but I can give you a better figure.

Senator HANSON-YOUNG: Okay. Is it just the one consent form that an individual detainee signs?

Ms Pope: Ordinarily, although there have been reported incidents of clients signing more than one form and also that clients believe they are referred when they may or may not actually be, so there has been some confusion for clients around that. There is the issue of being referred: as I said, there are a large number of single adult men who have been referred but some capacity constraints about how many we can place at any one time, and we are working steadily through those. So clients would have a perception potentially of waiting longer than the time between signing the actual consent forms and placement.

Senator HANSON-YOUNG: I think you are probably right. Mr Metcalfe, this might be a question for you. Is there an action plan or a brief on what the Red Cross and partner NGOs are going to need in terms of extra support, given the Prime Minister's announcement on Thursday?

Mr Metcalfe: I would not describe it as an action plan or a brief, but we are clearly now working through more detailed considerations and have commenced some discussions with our key advisory group, the council for immigration status and services. Those discussions are now picking up and, frankly, once we are through estimates I expect there will be more discussions with people.

Senator HANSON-YOUNG: The immigration minister last week said that we can expect to see 600 or more asylum seekers arriving each month. Where does that figure come from?

Mr Metcalfe: The figure that I think people have focused on is an average of arrival numbers across the second half of last year.

Senator HANSON-YOUNG: Is that a figure that you have given the minister?

Mr Metcalfe: It is a figure that we have given many people, and evidence to this committee. It is a matter of public record how many people have arrived across that period of time. It is a figure that the minister has used and it is a figure that I used when I was asked questions in a briefing with some journalists last month.

Senator HANSON-YOUNG: Is in some official brief that the department has researched?

Mr Metcalfe: It is, but it is also clear that it is a speculative number, but based upon what happened last year could well happen again and noting that in the past there have been much higher arrival numbers. For example, in the month of August 2001, prior to the arrival of the *Tampa*, well over 1,000 people arrived in that particular month. So it is quite a reasonable figure, but it is not a forecast of the particular numbers. It is a judgment saying that we got that number last year on average and the conditions that we see in terms of people seeking to come to Australia are not dissimilar to what we saw last year.

Senator HANSON-YOUNG: It is not a researched, forecast figure?

Mr Metcalfe: I would regard it as a reasonably official figure, noting that no-one can predict what is going to happen because there are so many variables here. I would argue it is not an unreasonable figure to say that we could receive that number of arrivals in a month because less than 12 months ago we saw that number of arrivals.

Mr Moorhouse: Perhaps I could add that the number used is a number that is used within certain parts of government in relation to the capacity of the people-smuggling networks to deliver people to Australia. In the 12 months of last year there were four months when the number of people coming to Australia exceeded 700 per month; there were other months, particularly when the weather was unsuitable, when the number was down—there were three months when the number was in the 300s. Essentially, if you look at an average, it gives you an average of just under 550 for the 12 months of 2010. So I think it is reasonable to say that the people-smuggling networks have a capacity to deliver approximately 600 a month, and we have seen the numbers arriving exceed that in five months last year.

Senator HANSON-YOUNG: Just to reiterate: this is not a formal, forecasted figure by the department.

Mr Metcalfe: You are seeking to place that tag on it.

Senator HANSON-YOUNG: No—

Mr Metcalfe: What I am saying, Senator, is that it is a figure I have used and it is a figure derived from what happened last year and in the knowledge that people-smuggling networks remain active, Australia remains an attractive destination and there are significant factors leading people to leave home and travel to Western developed countries. Given all of that, it is quite reasonable to expect that we may again see what we saw last year.

Senator HANSON-YOUNG: Okay. Does the department have a research unit?

Mr Metcalfe: Yes, we do.

Senator HANSON-YOUNG: How many staff are in that research unit?

Dr Southern: I do not have the exact figure in my head but it is around a dozen people.

Senator HANSON-YOUNG: Has that research unit ever done an analysis of the numbers of people arriving by boat and what the factors for those numbers are?

Dr Southern: I do not believe the research unit has done a specific piece of work on that but we did cover that in quite a bit of detail in the submissions that we made to the Joint Select Committee on Australia's Immigration Detention Network.

Senator HANSON-YOUNG: That submission was not put together by the research unit though?

Dr Southern: No. They would have been consulted in the preparation of it but, no, they were not commissioned to do that piece of work.

Senator HANSON-YOUNG: Has the research unit ever produced a report on the use of deterrents?

Dr Southern: Not to my knowledge, but—

Mr Metcalfe: I would not regard the research unit as the only people in the department who do work on policy or research related issues.

Senator HANSON-YOUNG: No, but you have a research unit and I am asking whether they have done that research.

Mr Metcalfe: Largely, the research unit do not of themselves undertake research. They commission research from others and work closely with our chief economist and other people who might be undertaking some of that work.

Senator HANSON-YOUNG: Has the research unit ever commissioned any work on the use of deterrents and what the possible responses are?

Mr Metcalfe: Not to my recollection, but we will check and take that on notice.

Senator HANSON-YOUNG: Okay. Thank you. Has the research unit ever looked at the cost comparisons between immigration detention and community based assessment?

Mr Metcalfe: Not the research unit, but other parts of the department have.

Senator HANSON-YOUNG: When was the last time work was done in relation to the cost comparison?

Mr Metcalfe: Quite recently. Now that community detention arrangements are maturing and now that we have a large number of people who have moved in and moved through community detention we are getting a more realistic appraisal of the cost of supported community detention—the Red Cross arrangements and so on—and are therefore able to draw comparisons as to held detention in immigration detention centres or other facilities.

Senator HANSON-YOUNG: I think last time we spoke it was in this forum and you were saying that community detention had not been operating for long enough to be able to come up with those kinds of figures. It is a year now, I guess. So what you are saying is that you are being able to collate the cost savings?

Mr Metcalfe: Whether they are savings or not, we are getting a better picture of the cost. I do not know if Ms Pope can add anything to that or whether it is preferable if we give a more precise answer on notice. I will leave it to her as to how she cares to respond.

Ms Pope: I think is the latter rather than the former. There are still issues to do with throughput and set-up costs and so on that are running through, so I would not yet be confident of generating a per head cost in community detention. But I certainly agree with the secretary that we are getting closer to that.

Senator HANSON-YOUNG: When do you think you will be able to have something that is able to be publicly released?

Ms Pope: It is probably best if I take that on advice from our financial area and give a response on notice, because I think my speculation would be inaccurate.

Senator HANSON-YOUNG: Okay. The cost was an issue that was reported in the *Age* on Saturday, comparing the cost to community detention by Red Cross and partner organisations. The reported cost was \$137,317 per person per year in an immigration detention facility versus 10,400 per person per year in community detention. Do you accept those figures?

Ms Pope: No. We did not generate them and I am not sure how they were derived, so I could not verify those.

Mr Metcalfe: Certainly the second figure sounds extremely low, from our experience. I think that the real cost would be higher than that.

Mr Moorhouse: Senator, if I may add to the answers. Even in relation to held detention we have always declined to provide an average cost per person. The reason for that is there are so many variables. In a particular facility the cost per person can seem extraordinarily high because of the cost of establishing and maintaining that facility with a small population, for example. It is possible to do a comparison by adding everything up and dividing it by the number of people who have been there, but it is not really a meaningful number because it takes into account capital costs and it is very hard to allow for the flow-through of people because people are moving through all the time.

It is somewhat similar in community detention where we are establishing properties. Those properties will be used by multiple families as the people move through them but the establishment costs in terms of buying whitegoods and electrical appliances can make it seem quite expensive at the beginning. Of course, amortised over a period of time with several families moving through, the cost can be significantly reduced. It is not that we are seeking to be unhelpful, it is just that it is very hard for us to provide a meaningful number. Our impression is that community detention is unlikely to be more expensive than held detention.

Senator HANSON-YOUNG: I think you can save money just by getting rid of the 24-hour security and four-hourly head checks would be my guess. This is one of the reasons why it would be good to have some of these figures produced by the department so that there is a very clear understanding of what these types of programs are costing the taxpayer. Ms Pope, if you could get back to us this afternoon in relation to when you think there would be some ability to have some proper costs.

Ms Pope: That will not be in my remit, Senator, but I will certainly discuss with my colleague and see what we can bring back.

Senator HANSON-YOUNG: Thank you.

Mr Metcalfe: Chair, we had one update for Senator Hanson-Young, or a correction, to an earlier answer that we might do now, if that is okay.

Mr Fleming: You were asking about offshore humanitarian program grants out of Kuala Lumpur. I can tell you in 2010-11 it was 490. I think you had a figure of 519 that I said would be close.

Senator HANSON-YOUNG: It was 518, I think.

Mr Fleming: It is 490. Of those Burma nationals 430, Iraq 22; Afghanistan 21; Malaysia eight, and I should say that they are counted against Malaysia because they were born in Malaysia to Burmese refugees; Sri Lanka 6; and Iran 3. You were also after the program year-to-date. To 30 September I think the figure I gave you earlier was a total of 304. It is actually 342 and 324 of them were from Burma and 18 from Afghanistan.

Mr Moorhouse: Chair, I wonder if I could provide some of the information that was requested by Senator Cash this morning? I said I would try to get back with it.

CHAIR: Let us do that and then we will sort out where we are going from here.

Mr Moorhouse: Senator Cash asked what our expenditure on the Serco contract had been in recent times. In the financial year 2010-11 it was \$374.9 million and to 30 September of this financial year it was \$101.052 million. There was another question about variations to the contract, or I discussed the variations to the contract. It is probably best to explain that by saying that the initial contract with Serco, which was signed on 26 June or September, I am not quite sure, in 2009 was for \$368 million. There was a second contract signed in relation to the immigration transit accommodation and immigration residential housing, and that was signed on 11 December 2009, for a value of \$44.45 million. The first variation to the contract did not involve any change in value. The second variation to the contract, which was for the additional capacity at North West Point on Christmas Island and for the Aqua and Lilac compounds on Christmas Island, was for \$345 million. Those numbers, by the way, are over the life of the contract—the \$368 million and the \$345 million.

Senator CASH: So the \$345 million is on top of that?

Mr Moorhouse: No. The contract was \$368 million—

Senator CASH: Yes.

Mr Moorhouse: but, of course, that was at a time when numbers were quite low. The most substantial variation was for \$345 million, which was—

Senator CASH: An additional \$345 million?

Mr Moorhouse: an additional \$345 million over the five-year life of the contract. Another question that I was asked was whether Serco had ever sought to vary or cancel the contract, and it has been confirmed for me by senior officers in our department and in Serco that there has been no request to vary or withdraw from the contract.

Senator CASH: Thank you.

Senator HANSON-YOUNG: Chair, I just have one more area—

CHAIR: One more area in outcome 4?

Senator HANSON-YOUNG: outcome 4—and then I am happy to hand on to colleagues. If there is time for me to come back afterwards, then I can. I am just conscious of taking up too much time.

CHAIR: Okay. You have other questions, though, in the immigration portfolio through the day?

Senator HANSON-YOUNG: Yes, yes.

CHAIR: What is the area you wanted to go to?

Senator HANSON-YOUNG: I wanted to follow up on some of the self-harm stuff, just quickly.

CHAIR: All right. We will do that and then we have to go back and do Senator's Furner's questions, which will finish outcome 2, I think—

Senator CASH: And Senator Brandis's.

CHAIR: And then Senator Brandis. Senator Furner has about five minutes worth; that is all. Senator Hanson-Young, over to you.

Senator HANSON-YOUNG: Mr Moorhouse, you gave me a breakdown of the numbers of self-harm incidents since July. I wanted to go to questions about the amounts of antidepressants and sleeping tablets that have been distributed and that are being distributed within the detention facilities. Does the department keep a record of the amount of medication dispensed, as recorded by IHMS?

Mr Moorhouse: I am not sure about that. I would leave that to my colleague Mr Douglas. But, certainly, we can obtain that information from IHMS, even if we do not keep records on a continuing basis.

Senator HANSON-YOUNG: Okay. Thank you.

Mr Douglas: Senator, no, we do not; and, as my colleague has indicated, if we were asked we would obtain that information from our contracted medical provider, IHMS.

Senator HANSON-YOUNG: In that case, Mr Douglas, could I ask you to take on notice to provide figures since July—to correlate with the same figures that Mr Moorhouse gave me in relation to self-harm—on the levels of dispensing of antidepressant medication and sleeping tablets in each of the facilities.

Mr Moorhouse: Actually, I do have some information here. I apologise for not being aware of it straightaway. I have information here about people who have had a mental illness diagnosis and about the use of psychotropic medication. The figures are as at 15 September.

Senator HANSON-YOUNG: The 15th, did you say?

Mr Moorhouse: The numbers I have are as at 15 September. It shows that a total of 451 people have been diagnosed with a mental illness and there are 228 people who are on antipsychotic medication.

Senator HANSON-YOUNG: 228?

Mr Moorhouse: Yes. For completeness, can I just add that there are 527 people who are on antidepressant medication.

Senator HANSON-YOUNG: Do the figures you have in front of you there, Mr Moorhouse, show that those numbers have increased?

Mr Moorhouse: The numbers I have are only for a particular point in time, so I cannot comment on how they might compare with the previous year.

Senator HANSON-YOUNG: Okay—if you could take that on notice.

Mr Moorhouse: Yes, we will do that.

Senator HANSON-YOUNG: I understand that the discrepancy is going to always be about population—

Mr Moorhouse: That is right.

Senator HANSON-YOUNG: but as reasonable a comparison as possible would be helpful.

Mr Moorhouse: I can give you figures by facility if you are interested in that.

Senator HANSON-YOUNG: Yes, that would be very helpful.

Mr Moorhouse: The largest number of people diagnosed as having a mental illness is at Curtin, where there are 184, and at Northern IDC, where there are 125. The next largest on the list is Scherger with 68 and then the figures drop down considerably at other facilities.

Senator HANSON-YOUNG: So that does not include Christmas Island?

Mr Moorhouse: There are 13 people on Christmas Island who have been diagnosed with a mental illness.

Mr Douglas: We could give you some indication of the number of consultations over the period of 2010-11 and then to 15 September this year. For example, during the course of 2010-11 there were 444 psychiatrist consultations. In the period 1 July 2011 to 15 September 2011 there were 228 psychiatrist consultations. Between 1 July 2010 and 30 June 2011 there were 12,062 psychologist consultations. From 1 July to 15 September 2011 there were 3,873 consultations.

Senator HANSON-YOUNG: For the record, no detention centre has an on-site psychiatrist, so those 228 consultations would have been pre-organised appointments, I imagine.

Mr Douglas: They were appointments made with either a visiting or resident psychiatrist.

Senator HANSON-YOUNG: But there is no in-house psychiatrist in any of our detention centres?

Mr Douglas: No, but there are arrangements in a number of centres for a psychiatrist to come to the centre or for people to be transported to a psychiatrist.

Mr Moorhouse: On Christmas Island a psychiatrist will visit every so many weeks for a specific period. While there is not a resident psychiatrist, there is a capacity to have regular appointments. I am conscious of the size of the numbers and the public nature of this discussion. When we talk about mental illness, there is often a level of misunderstanding about what that entails. While I am not trying to downplay the significance of the numbers in any way, it is important to know that while we said there were 451 people with indicators of a mental illness, in contrast there have been 16 people who have been admitted to a psychiatric facility.

Senator FURNER: Could you give a basic explanation to the committee the purpose of the memorandum of understanding signed between Minister Bowen and Minister Pala concerning work and holiday arrangements under 462 visas and what it will lead to?

Mr Metcalfe: I am happy to but that probably fits under outcome 1, which we have not come to yet. We are somewhere between outcomes 2 and 4 and will come back to outcome 1. I am happy to talk about that, but I do not have the relevant officer with me. We have told him to come a bit later in the day.

Senator FURNER: No problems.

Senator BRANDIS: Mr Metcalfe, you will recall on 7 September last when you and some of your officers came to Brisbane to brief Mr Abbott, Mr Morrison and me. I asked you some questions about the legal advice that had been provided to your department prior to the High Court's decision of 31 August. My note of your response to those inquiries is that the advice was departmental advice and advice from the Solicitor-General as well as from the Australian Government Solicitor and the Attorney-General's Department. I give you the opportunity to enlarge a bit more fully on the question of what advice your department received in relation to the so-called Malaysia solution prior to the High Court's decision and, in particular, what agencies or officers that advice came from.

Mr Metcalfe: I think your notes and your recollection are substantially correct. On the broad issue of the operation of section 198A and arrangements made pursuant to that section, advice was provided to the department and the minister by the Attorney-General's Department and, more particularly, the Australian Government Solicitor. There is a senior officer, whom you have met, of the Australian Government Solicitor who was employed as the special counsel to the department. He has occupied that job for 10 years or so.

Senator BRANDIS: What is his name?

Mr Metcalfe: Mr Ian Deane. He is special counsel, but in effect he is an Australian Government Solicitor officer. Mr Deane has been involved, the Solicitor-General was involved from time to time and, to be accurate, probably the department's own in-house legal team would have provided advice on various aspects along the way.

Senator BRANDIS: Taking those one by one, was the advice provided by Mr Deane written advice?

Mr Metcalfe: Ordinarily Mr Deane would provide written advice. Sometimes he may provide oral advice. I would have to check on the specifics. Depending upon the particular issue, sometimes we will ask him for a quick opinion, but on more serious or substantive issues either there would be a written opinion or he would confirm his oral advice in writing.

Senator BRANDIS: It sounds as if you are telling us that there were several sequential pieces of written advice from Mr Deane.

Mr Metcalfe: Through the development of the arrangement and our reliance on section 198A to support the arrangement, legal advice was provided through the process.

Senator BRANDIS: Coming specifically to my question, that includes several individual pieces of written advice from Mr Deane?

Mr Metcalfe: That is my recollection, but I will take that on notice and correct it if I am incorrect.

Senator BRANDIS: Turning to the Solicitor-General's advice, you said to me, as you had said on 7 September, that from time to time he was involved. Did the Solicitor-General provide written advice prior to the High Court's decision about the Malaysia solution?

Mr Metcalfe: I will ask Ms Hardy, the chief lawyer of the department, to answer that. Ms Hardy is the division head in the department responsible for our legal services whether they are legislation, litigation or legal advising services. She works in a professional collegiate manner with Mr Ian Deane, but ordinarily advice on issues like this would come from the Australian Government Solicitor through Mr Deane or the Solicitor-General.

Senator BRANDIS: Ms Hardy, my question was whether written advice was provided by the Solicitor-General before the High Court's decision concerning the so-called Malaysia solution.

Ms Hardy: Yes, it was.

Senator BRANDIS: How many individual pieces of written advice were provided by the Solicitor-General prior to the High Court decision?

Ms Hardy: My recollection is that there were three pieces of written advice specifically prior to the High Court decision, but there was also reliance on a number of written advices that the Solicitor-General had previously provided on relevant sections.

Senator BRANDIS: Was that in advance of the development of the Malaysia solution or was the additional advice you are talking about also directed to the so-called Malaysia solution?

Ms Hardy: It was provided from time to time as issues developed.

Senator BRANDIS: About the Malaysia solution?

Ms Hardy: Or about relevant provisions that the Malaysia solution was based on.

Senator BRANDIS: Section 198A?

Ms Hardy: Yes.

Senator BRANDIS: You seem to be drawing a distinction between three particular pieces of written advice about the Malaysia solution provided by the Solicitor-General and other advice provided by the Solicitor-General about section 198A. All I am trying to work out is the difference between the two categories you have defined.

Ms Hardy: I am sorry—was your advice about the High Court proceedings or the Malaysian solution, or was it about both? If it was about both then there were a number of matters of advice that had been provided on other relevant parts of the legislation, not specifically section 198A, that the Solicitor-General had previously provided. So there were a number of pieces of advice, but specifically, from recollection, there were three specific pieces of advice provided.

Senator BRANDIS: The reason I am asking these questions is that, as you would be aware, the government has publicly released two pieces of written advice from the Solicitor-General and two other counsel, dated 2 and 3 September, subsequent to the High Court's decision.

Ms Hardy: Yes.

Senator BRANDIS: But what I am interested in identifying is the advice given to the government before the High Court's decision bearing upon the so-called Malaysia solution. So there were three pieces of written advice, were there?

Ms Hardy: From recollection, yes.

Senator BRANDIS: What were the dates on which they were provided, please?

Ms Hardy: I do not have those in front of me. I think we provided a response to a similar question from Senator Cash at the inquiry into the Malaysian solution. The advice was provided from time to time as issues developed. But I do not have the exact dates in front of me.

Senator BRANDIS: Can you take that on notice for me, please.

Ms Hardy: Certainly.

Senator BRANDIS: So we have the advice from the AGS, and in particular from Mr Deane, and we have three pieces of advice from the Solicitor-General. Mr Metcalfe, was there also advice provided to the department by the Office of International Law within the Attorney-General's Department?

Mr Metcalfe: I will have to check as to whether there was written advice or whether there was advice in the course of frequent discussions. Dr Southern might be able to assist.

Senator BRANDIS: Dr Southern?

Dr Southern: Actually I was going to pass to my colleague Vicki Parker, who was directly involved in that.

Mr Metcalfe: We will pass the parcel across to Ms Parker.

Senator BRANDIS: I do not mind who answers the question. The question is directed to anybody who knows the answer.

Mr Metcalfe: We are trying to help.

Ms Hardy: I can probably assist as well.

Senator BRANDIS: Yes, Ms Hardy. Why don't we start with you?

Mr Metcalfe: Just a bit of help.

Ms Hardy: There was advice provided by the Office of International Law. Some of that was in the context of verbal advice during meetings on the development of the process, as well as some written advice.

Senator BRANDIS: Was it Mr Campbell from the Office of International Law who provided that advice?

Ms Hardy: There were a number of people, including Mr Manning. I think Mr Campbell was involved as well at some stage, but I do not have the specific details. You would have to direct that question to the Attorney-General's portfolio.

Senator BRANDIS: I intend to, but I want to avoid being told by them to ask you first, you see.

Mr Metcalfe: That would never happen!

Senator BRANDIS: No, that would never happen! So you got both written and oral advice from the Office of International Law. I just want to limit myself for the moment to advice provided in advance of the High Court's decision. How many pieces of written advice were provided by the Office of International Law on the Malaysia solution prior to the High Court's decision?

Ms Hardy: I do not recall specifically. Ms Parker may be able to help.

Ms Parker: There were a number of advices received from the Office of International Law. They were not formal advices, I believe, but rather were by exchange of emails. There were also a number of conversations between me and Ian Deane, our AGS special counsel, and the Office of International Law.

Senator BRANDIS: When you say they were not formal advices, do you mean that you did not receive a formal opinion, as it were—in the technical sense in which lawyers use that word—from the Office of International Law?

Ms Parker: In terms of us requesting a formal advice, no. What we did receive was responses in relation to the draft MOU with Malaysia as it developed during the course of negotiations.

Senator BRANDIS: Did any of the advice that was received from the Office of International Law raise any doubts at all about the conformity of the proposed so-called Malaysia solution with Australia's international obligations under the refugee convention or otherwise?

Ms Parker: I would not want to go into the legal advice that was received.

Senator BRANDIS: I am asking you to.

Senator Carr: That is not normal.

CHAIR: I think we have had this debate a number of times, Senator Brandis, about when, where, who and how but not what is in the legal advice.

Mr Metcalfe: It is quite clear that we were engaged properly and appropriately with legal experts on these issues. Our position was and remains that the arrangement was quite proper under international law.

Senator BRANDIS: Thank you for that observation. I want to be a bit more specific, though. Were concerns raised in that advice? That may have been the ultimate conclusion, but in the course of the advice were there nevertheless concerns raised about the conformity of the Malaysia solution with Australia's international obligations?

Mr Metcalfe: I do not think we would normally comment about what was essentially an iterative process of working through drafts of an MOU. We clearly had an underlying position that whatever we did needed to comply with Australian law and our obligations under relevant conventions. Prior to the High Court case we were very confident about that position.

Senator BRANDIS: You have told us what the conclusion of the advice was, so I want to explore that statement you made a little more carefully. It would be right to say, would it not, that in the course of what you have described as 'iterative advice'—

Mr Metcalfe: An 'iterative process'.

Senator BRANDIS: this advice that formed part of an iterative process there were some concerns raised—albeit that, as you say, the ultimate conclusion was as you have said.

Mr Metcalfe: I did not say what you have just said in the first part. I said that we were comfortable about the final position. You have suggested that there were concerns raised, and I have neither confirmed nor denied that. I have said that there was a process of working through relevant department and agencies—the Department of Foreign Affairs and Trade, my department and the Attorney-General's Department—and we were very pleased with the outcome.

Senator BRANDIS: Perhaps I misheard you. When you talked about the conclusion, were you talking about your conclusion rather than the conclusion of the legal advice?

Mr Metcalfe: No, I think that was the government's conclusion.

Senator BRANDIS: So you are not saying to the committee that that conclusion was the conclusion of the legal advice.

Mr Metcalfe: I have said it is really not appropriate for me to go into that. It is a matter for the Attorney-General's Department how they respond to you tomorrow when, I am sure, you will ask them these questions.

Senator BRANDIS: Let me put to you the proposition that the Office of International Law has confirmed—I will come back to that in a moment. You have talked about advice from Mr Dean, you have talked about advice from the Office of International Law and you have talked about advice from the Solicitor-General. What were the other sources of legal advice about the Malaysia solution prior to 31 August—if there were any others?

Mr Metcalfe: I do not think there were any others.

Ms Hardy: No, not other than the ones that we have referred to—other than the several counsellors you are aware of who worked with the Solicitor-General on the preparation of advice.

Senator BRANDIS: I understand. Was that Mr Stephen Lloyd and Mr Geoffrey Kennett?

Ms Hardy: Stephen Donaghue was also involved.

Senator BRANDIS: All right. Was the conclusion of each of those three advisers—that is, the Solicitor-General and his collaborators, those from the Office of International Law and Mr Dean on behalf of his team of collaborators from the Attorney-General's Department—that the Malaysia solution was on solid ground?

Mr Metcalfe: I will not get drawn into specific aspects of briefings. You might hope me to but you would not expect me to. I think the government's legal position, as I recall, I mentioned at our meeting in Brisbane on 7 September as being well articulated in terms of the pleadings before the court and the various documents lodged before the court. If anyone wishes to examine the Commonwealth's legal position they need look no further than the documents before the court.

Senator BRANDIS: I have read the submissions, but that really is not my point. I well understand what the government's declared position was, because it was declared by, among others, the Prime Minister and Mr Bowen. What I am interested in knowing is what the conclusion of the legal advice was.

Mr Metcalfe: As I said I think at the previous estimates, we were very confident as to the legal position. That was based upon the informed advice from the various people providing that material to us. We were all very surprised by the court's interpretation of section 198A and related sections of the act.

Senator BRANDIS: Let us take these one at a time. Is it a proper or a fair characterisation of the conclusion of the Solicitor-General and his collaborators that the government was on solid grounds in relation to the Malaysia solution in the advice he gave before the High Court's decision?

Ms Hardy: As expressed by the minister at the time, yes, I think that would be—

Senator BRANDIS: No, I am not asking what the minister said. This is a problem. Politicians may say one thing about what they are told. I am not trusting the politicians; I am trusting the lawyers.

Mr Metcalfe: I think Ms Hardy is saying that what the minister said was right.

Senator BRANDIS: Is that what you are saying, Ms Hardy?

Ms Hardy: Yes, it is. As the secretary has already said, we believe—

Senator BRANDIS: So, if we examined the Solicitor-General's advice given prior to the High Court's decision, we would find that the Solicitor-General concluded that the Malaysia solution was on solid ground?

Ms Hardy: Similarly, it is not appropriate to go into the specific advice, but that was the effect of the advice, yes.

Senator BRANDIS: And was that the effect of the advice of the Office of International Law?

Ms Hardy: They were asked to advise on specific aspects of international law as it applied to it all. They were not asked to advise on the prospects of the High Court case, as you would appreciate.

Senator BRANDIS: What particular aspects of international law were they asked to advise about?

Ms Hardy: There were a range of different issues.

Senator BRANDIS: And what were they?

Ms Hardy: Again, as discussed before, it was as issues developed throughout. There were a whole range of different things.

Senator BRANDIS: What are the principal ones, please?

Ms Hardy: Again it would not be appropriate to go into the specifics of the advice.

Senator BRANDIS: I am not asking about the advice; I am asking you about what they were asked to advise about.

Ms Hardy: To give you an absolute correct answer I will have to take that on notice.

Mr Metcalfe: I certainly would not have regarded them as being constrained. If there were a problem, I would have expected to have been told about it. There is absolutely no doubt in my mind that we were punctilious in ensuring that we were behaving in a proper, lawful manner on a reasonable view of the law as it stood and that the entire basis for our proceeding was on that understanding of the law both domestic and international.

Senator BRANDIS: Thank you, Mr Metcalfe. Ms Hardy, did the range of issues on which advice was sought from the Office of International Law include advice as to the compatibility of the so-called Malaysia solution with Australia's obligations under the refugee convention?

Ms Hardy: That is certainly my recollection, but again I will take it on notice and confirm that.

Senator BRANDIS: Is that right, Mr Metcalfe?

Mr Metcalfe: That was, of course, the key issue.

Senator BRANDIS: It was, wasn't it?

Mr Metcalfe: Was it appropriate? Would Australia be in breach of its obligations as a state party to other state parties through pursuing the Malaysia arrangement? The clear view was that, because the arrangement provided for non-refoulement and access to a status

determination process administered by the UNHCR, the arrangement was compliant with our obligations under international law.

Senator BRANDIS: Given the penalties to which asylum seekers are potentially liable under section 6 of the Malaysian migration act, was advice sought from the Office of International Law about whether the Malaysia arrangements might potentially place Australia in breach of its obligations under the UN convention against torture?

Ms Parker: Section 6 applies to people who enter Malaysia basically unlawfully or without appropriate documentation unless they are exempt under section 55 of the immigration act in Malaysia. The people who were going to be entering as transferees from Australia were to be exempt under that provision of the legislation.

Senator BRANDIS: You have obviously thought about this.

Ms Parker: Yes.

Senator BRANDIS: And was advice taken from the Office of International Law, or indeed from any of the other sources of legal advice you have identified, about whether Australia might be in breach of its obligations under the UN convention against torture?

Ms Parker: Advice was sought on the whole range of international obligations.

Senator BRANDIS: Did it include that topic?

Ms Parker: The convention against torture? Yes.

Senator BRANDIS: It did. Okay. From which of the legal advisers with that advice sought? Was it the Office of International Law, the Solicitor-General or Mr Deane, or more than one of them; and, if so, which?

Ms Parker: I believe it was Mr Deane and the Office of International Law.

Senator BRANDIS: And they provided separate advice on that topic, did they?

Ms Parker: I believe so.

Senator BRANDIS: All right. And that was written advice?

Ms Parker: I would have to take that on notice.

Senator BRANDIS: Do you know, Mr Metcalfe?

Mr Metcalfe: No, I do not, Senator. I will—

Senator BRANDIS: Do you know, Ms Hardy?

Ms Hardy: I cannot recall either.

Senator BRANDIS: Can you please take that question on notice for me. And, going back to your answer a few questions ago, Ms Hardy, can you take on notice, please, to provide all of the particular topics—you mentioned a range of topics—on which advice was sought from the Office of International Law, Mr Deane and the Solicitor-General concerning the Malaysia arrangement prior to 31 August 2011.

Now, the Malaysia arrangement—which, as you quite properly say, Mr Metcalfe, was an arrangement, not an agreement—was nevertheless embodied in a document. Was legal advice taken by your department in relation to the drafting of that document?

Mr Metcalfe: I will ask Ms Parker to continue giving evidence, as she was the person probably most closely involved in developing the document.

Senator BRANDIS: Okay. Thank you. Ms Parker?

Ms Parker: Senator, the original arrangement was drafted in-house, and that was shared—

Senator BRANDIS: Sorry, just pausing there—by 'in house', you mean within the department of immigration?

Ms Parker: That is correct.

Senator BRANDIS: Yes.

Ms Parker: That draft was shared and discussed on a number of occasions with Ian Deane, in relation to the contents.

Senator BRANDIS: And Mr Deane provided specific feedback in relation to certain provisions at various stages of the drafting process, did he?

Ms Parker: He did, almost on a daily basis, over the period of the negotiations.

Senator BRANDIS: How long was that, by the way, Ms Parker?

Ms Parker: I believe that we began discussions in relation to the arrangements as early as February, January—

Senator BRANDIS: February 2011?

Ms Parker: Yes.

Senator BRANDIS: Right. Presumably, the final iteration of the draft was produced a day or so before the signing ceremony in Malaysia?

Ms Parker: I cannot recollect exactly, but it was within a short time frame, yes.

Senator BRANDIS: All right. You may or may not need to take this on notice, but can you tell me, please: at what point in this process was clause 16 inserted into the arrangement? I will remind you—let me read it to you:

This Arrangement represents a record of the Participants' intentions and political commitments but is not legally binding on the Participants.

Ms Parker: I do not recall the exact date, but it did go into the arrangement fairly early on in the process.

Senator BRANDIS: Fairly early on. Would that have been before the May estimates?

Ms Parker: I could not say.

Senator BRANDIS: Can you check the date on which clause 16, or a provision to the effect of clause 16, was first inserted into the arrangement. You see, Mr Metcalfe, I have it in mind that you told us in the May estimates, quite rightly, that none of these arrangements would be enforceable in Malaysia, and I wonder if you had clause 16, or a germinal provision which became clause 16, in mind when you gave that evidence.

Mr Metcalfe: I will have to go back and check the dates, Senator, but it was our understanding from an early point—and this was clear, I think, in the joint prime ministerial declaration a week or two before estimates—

Senator BRANDIS: It certainly was not clear from the rather flamboyant hoarding behind the ministers at the signing ceremony, where it was described, for propaganda purposes, as 'an agreement'—nor was it clear from various statements made by the Prime Minister, by your

minister or by Senator Carr, beside you, representing your minister in the Senate on numerous occasions, who referred to the arrangement as 'an agreement', with the direct implication that it would have binding force, when we know it does not have binding force and never was going to have binding force.

Mr Metcalfe: I think it becomes a question of legal semantics as to whether—

Senator BRANDIS: Whether something has binding force or not is not a question of legal semantics.

Mr Metcalfe: No, but the use of the word 'agreement'—there is agreement and there is agreement. Clearly Malaysia and Australia agreed. The question of whether or not it is enforceable at international law, represents a treaty or whatever, ultimately becomes—

Senator BRANDIS: That was the whole point on which you lost in the High Court, so it was more than legal semantics, I suspect.

Mr Metcalfe: It was probably more than that we lost on, Senator.

Senator BRANDIS: I would give you that, Mr Metcalfe; you lost on a number of fronts, but that was front and centre.

Mr Metcalfe: It was only one of the surprises we got.

Senator BRANDIS: We will move on. At your meetings with Mr Abbott and me on 7 and 16 September the opposition asked for the legal advice on the basis of which this policy was sought to be put into effect, and on the basis of which your minister confidently claimed that it was on solid legal grounds, to be produced. I renew on behalf of the opposition that request. I assume you will have to take that on notice.

Mr Metcalfe: The minister is aware of that request and I will again place that request on notice.

Senator BRANDIS: And when I talk about the legal advice I mean each of the specific pieces of legal advice which have been referred to in the answers to my questions this afternoon.

Mr Metcalfe: Thank you.

Senator BRANDIS: You would be, I suspect, familiar with an opinion published in the *Sydney Morning Herald* on 12 September by the former Commonwealth Solicitor-General, Dr David Bennett, reflecting upon the High Court's decision. May I read to you some words from Dr Bennett's view. He said:

... there is no legal reason why steps could not be taken with Nauru ... which would enable the minister to declare (them) satisfactory. It is significant that Nauru has now acceded to the Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees. Much attention to detail would be required. In particular, any agreement with Australia should, unlike the agreement with Malaysia, be expressed to be legally binding.

I know Dr Bennett is a private citizen these days and this was an opinion piece published in a newspaper. Nevertheless, I do not think it would be controverted that Dr Bennett speaks with a great deal of authority on these matters. This opinion of Dr Bennett was expressed in the *Sydney Morning Herald* 10 days after the Solicitor-General's opinion was published and four days before our meeting in Melbourne. Has the government sought advice from the Solicitor-General or, for that matter, from Mr Deane or other officers of the Attorney-General's

Department or, for that matter, from the Office of International Law subsequent to the publication of Dr Bennett's opinion about the feasibility of the Nauru solution?

Ms Parker: In relation to the advice that was subsequently provided to the opposition by Dr Bennett, I had a discussion—

Senator BRANDIS: If I can interrupt you, there was advice provided to the opposition from Dr Bennett, that is true, but that was not what I was asking about. I am asking about Dr Bennett's published advice in an opinion column in the *Sydney Morning Herald* on 12 September. I can go to the other advice if you like, but I just want to make sure you are not proceeding to answer my question on a false assumption.

Ms Parker: I will not answer the question in that case.

Senator BRANDIS: Can anyone answer my question?

Mr Metcalfe: We will take that on notice.

Senator BRANDIS: Has the government sought any advice about the feasibility of the Nauru solution since the High Court's decision, or is what Mr Gagelar said about it in his opinion on 2 September—which, although we know it was misrepresented by ministers, holds open the possibility that the Nauru solution is feasible—the last word as far as advice to the government goes?

Mr Metcalfe: I will check but I think that the advice from the Solicitor-General and at least one other colleague—I think Mr Lloyd co-authored that advice—

Senator BRANDIS: Mr Lloyd is a co-signatory to that advice, as is—

Mr Metcalfe: From those two eminent gentlemen, I think that is the government's understood position on that issue. Clearly, the High Court decision has thrown a great deal of doubt about the meaning of those sections.

Senator BRANDIS: It has certainly thrown some area of doubt. Mr Metcalfe, can you please state for us, since you referred to it, what is the government's position?

Mr Metcalfe: The government's position on this issue was summarised by the Prime Minister and the minister last Thursday.

Senator BRANDIS: Can you state it for us in your words please because there still seems to be some confusion about what the government's position is about the feasibility of Nauru.

Mr Metcalfe: I would be very cautious, as a departmental official, about getting drawn into matters which have been the subject of keen political contest and debate.

Senator BRANDIS: That is your unhappy lot, Mr Metcalfe.

Mr Metcalfe: It is.

Senator BRANDIS: The fact is that you have received advice from the Solicitor-General. You were present at Treasury Place in Melbourne, sitting across the table from me on 16 September when Mr Gageler's advice was discussed in his presence. I made a remark about the way in which Mr Gageler's advice had been misrepresented and Mr Gageler, you will remember, said, 'That is not what I said.' So there is confusion in the public mind, perhaps some of it mischievously created by government politicians, as to what the legal advice or the legal understanding, on the basis for which your department has approached this issue, is. I want to know what your understanding of the position is.

Mr Metcalfe: My understanding of the position is as advised by the Solicitor-General and Mr Lloyd in his written opinion that has been put on the public record.

Senator BRANDIS: If there continue to be concerns about the Nauru solution in the mind of the government, why did your minister—because this has not been denied, including by your minister in a television interview yesterday morning—argue for the Nauru solution in cabinet on Thursday?

Senator Carr: I think it is a bit rich to ask an officer to comment on that.

Senator BRANDIS: All right, I will ask you.

Senator Carr: Invariably you will and you will be told invariably that I do not comment on cabinet discussions.

Senator BRANDIS: I perfectly understand that is the orthodox position but we are in uncharted waters at the moment because the Prime Minister, as recently as this morning at her press conference in Brisbane, has effectively conceded the leaks from cabinet—appearing in particular in Mr Hartcher's column in the *Sydney Morning Herald* on Saturday morning. And Mr Bowen, in his television interview on *Meet the Press* yesterday morning, did not dispute what was attributed to him.

Senator Carr: What he said was he was not going to comment on the detail of cabinet discussion. I read those reports. I was present at the meeting. I am not going to comment on those matters either. But I think it would be fair to say that they do not reflect the way in which the conversation went to my recollection. I am not going to say any more other than it is the nature of these things that people put a spin on these issues.

Senator BRANDIS: It was not anybody in the Liberal Party who was talking to journalists.

CHAIR: Senator Brandis, I just want to remind you that this is supplementary budget estimates, so let's get back to asking the officials about what is happening in the budget in relation to the immigration and Defence portfolio.

Senator BRANDIS: What I am struggling to understand is: if the department, for reasons I can well understand having read Mr Gageler's advice, entertained concerns about the legal availability of Nauru without some amendments to the Migration Act, how could it be that anyone—in particular the minister—could argue for the Nauru solution to be revived?

Senator Carr: You have made a supposition in that question, which is not one that I am prepared to accept.

Senator BRANDIS: I am entitled to ask hypothetical questions.

Senator Carr: You can ask the public servant any question you like but you will not necessarily get an answer. That is clearly a political matter which I am answering. It is not a subject to which we are going to give further advice on.

Senator BRANDIS: I am not asking now about what happened in cabinet because I think the entire public knows that.

Senator Carr: Yes you are; you just did.

Senator BRANDIS: I am not asking about departmental advice, what I am asking about is something quite different, Mr Metcalfe, and that is the department's mind. I am asking about

the department's mind. You, if I may say so, in a very fair, cooperative and forthcoming way have told us all you feel you probably can about the legal advice that you have received, with the appropriate reservations. I gather from what you have said that Mr Gagler's advice of 2 September, complete with the reservations that he expresses, is where the department's thinking now is. Is it still the position of the department that the Nauru solution could not safely proceed without legislative amendment or isn't it?

Mr Metcalfe: The view of the department—and the record will show that you dragged this from me—is that the amendments proposed by the government were the only amendments that were likely to remove the greatest amount of doubt in an area that has become quite doubtful as a result of the High Court decision. The advice—and this is something that has been discussed publicly—and it is my view that the government of the day regardless of which political party in power should have the executive authority consistent with our obligations under international and Australian law to be adaptable in the way it responds to people smugglers. The government amendments were the way that was most effective in achieving that.

Senator BRANDIS: Thank you for that. That is what I understood your position to be. If that is the position of the department, then it could not be fairly maintained, could it, consistently with the department's view—and we may infer advice—that the Nauru solution could be safely revived?

Mr Metcalfe: Our view is that legislative amendments are required. The Solicitor-General has confirmed that. Our view is that the government of the day should have flexibility. You have not asked me, and I will not go into the department's view, as to whether or not in a practical sense Nauru operating by itself would in fact amount to a sufficient deterrent.

Senator BRANDIS: I have not asked you about that, that is true.

CHAIR: Would it be a sufficient deterrent?

Mr Metcalfe: I am reluctant to be drawn into that because it does go to the issue of policy advice, which has been provided to the government—and at the offer of the Prime Minister and the acceptance by the Leader of the Opposition I provided advice to the Leader of the Opposition on that point as well. I do simply say that the lessons of history are very important in this area. What was uncertain in the past is now certain as to what happened. There were a combination of events 10 years which collectively had a very, very significant impact on people-smuggling operations.

CHAIR: That is right, and you went through those this morning.

Mr Metcalfe: I went through those this morning. Beyond that I do not think it is appropriate for me to get into the habit of giving views on policy advice that has been provided. Chair, can I just ask a question: whether the committee thinks it is likely to get to outcome 1, in other words finish 2 and 4 prior to dinner.

CHAIR: No.

Mr Metcalfe: We have some officers on standby and it is a question of whether they should make their way over at afternoon tea or whether we get them to come back at eight o'clock.

CHAIR: Let us just ascertain if we have finished asking questions in outcome 2, have we?

Senator CASH: At this stage, yes.

CHAIR: No, it is either yes or no.

Senator CASH: Yes, I am happy to move on.

CHAIR: Outcome 2 is finished, if that helps in any way.

Mr Metcalfe: Do we think we will get to outcome 1 to migration issues—Senator Furner had questions there—before dinner? Or should I tell those officers to stay in Belconnen. It is just a practical issue.

Senator CASH: I would say that I have enough questions to get us through until dinner.

Mr Metcalfe: So we will tell them to be here after dinner.

CHAIR: So we will not get to outcome 1 before 6.30.

Mr Metcalfe: If we think we are heading that way, I just need half an hour's notice.

CHAIR: It is as per the program, anyway.

Mr Metcalfe: It is literally the logistics of getting from Belconnen to here and then trying to park in this precinct; it is not all that easy, even for Senate estimates.

CHAIR: They will not have to worry about that till eight o'clock now.

Mr Metcalfe: Thanks very much.

[15:20]

CHAIR: So we are going to go through, as per the program, with outcome 4 till 6.30.

Senator CASH: Thank you, Chair. So we are now turning to outcome 4, the onshore arrangements. I refer to the announcement on 13 October, when the government announced that all applications for protection will now be processed onshore. Will all IMAs still be considered offshore entry persons under this new proposal?

Mr Metcalfe: Providing they arrive at an excised place, that remains their legal status.

Senator CASH: So the answer is yes, subject to arriving at—

Mr Metcalfe: Subject to them arriving at Ashmore, Christmas Island or another excised place.

Senator CASH: Is it the plan that all IMAs intercepted will first go to Christmas Island?

Mr Metcalfe: That is my current understanding.

Senator CASH: This may change, though?

Mr Metcalfe: Nothing is ever certain in this life. My current understanding is that the operational arrangements of interception by Customs or Navy vessels and then transfer for initial processing at Christmas Island will continue and that nothing has changed in that regard.

Senator CASH: Have there been any discussions in relation to a potential change to that?

Mr Metcalfe: No. I sought confirmation and I was provided with advice that nothing was changing in that area.

Senator CASH: If the IMAs are brought straight to the mainland, will that affect their status as an offshore entry person if they bypass Christmas Island?

Mr Metcalfe: In order to become an offshore entry person they need to come to Australia at an excised place. So if we had an undetected arrival at the mainland, for example, then that would occur, and we have seen that in past years. But the normal modus operandi is that the persons are brought ashore on Ashmore Reef or at Christmas Island. Subsequent to any later transfer to the mainland, if further processing is occurring there, I do not see any changes occurring in that area.

Senator CASH: In the event that we did pick them up and they had not reached the mainland—if we picked them up near Christmas Island—and we brought them straight to the mainland, would that affect their status? Are they automatically onshore persons?

Mr Metcalfe: They have to be brought ashore at Christmas Island or Ashmore.

Senator CASH: To actually be offshore entry persons?

Mr Metcalfe: Precisely. That is settled law for the last 10 years, unless the High Court changes that as well.

Senator CASH: What access will they have to administrative and judicial review?

Mr Metcalfe: Essentially, the arrangements as outlined in the M61 case last November mean that—I think we discussed this with Senator Pratt earlier this morning—we have people moving through a refugee status determination, an appeal right and judicial review. Since the M61 case last year, it has been quite plain that that applies whether or not a person is an excised person.

Senator CASH: So they will have access to administrative and judicial review.

Mr Metcalfe: As they have since last November.

Senator CASH: As per the M61 case.

Mr Metcalfe: As per M61.

Senator CASH: As stated at the 2011-12 budget estimates hearing—you and I had a long conversation surrounding this, Mr Metcalfe—the department budgeted for the arrival of 750 IMAs in the 2011-12 financial year. How many have arrived to date in this financial year?

Mr Metcalfe: I think we asked and answered that earlier this morning. I can get that figure for you again if you would like. I thought it was over 1,000; it was more than 750. But we can check as to what it is.

Senator CASH: Do you have a percentage increase that that translates to?

Mr Metcalfe: It is certainly well above the 750 that was originally estimated.

Senator CASH: So what is it? Approximately 25 per cent?

Mr Metcalfe: The 750 was on the basis of the Malaysia arrangement being in place and taking effect. I would refer you on that basis to the earlier discussions we have had about what arrival numbers we might see and what we saw last year.

Senator CASH: I will get on to that shortly. Do we have confirmation of the arrivals to date?

Mr Moorhouse: We will come back to you.

Senator CASH: Thank you very much.

Mr Metcalfe: It is on the transcript of this morning, I think.

Dr Southern: I think the number we talked about this morning was actually the number of arrivals since the May announcement.

Senator CASH: I am looking at this financial year.

Mr Metcalfe: Since 1 July.

Senator CASH: Yes, since 1 July.

Mr Metcalfe: We will get that number for you.

Senator CASH: How many have actually arrived?

Mr Metcalfe: Yes.

Senator CASH: Both the department and the minister have said that they anticipate an additional 600 IMAs a month will arrive in the wake of the failed Malaysia agreement, as I understand it from listening to Senator Hanson-Young's questioning. My question was on what basis this estimate has been made. My understanding is it is an average of what occurred last year rounded up to 600.

Mr Metcalfe: Yes, we can expect to see people coming and a reasonable guide is what happened last year.

Senator CASH: There have been press reports that up to 10 boats could be coming from Indonesia as a result of the government's failed Malaysia solution and the decision to process applications onshore. What advice has the department been given about the number of boats potentially on their way from Indonesia?

Mr Metcalfe: I would have to check. Again, that is a point-in-time issue. At any one time, the Australian Customs and Border Protection Service, which has responsibility for this issue, is monitoring a number of potential vessels. We do know there have been some significant disruptions of people-smuggling activity in Indonesia recently and we thank the Indonesians for that cooperation. What we do know is that there are people in Indonesia wanting to come to Australia. We also know that there are people further afield wanting to come to Australia.

Senator CASH: In relation to the press reports, have you been advised that there could be up to 10 boats?

Mr Metcalfe: I would have to check, but we are advised different things every day.

Senator CASH: What is the current estimate? What were you advised yesterday or today in relation to the number of boats?

Mr Metcalfe: I will check. I suggest you would be best advised to ask the Australian Customs and Border Protection Service which is responsible for monitoring that issue. I can say that at any one time, and right at the moment, there are a number of potential ventures being planned and underway in Indonesia. If you read the press reports from interviews with people there, many are seeking to come here.

Senator CASH: You said you are updated every day. On what are you updated every day?

Mr Metcalfe: There is a regular update from the Australian Customs and Border Protection Service on the information they have about potential boat departures from Indonesia coming to Australia.

Senator CASH: What was the most recent update that you were given?

Mr Metcalfe: I have not given you that. I will have to take that on notice. You will probably see Customs before I give you that answer.

Senator CASH: You do not recall the information you were given?

Mr Metcalfe: I have used the word 'several' several times. That is the word that I am thinking of. I would say it is a dynamic situation. It will change from day to day depending upon the effectiveness of disruption efforts, whether people succeed in getting away, whether the Indonesians detain people and they stay in detention and so on. But there are several ventures being planned at any particular time.

Senator CASH: On the basis that the budgeted number of IMAs for 2011-12 has now been exceeded by approximately 25 per cent, as I understand it, what is the adjusted number of arrivals anticipated in the 2011-12 financial year?

Mr Metcalfe: We have not forecast that. For financial planning purposes, that is the issue we discussed earlier as to the calculations that will come into account.

Senator CASH: Has the department not forecast this? You have exceeded your intake for the year and the department has not bothered to forecast where we could be going with that figure?

Mr Metcalfe: What I said is that we do expect people to be coming and we point to last year.

Senator CASH: Up to 600 a month.

Mr Metcalfe: Is that a forecast or simply a view based upon history? That is important because if it is a forecast—

Senator CASH: It is just as important as where the evidence in relation to the 750 came from. That was really just a view, wasn't it?

Mr Metcalfe: No, that was based on historical fact.

Senator CASH: I can give you, based on a rolling five-year average, a figure. I can also give you a figure based on the fact that the average was 600 a month. I would have thought those were two reasonable figures.

Mr Metcalfe: The 750 figure was based upon the figures in the budget in 2002-03, following the Pacific strategy.

Senator CASH: Why did you reduce it to 750 following the Pacific strategy?

Mr Metcalfe: Because the previous government reduced to 800.

Senator CASH: Are you saying the previous government put in place a policy solution that you believed at the time would see a reduction in the number of people coming to Australia?

Mr Metcalfe: Which it did.

Senator CASH: It reduced the number of boats to what?

Mr Metcalfe: To virtually zero.

Senator CASH: So the Pacific solution reduced the number of boats to zero, and that is what you based the Malaysian solution numbers on?

Mr Metcalfe: Not just the Pacific solution. There were a number of things that happened at that time that I mentioned this morning.

Senator CASH: What were the other things that happened that managed to reduce the numbers by such a significant amount that you basically rounded yours down by several thousand?

Mr Metcalfe: We went through this. I have a document here that may or may not be of interest, drawn from departmental submissions to the Joint Select Committee on Australia's Immigration Detention Network, which talks about the waves of migration and things that happened at certain times. As I said this morning, there are a number of factors that occurred in 2001-02: the *Tampa* and the very high profile military intervention associated with it; the establishment of Nauru; when Nauru filled up the establishment of Manus; and when Manus filled up the tow-back of a number of vessels. I personally believe that the tow-back of those six or seven vessels was probably the most dramatic action taken by Australia to send a very clear message that coming here was not going to happen. The sinking of SIEVX and the loss of 353 lives 10 years ago this week, the fall of the Taliban and the return of two million people to Afghanistan were all factors—and they worked.

Senator CASH: But your evidence is that the Pacific solution contributed to a reduction in the number of people coming to Australia?

Mr Metcalfe: It was part of a range of things that occurred. I was involved in that and I was very pleased with what we were able to do.

Senator CASH: Absolutely.

Mr Metcalfe: As a result, the estimated number of arrivals in Australia was reduced from the several thousand that occurred previously to 800, as a budget-planning tool. Subsequently, it was reduced to 200 or 100.

Senator CASH: Why was that?

Mr Metcalfe: Because it reflected the reality of what we were seeing.

Senator CASH: So the Pacific solution was actually working? If the goal is to reduce the boats—

Mr Metcalfe: It was the Pacific solution plus all those other factors.

Senator CASH: It could not be the Pacific solution alone, could it?

Mr Metcalfe: Those tow-backs, in my view as the deputy secretary of the department at the time, were the single most effective thing. Some people forget that Nauru filled up. There was no space on Nauru.

Senator CASH: Some people also forget that we reduced the number of boats coming to Australia to zero.

Mr Metcalfe: I have never suggested that. I am very pleased with what we achieved. Some people forget that Manus filled up and believe that is the only thing that happened. People do not talk about the tow-backs and how effective they were, even though they were extraordinarily difficult to achieve.

Senator CASH: But they were effective?

Mr Metcalfe: They were effective, and I very carefully have not gone into issues of policy advice I provided to this government or the Leader of the Opposition in briefings at which others were present—not you. As to my professional opinion as to whether those conditions could be replicated, we have been through that. Where we started this conversation a few minutes ago was—

Senator CASH: In relation to the anticipated arrival numbers of 2011-12.

Mr Metcalfe: That is correct. You and I have had many hours of discussion about what is the right forecast—

Senator CASH: Numerous conversations.

Mr Metcalfe: For me, a forecast is derived upon a serious, evidence based view, as opposed to an opinion which might be derived from other material. The way that we and the Department of Finance and Deregulation had come to a financial forecasting tool prior to this budget was to take a five-year rolling average. It was as good as any other tool there might be. Whether that tool is to be used again in the future, given that the Malaysia arrangement is not feasible under the current law, is a matter that we will know about in the next couple of months. I have said on four or five occasions today and in briefings that I would not be surprised if we returned to a figure similar to that which we saw last year.

Senator CASH: And what was that figure?

Mr Metcalfe: Whether that is regarded as a forecast or simply the fact that we are moving to about where we were last year—

Senator CASH: I think 6,889 people arrived in the 2010 calendar year.

Mr Metcalfe: No, I did not think it was that many.

Senator CASH: The financial year was 4,949 and the calendar year was 6,889.

Mr Metcalfe: Yes. What we saw was an average across the first half of the 2010-11 financial year of around 580 to 600 from July through to December. We had SIEV221, and that clearly had an impact on people being prepared to risk their lives. We have had a very successful disruption program and the arrest of several significant people smugglers, all of which has thrown a fair bit of confusion into the people-smuggling networks. And we have had the announcement of the Malaysia arrangement. That means that over the last—

Senator CASH: That was spectacularly done.

Mr Metcalfe: Well, over the last few months the numbers have come back to about 300 per month.

In the absence of the Malaysia arrangement and a change in the psychology of people smugglers and their passengers that getting to Australia is going to result in accessing Australian processes I suspect we are returning to a situation more like we had last year. Which is why I think virtually everyone has been pursuing some form of offshore solution.

CHAIR: Senator Furner has some related questions about towing back boats, so while we are on that subject let us just jump to Senator Furner and we might be able to finish that.

Senator FURNER: I did not want to miss the opportunity to meet Mr Metcalfe, based on that we were on this track about tow-backs. Looking at contemporary arrangements, do you think that tow-backs would be effective in today's climate?

Mr Metcalfe: I think that it is extremely unlikely. I note that the High Court has not ruled upon that particular section of the act but, given the decisions we have seen on other sections of the act, whether any legal adviser would regard those powers as being unaffected is one question that you would have to ask.

Senator FURNER: Would you consider it a viable policy decision of government to—

Mr Metcalfe: Leaving aside the law, I do not believe that tow-backs are operationally feasible. Indonesia has made it very clear that they do not welcome tow-backs. There is no agreement with Indonesia. Indonesia is, of course, not a signatory to the refugee convention or any other material. The tow-backs that occurred in 2001 occurred to a country that was not a signatory to the refugee convention but where the good offices of IOM and UNHCR, funded by Australia, provided for the arrival.

Operational discussions with operational agencies also indicate that they think it is extremely likely that a tow-back would not be operationally possible because of the great risk of harm either to Australian crew—Australian sailors: Navy or Customs—or the passengers of the vessels themselves. We have seen highly adaptable processes undertaken by people smugglers: we have seen numerous efforts—some successful—to sabotage or to sink vessels and we have seen an explosion on a vessel that killed five people. So the collective view of the senior departmental officials—not just in my department—who advise on this issue is that it would be extremely unlikely that an Australian patrol boat captain would be able to safely secure a vessel, bring the people onto his vessel, sail it back to the waters adjacent to Indonesia and for there not to be a major diplomatic incident in the absence of an express agreement with Indonesia, which is not present.

Senator FURNER: When you say Indonesia does not welcome tow-backs, is that coming from the Indonesian government formally in some communique?

Mr Metcalfe: There have been statements made by senior officials that they would not welcome any tow-backs. We have seen some incidents over the last couple of years where clearly they were not particularly prepared to cooperate in this area.

That is why in the department's view the Malaysia arrangement was effectively a virtual tow-back. Effectively, it was a means of taking people back to a country, but a country where there were arrangements in place for them to access UNHCR processes and to be supported by IOM, and where we believed it would very rapidly have changed the psychology of people coming to Australia. That is why it has been regarded as an elegant or an innovative solution that protected people's rights but removed the risk and danger associated with tow-backs and which occurred with a country that was willing for it to happen.

Senator FURNER: You did refer to the health and safety of our Defence personnel. In fact, last year I was in Border Protection Command in Darwin and I think it was a Liberal House of Representatives member on the parliamentary defence program that I was on who asked the question of the second-in-charge about what would happen. It was similar to your story about damaging motors or damage to the boat so that it would have to be rescued. I was also there during the last two or three weeks and the officer in charge was explaining various techniques with some of these boats having projectiles of sharpened bamboo, or those sorts of things, which would put our defence personnel at severe risk. Are there any other examples like that that you can explain?

Mr Metcalfe: One of the lessons we know about people smugglers is that they actively seek to take countermeasures. They understand that our tactic is to try and board a vessel, secure it and keep it in such a condition as would enable the passengers to be returned to it 13 miles off the Indonesian coastline outside their territorial waters and for the people to then willingly sail the vessel the 12 miles back to Indonesia. I think the concluded view is that it worked really well 10 years ago but we will not get those same circumstances again.

Many people have talked about them never wanting to take a phone call again such as when they heard about the crash of SIEV221 onto the rocks at Christmas Island last year. I remember very clearly where I was when I was rung by Ms Pope to tell me that there had been a large explosion on a vessel off Ashmore Reef, and it turned out that many people were injured, five people were killed and several Australian personnel suffered injuries narrowly avoiding death.

It is a very serious issue when you have non-compliant caseload, where you have people who are very determined to get the outcome of coming to Australia, who have been actively coached or who are with crew who have been instructed as to how they should prevent Australian actions occurring. And, of course, you do not have the issue of the country they might be returned to being prepared to agree to that; a country with whom we have a very important relationship. I was personally involved in these issues 10 years ago and they were extremely important. No-one who studied these issues at senior levels in government believes that they can be replicated again today.

Senator FURNER: So when Tony Abbott says, 'We will turn back the boats,' in his policy that is really an ingenuous statement.

Mr Metcalfe: It is not appropriate for me to comment on what the Leader of the Opposition says. I simply know what advice we provided.

Senator PRATT: I wanted to clarify: it would strike me that clearly Indonesia would have no obligation to take them back particularly given that these people in the main would be citizens of neither Indonesia nor Australia.

Mr Metcalfe: Not only no obligation, but I think they have indicated that they would not welcome it as an act of a friendly neighbour.

Senator PRATT: If we wish to remain a friendly neighbour it is not the kind of act that we would contemplate.

Mr Metcalfe: It is a very important relationship on very many levels. I continue to say that we should put on the record our thanks to Indonesia for all of the work it does in working with Australian authorities, my department and with other authorities, in attempting to stop and suppress the situations where ultimately people place themselves and where Australian sailors at considerable risk. We have seen these tragedies. Indonesia has been a very helpful partner in that regard.

Senator PRATT: What is the comparative burden of asylum seekers in Indonesia versus Australia?

Mr Metcalfe: I do not think that there are very high numbers of asylum seekers in Indonesia because the vast majority of people in Indonesia are only there because they want to come to Australia. It is quite different to what we see in Malaysia where we know there are about 92,000 asylum seekers.

CHAIR: Let us have a break for afternoon tea and we will come back at four o'clock.

Proceedings suspended from 15:43 to 16:00

CHAIR: We will resume this public hearing into supplementary budget estimates. Senator Cash, you were going to continue with some questions.

Senator CASH: Thank you very much.

CHAIR: Dr Southern?

Dr Southern: Senator Cash, you asked for the year-to-date figures on IMAs for 2011-12. The figure is 952 IMAs—

Senator CASH: And how many crew?

Dr Southern: plus 35 crew.

Senator CASH: Thank you very much. I had some questions continuing on the topic of towing boats back. Mr Metcalfe, what role does DIAC play with the tow-backs? What is your operational role there?

Mr Metcalfe: We have no operational role in relation to them.

Senator CASH: No operational role?

Mr Metcalfe: That is correct.

Senator CASH: Do you have any role at all?

Mr Metcalfe: We do have a role where, were a group to be successfully towed back, of course—

Senator CASH: No, no—just in relation to the actual towing back itself.

Mr Metcalfe: Okay. No, those are issues for the Navy and for the Australian Customs and Border Protection Service. But it is clearly an issue that has been considered as part of whole-of-government border protection policy issues.

Senator CASH: What is your capacity to give evidence or advice in relation to tow-backs on behalf of other agencies?

Mr Metcalfe: Many years of experience of working on the issues, Senator, but—

Senator CASH: But what is your actual capacity to give—

Mr Metcalfe: As I have indicated as head of the department, we do not have any particular operational role on the issue. We do have a broader role in providing and coordinating advice on immigration policy on these issues.

Senator CASH: But do you have the capacity to actually give evidence on behalf of other agencies on this matter?

Mr Metcalfe: I believe I have the capacity, but what I have agreed with you is that it is not the role of my department to get operationally involved in decisions. However, I can say that, on the point about the views of Indonesia, that is a matter that properly comes under the area of advice of the Department of Foreign Affairs and Trade, but I am just passing on to the committee what I have been advised by the department of foreign affairs and have read in relation to reporting on this issue.

Senator CASH: But my questions about the operational role in relation to tow-backs should more properly be put to other agencies?

Mr Metcalfe: Yes. I think the Australian Defence Force or the Australian Customs and Border Protection Service would be the appropriate operational agencies on this issue.

Senator CASH: Mr Metcalfe, given the failure of the Malaysian agreement and your evidence that the Pacific solution was tried and was successful at the time but would not be successful now, are you saying that there is nothing the government can do other than onshore processing and we are really just raising the white flag?

Mr Metcalfe: Well, I would be very careful about responding to your question in the way that you have phrased it, Senator. I have indicated our views at some length as to the state of Australian law and international law on this issue. I have indicated a historical analysis of what has worked in the past and whether it would work again, and certainly my view is that processing somewhere else in a regional context—which happened with the Vietnamese and happened with other groups—if you wish to stop people coming, is the most effective way for that to occur. I have indicated and I think other officers have given evidence to other committees whether or not what worked last time could work again, given that it was uncertain then but it is clear now. I have indicated the determination of people and the adaptability of people smugglers. So all of those things have been provided now. In terms of further policy advice, I will resort to the usual response, that I do not get into discussions of policy advice. As for what alternative considerations, issues or options might be available, the government has made some clear statements on this issue—as recently as last Thursday.

Senator CASH: Chair, I believe Senator Humphries has some questions now, before I move on to my next topic.

CHAIR: All right. Senator Humphries, we will go to you.

Senator HUMPHRIES: Mr Metcalfe, I want to clarify something you said earlier about estimating the number of IMAs in the course of this year. You said to Senator Cash that no revised estimate had been produced. Is it the intention of the department to produce at some stage a revised estimate for planning purposes?

Mr Metcalfe: That will need to be done as part of the budget update process. Over the next couple of months in the lead-up to additional estimates decisions will need to be taken as to what numbers should be properly put into the forward estimates in terms of future arrivals. Of course, a lot is being done to try to prevent those arrivals from occurring—disruption and other efforts—so any figure is always going to be open to question because there are so many factors in this area. That is why I have hesitated to use the word 'forecast'. To me a forecast is something done in an economic way with some clearly understood parameters, and the whole issue of people smuggling is difficult to forecast. That is why in many respects it is easier to look at what we know has happened in the past. Only 12 months ago we were seeing arrivals in the order of 600 a month.

Senator HUMPHRIES: Equally, it would be undesirable simply to be reactive to whoever turns up. You would need to plan for certain contingencies.

Mr Metcalfe: Of course. And certainly the department, in providing advice and in its own operational workforce planning, has to look at all of these issues and a variety of potential options and be prepared to adjust and adapt, noting that the whole time agencies are doing what they can to prevent people risking their lives in this way.

Senator HUMPHRIES: Would you normally publish any revised estimates before the estimates committee meets, or will it be up to us to find out at estimates?

Mr Metcalfe: As we discussed this morning, whatever figures need to go into the updated budget forecasts would occur and be tabled either in December or early February in advance of the next estimates hearings, which are to examine the additional estimates. These estimates are, of course, supplementary to the budget. The next estimates are to examine the additional estimates processes. Depending on when those figures are published, it would be prior to the estimates hearings.

Senator CASH: If they were published or tabled in December I am assuming they would be tabled outside the parliament's sitting, because we are not sitting in December.

Mr Metcalfe: I am not sure of the mechanics. However that works is the area of the Department of Finance and Deregulation, but certainly the budget update routinely occurs. It does every year across all portfolios and is in advance of the additional estimates process in mid-to-late February.

Senator CASH: Can I confirm that at this point in time the department does not have an adjusted number of arrivals anticipated for 2011 and 2012 despite the fact that we are now at 952 plus 35 crew and the department has been budgeted for 750 IMAs?

Mr Metcalfe: That is correct.

Senator CASH: If we were to use the similar figure that last year was based on the approximately 600 a year that you have alluded to and if it were around 5,000 for this financial year, what would be the budgetary implication?

Mr Metcalfe: I have not got those figures with me. As you know, it is a complex equation depending upon the arrival numbers, how long—

Senator CASH: Just in relation to 5,000. If we actually agreed that the upward revision was 5,000 based on what occurred last year—

Mr Metcalfe: I think that would require a significant degree of calculation that I cannot provide you here.

Senator CASH: Could you take it on notice, then?

Mr Metcalfe: We will take it on notice and try to answer it as best we can, but what I can say is that there are certain things that were budgeted for that will no longer require budget appropriations—the additional thousand refugee places et cetera. We went through that this morning. It then becomes a question of how many people arrive, the circumstances of their detention and processing and what model ultimately applies to the majority of people. Those are issues being worked on right now.

Senator CASH: At the last estimates hearing when we were speaking on the estimate of 750, the evidence that you gave on page 44 of the *Hansard* was:

The other figure that Mr Sheehan has indicated is in the budget estimates for next year is an expectation that, as a result of the policy measures the government has put in place, estimated arrival numbers will be 750. That was purely, as we have discussed on many occasions, a figure that has been identified for financial planning purposes.

So basically what you are saying at this point in time is that for financial planning purposes the government does not have an estimated number of arrivals.

Mr Metcalfe: At this stage.

Senator CASH: So the government's financial planning is in disarray.

Mr Metcalfe: This is a part of a much larger budget, and all sorts of things move around the budget. There is a proper annual orderly process and that is underway right now.

Senator CASH: Please take this on notice. In relation to the number of anticipated arrivals in 2011-12, if that number is based on the 4,949 people who arrived last year, what would be the financial impact of that adjustment across the department's outcome areas?

Mr Metcalfe: Just now I took on notice a figure of 5,000.

Senator CASH: Which is easier for you: 4,949 or 5,000?

Mr Metcalfe: I will ask our award-winning CFO to come up with it. We understand what you are saying, but I suspect that whatever he provides on notice would be heavily weighted with a whole range of assumptions and issues. Ultimately you know what you are going to spend when you have spent it in this area because there are so many moving parts. I understand where you are trying to take us and if we can assist we will.

Senator CASH: All I am trying to work out is the financial implications for the Australian taxpayer.

Mr Metcalfe: I think that it is quite significant.

Senator CASH: It is very significant.

Mr Metcalfe: That is why a great deal of work has been done to try and find a way to prevent people from coming on which—

Senator CASH: Which we have failed to do to date.

Mr Metcalfe: we do not appear to have been able to reach agreement.

Senator CASH: There has been an announcement that, under the new onshore arrangements, temporary and bridging visas will be provided to asylum seekers. What are the temporary and bridging visa subclasses that could be provided to the asylum seekers?

Mr Fleming: As per the announcement by the Prime Minister and the Minister for Immigration and Citizenship last week, there will be case-by-case consideration. But the minister indicated that the usual bridging visa, were people to go on to a bridging visa, would be a bridging visa E subclass 050.

Senator CASH: Please take me through the components of that visa.

Mr Fleming: Essentially that would provide the holder with lawful status for the duration of their processing, so they would no longer need to be detained. It is typically linked to the processing of their claims for asylum, so it remains valid while their claims are still being processed and through judicial review. There are various conditions that can be placed on the bridging visa, including things like a right to work, reporting conditions, the need to notify Immigration of changes of address. They are not set in stone as one-size-fits-all; there is a flexible suite available.

Senator CASH: What conditions placed on the bridging visas are anticipated at the moment? Will all people be given work rights?

Mr Fleming: The minister indicated he would be inclined to give work rights.

Senator CASH: And welfare?

Mr Fleming: As asylum seekers in community on a bridging visa, they would have access to Medicare but not to Centrelink benefits.

Senator CASH: I read in the paper that they would receive a welfare payment. What did that allude to?

Mr Fleming: If I can compare it to what we do for non-IMA asylum seekers in the community, there is a thing called the Asylum Seeker Assistance Scheme that we fund and that is delivered on our behalf by the Australian Red Cross. That allows, subject to means test and regular checking, that they can get—

Senator CASH: Subject to a means test.

Mr Fleming: Basically they would have to be otherwise destitute and then they could access payments of up to a maximum of 89 per cent of special benefit.

Senator CASH: What is that the equivalent of per week?

Mr Fleming: About \$215 a week maximum.

Senator CASH: Is that per individual?

Mr Fleming: That example is drawn from a single unaccompanied adult with no dependants. There are obviously a whole heap of formulas.

Senator CASH: Could you provide to the committee an analysis of those formulas.

Mr Fleming: Certainly.

Senator CASH: Thank you.

CHAIR: Mr Fleming, this is not a new visa, is it?

Mr Fleming: No, it is not a new visa.

CHAIR: It has been around for—

Mr Fleming: Since 1994, I think, we have had the concept of bridging visas.

CHAIR: I just wanted to clarify that.

Mr Metcalfe: Essentially, I think, in many regards these arrangements would be equivalent to what applies to someone who arrives by air and who subsequently seeks asylum in Australia.

Senator CASH: In relation to the Asylum Seeker Assistance Scheme, under which they are able to access approximately 89 per cent of what—

Mr Metcalfe: Exactly 89 per cent.

Senator CASH: Exactly 89 per cent of what an Australian would be paid under Centrelink. What is the current budgetary figure for the ASA?

Dr Southern: Mr Illingworth can give us some advice there.

Mr Illingworth: I do not know that I have a number for ASA.

Senator CASH: What did you budget for the 2011-12 period?

Mr Illingworth: I have figures for expenditure, if that would—

Senator CASH: But what have you budgeted for the Asylum Seeker Assistance Scheme for the 2011-12 period?

Mr Illingworth: I will just have to get my hands on those figures.

Mr Metcalfe: Can we come back on that point.

Senator CASH: Yes. In terms of the budgeted amount, how many asylum seekers was that based on?

Mr Metcalfe: We will check on that, and hopefully we will be able to come back fairly shortly on those questions.

Senator CASH: Thank you. Will the budget for the ASA have to be increased as a result of the new onshore arrangements?

Mr Metcalfe: As part of the calculations for revising the budget, yes. Clearly, if there are to be additional people placed on bridging visas, one would expect that a proportion of those people would otherwise be destitute and therefore would be eligible for up to 89 per cent of special benefit, and therefore this would be one of those calculations that need to go into that detailed work on the budget update.

Senator CASH: Why do you say that only a proportion of those people will be destitute?

Mr Metcalfe: Because they would have work rights, so it is a question of whether they are able to provide for themselves.

Senator CASH: In terms of the work rights, exactly what will they be able to do? What is the proposed policy of the government?

Mr Metcalfe: Details are being worked out, but if the best example is work rights applicable to people who have arrived by air then they would have the ability to undertake work in Australia, and the expectation is that they would be subject to normal Australian working payment levels and conditions.

Senator CASH: So basically, if there is a job available, they will be able to apply for it just like any Australian.

Mr Metcalfe: That is my understanding—that work rights provide that entitlement. So it becomes a question of: should the person seek to fend for themselves, or should they be provided for by the Australian community, or should they be destitute and homeless?

Senator CASH: What process will be put in place? I have now visited a number of the detention centres, as I am on the detention centre inquiry, and I have met with many detainees. None of them speak English. We have used an interpreter.

CHAIR: That is not true.

Senator CASH: None of them would speak English to the extent that they might be able to work within the community safely. So what is your anticipation in relation to those who will be able to work and those who will have to access the Asylum Seeker Assistance Scheme?

Mr Metcalfe: That is something we are working through now, but I think you raise a fair point.

Senator CASH: Will you be lowering the English language test for this group of people as opposed to, say, people coming here on a 457 visa?

Mr Metcalfe: It is not our English language test as such. They would have the right to work. It is whether they could find employment in a place where their own language, or any

other language they have, is appropriate—subject to appropriate occupational health and safety issues, as you have suggested. But I suspect many people would find it a challenge to fend for themselves, because of the issues associated with language.

Senator CASH: What processes will be put in place to ensure that these people are not exploited if they are employed?

Mr Metcalfe: The normal arrangements provided for under workplace arrangements.

Senator CASH: And these people will be made aware of their rights whilst at work?

Mr Metcalfe: Certainly part of preparing the person for release from detention and granting a bridging visa would be to provide them with information as to Australian living and working conditions and access to people such as the Fair Work Ombudsman, who has done good work in relation to other groups, students or 457 holders, as we have seen in past years. So that is the standard arrangement. In addition, the department would need to maintain regular contact with people as we go about processing any claims they have. That would be an opportunity for our case managers to check whether there were issues.

Senator CASH: We have referred, Mr Fleming, to the bridging visa subclass 050. What other visas would potentially be available to this cohort?

Mr Fleming: In theory, because the people are in detention, one option is to rely on the ministerial intervention power to grant a visa to any person in detention. In theory, any class of visa would be able to be granted. A bridging visa has been specifically designed to keep somebody with lawful status while their substantive claims to remain in Australia are processed.

Senator CASH: But, in theory, any visa could be provided on the basis that the minister can intervene and provide a visa?

Mr Fleming: That is correct.

Senator CASH: When people are released on the bridging visas will they be allowed to live anywhere or will there be parameters around where they can be accommodated?

Mr Fleming: Mr Illingworth might want to add something, but that is something that can be considered on a case-by-case basis. Conditions can be attached to a bridging visa and one option is to require them to reside at a specified address but another is just to require them to stay in regular contact and tell us in advance if they are going to change address.

Mr Metcalfe: I am sure the minister will be making further detailed announcements about this.

Senator CASH: I certainly hope so.

Mr Metcalfe: I suspect that this level of detail will become more apparent in the time ahead.

Senator CASH: So the level of detail in relation to the government's current policy has not yet been worked through?

Mr Metcalfe: The government have made it quite clear they will be making further specific announcements.

Senator CASH: But it has not been worked through at this stage, otherwise you would be able to provide me with information.

Mr Metcalfe: The minister will make announcements when he is ready to.

Senator CASH: In other words, we do not have the information?

Mr Metcalfe: I am saying that the minister will make announcements when he is ready to.

Senator CASH: If the department is going to provide the accommodation, what will the accommodation consist of?

Mr Metcalfe: We provide accommodation through the Red Cross for community detention, but I do not think it is envisaged that we will be providing accommodation for people on bridging visas.

Senator CASH: It is not envisaged that you will be providing that?

Mr Metcalfe: No, in the same way that we do not provide accommodation for people on bridging visas 050 who have applied for refugee status having arrived by air. Effectively the person is required to find their own accommodation. Many connect with community groups, advocacy groups and support groups who provide a service to them in this area. I think I took a question from Senator Hanson-Young about that earlier on.

Senator CASH: In relation to the granting of subclass 050 bridging visas, you stated that the conditions will be done on a case-by-case basis. Does the department anticipate having to increase its resources to be able to undertake this case-by-case analysis?

Mr Metcalfe: Firstly, we are working through the workforce implications of the changes that were announced last Thursday. We have a substantial resource in case managers, who are involved in working with people, many of whom are currently in immigration detention, whether it is in facilities or in community detention. That group of departmental officers would be involved in this type of work as well. It then becomes a question of what we actually expect to occur in the future and it comes back to the point that you and I love discussing as to what future arrivals might be. I am mindful of the fact that some of the resources currently employed in a detention environment will effectively be shifted across to a case management role of people who are in the community. That role is not just about the conditions of their time in the community; it is about coordinating all aspects of their case with a view to it moving through as rapidly as possible—for people who are not refugees being assisted through that process and for people who are refugees being identified.

Senator CASH: In relation to visa subclass 050, they will be entitled to work rights, and that is basically what the minister has alluded to at this stage.

Mr Metcalfe: The minister has indicated that.

Senator CASH: They will be entitled to housing.

Mr Metcalfe: No, we have not said that.

Senator CASH: There is a potential that they can be granted access to housing under the subclass 050 visa—that is a condition that can be placed on the visa?

Dr Southern: No, what we were saying is a condition could be that they are to live at a particular address but not that we would provide the accommodation at that address.

Senator CASH: They have to go and source the accommodation?

Dr Southern: Yes.

Senator CASH: With the money that they receive?

Dr Southern: That is correct.

Senator CASH: And they are entitled to assistance through the Asylum Seeker Assistance Scheme. Are they actually given a Medicare card?

Mr Metcalfe: We can check on that. Mr Illingworth is nodding his head.

Mr Illingworth: Yes, those that are eligible for Medicare would have the standard form of recognition of their entitlement.

Senator CASH: What other services are able to be provided to those on the bridging visa?

Dr Southern: I believe that torture and trauma services would be available if they were required.

Senator CASH: Is that mental health services?

Dr Southern: Beyond torture and trauma, yes.

Senator CASH: I suppose if you have got a Medicare card you can access almost anything.

Mr Metcalfe: Whatever they would be entitled to access under the Medicare card—

Senator CASH: As an Australian citizen, they will get.

Mr Metcalfe: They are not an Australian citizen, of course.

Senator CASH: No, they are not, but they would have the same—

Mr Metcalfe: The person who is eligible for Medicare would be able to access whatever range of services a person with that Medicare access would have. Because of the fact that quite a few people arriving in this way have experienced significant torture and trauma there has always been acceptance that there should be particular facilities made available to them, and that, these days, is done through the department of health. The department's involvement would essentially be their continuing processing in relation to their immigration status—in other words, pretty similar to someone who had arrived on an aircraft and sought refugee status when they came here.

Senator CASH: Can they jump the queue in relation to the types of medical services that they access?

Mr Metcalfe: I would not have an understanding of that. I would not use that word.

Senator CASH: What would you say? Are they able to access a service before an Australian citizen?

Mr Metcalfe: In the same way you were keen to establish that I did not have operational responsibility for tow-backs, I do not have operational responsibility for Medicare and I would suggest you address that to the Department of Human Services.

Senator CASH: How many asylum seekers does the department at this stage anticipate will actually be provided with the bridging or temporary visas?

Mr Metcalfe: That is currently being worked through. The minister's—

Senator CASH: It is another one of those issues that are currently being worked through?

Mr Metcalfe: The minister has made it clear that there will be mandatory detention for health, identity and security checking. There will be a case-by-case approach following that to individuals. He has identified in some of his comments that there are a range of factors he

would take into account there—time in detention, torture and trauma, whether they are on a positive or a negative pathway, their behaviour in detention—and those issues would all firm up into a question of: should they be granted a bridging visa, held in community detention or kept in held detention arrangements.

Senator CASH: What about the removal pending bridging visa, subclass 070? What are the thoughts surrounding the issue of that particular visa to asylum seekers?

Mr Fleming: I said in theory any visa could be granted—

Senator CASH: Has that particular one been looked at?

Mr Fleming: We have looked at that. It is not designed, however, to link into the processing of substantive claims to remain in Australia. It is designed for people who are usually failed asylum seekers or have no other claims remaining.

Senator CASH: Yes, absolutely; like the Afghanistans we talked about this morning.

Mr Fleming: That is right.

Mr Metcalfe: It was basically introduced some years ago for those persons who were not found to be refugees who we could not hold indefinitely and who were not easily able to be returned home, and therefore it gave them limited rights to get them out of detention. It is a visa that is used from time to time.

Senator CASH: Even though they were on a negative pathway?

Mr Metcalfe: Absolutely. It was primarily because they were on a negative pathway or in fact had completed a negative pathway but they just had not left yet. Some of those very long term detention cases, six and seven years, that we had some years ago—that visa was established to effectively get those people out of detention because of the real risk the Commonwealth was running that it would be seen to be arbitrary detention and therefore unlawful.

Senator CASH: What entitlements are given to asylum seekers that are given that 070 visa? What are they entitled to?

Mr Fleming: They have the right to work, they have access to Medicare and they also have direct access to Centrelink special benefit. Mr Illingworth might be able to add to that.

Senator CASH: What is Centrelink special benefit?

Mr Fleming: I gave you a figure of about \$215 a week for 89 per cent. So if we divide that by 89 and multiply by 100—

Senator CASH: What do you get?

CHAIR: It might be on Centrelink's website.

Mr Metcalfe: We do not administer special benefit.

Mr Fleming: The equivalent figure for a single adult with no dependent children gets you to around \$240 a week.

Senator CASH: Right, it is around \$240 a week. And these people are on a negative pathway—they are ultimately leaving Australia. And should they choose to return voluntarily?

Mr Metcalfe: In fact, I think that most of them are beyond the negative pathway in that they have been found not to be entitled to stay in Australia. It is just that they have not left yet because, as we discussed, there are quite often practical issues in having a person leave Australia.

Senator CASH: Certainly, the Afghans we talked about this morning are an example of a cohort that could actually be subject to subclass 070 visa?

Mr Metcalfe: Yes. Everything is potential—and, of course the Iranian issue that we discussed this morning—but I do not know whether Mr Illingworth had anything to add?

Mr Illingworth: As the secretary said, the RPBV was created to deal with some cases that were potential long-term cases detention cases, and difficult to resolve, where people had been through the pathway, they had no right to remain and they were willing and eager, in fact, to depart and were keen to cooperate in that process. So that was the basis on which the visa was created.

Senator CASH: In the event that the person is granted a subclass 070 visa, they are on a negative pathway and they refuse to leave Australia voluntarily, is there a maximum time period that they are able to stay on the subclass 070 visa?

Mr Illingworth: The visa was created to make a flexible but indefinite period for allowing a person to be in the community with the objective of arrangements for departure being made as soon as that departure became feasible. The visa has as part of its construction a very flexible mechanism for the minister to terminate the visa when that becomes available.

Senator CASH: If you were to terminate the visa, what then happens to the person if they cannot be removed from Australia?

Mr Illingworth: The idea would be that the visa would be terminated when removal becomes feasible. But if not, they would—

Senator CASH: It is an indefinite period. So for years and years—

Mr Illingworth: That is right.

Senator CASH: If it is indefinite, it could be for years.

Mr Metcalfe: Essentially, it is an acceptance that we cannot keep people detained forever and that ultimately management of them in the community is a better arrangement for a whole range of reasons. These are usually people who are refusing to help; they are not volunteering and there can be quite complex issues of identity, or nationality or they are simply completely unhelpful. The intention is that we keep working with that person and with that country to secure the return of that person. But it is simply not sustainable, as governments have found over many years, to detain people for extremely long periods of time.

Senator CASH: How many people are currently in Australia on subclass 070 visas?

Mr Illingworth: There are 34.

Senator CASH: Are you able to advise the committee how long each person has been on the visa?

Mr Illingworth: I can give you some numbers by cohort—

Senator CASH: General time frames?

Mr Illingworth: That is right. Twenty-eight have held their visas for longer than 12 months, 18—sorry—

Senator CASH: That is more than 34 already?

Mr Illingworth: Sorry, that is the extent of the age differentiation I have: 28 have held their visas for longer than 12 months.

Senator CASH: That is all we have?

Mr Illingworth: That is right.

Senator CASH: Could you take on notice to provide to the committee how long each of the 34 have actually held the visa for?

Mr Illingworth: Okay.

CHAIR: Could I just ask something unrelated to that? Not for people on that subclass visa but under the arrangements announced last week, will people be entitled to the asylum seeker support scheme?

Mr Metcalfe: There are two schemes that have very similar names. One is the Application Assistance Scheme, which is about helping you prepare your case. The other is the Asylum Seeker Assistance Scheme—

CHAIR: That is the one I am referring to.

Mr Metcalfe: which is what we have been discussing—up to 89 per cent of the special benefit. That is, as we discussed, currently administered for the department by the Red Cross, with a means test in place to ensure that a person would not otherwise be completely destitute and therefore, effectively, living on the streets.

CHAIR: Is this the scheme that, in the past, people from East Timor have accessed?

Mr Metcalfe: I do not think so.

Mr Illingworth: I believe you are referring to the group of East Timorese who were in Australia for some years. My recollection for those people is that they were on ASA.

Mr Metcalfe: We are going right back to probably Minister Bolkus in the early nineties.

CHAIR: No, not the nineties. There were about 1,600 of them left.

Mr Metcalfe: There were a couple of East Timorese groups. We had a large number of East Timorese asylum seekers in the early nineties, from memory, who sought refugee status in Australia. I recall former Minister Bolkus was involved in the interesting of whether or not they could access Portuguese nationality and be removed to Portugal. There were various legal opinions about that at the time. A quite separate group were the East Timorese who were brought here as part of safe haven arrangements following the attacks by militia on the high school in Dili where the UN mission was based prior to General Cosgrove and INTERFET moving in. That is the group that were brought to Darwin where we established a temporary safe haven behind the Greek club. Mr Frew was involved with that. Some of those people then joined the Kosavars who were here at the same time. That might be the group you are talking about. They were on a safe haven visa and therefore were provided with accommodation and other support. They were not under this type of arrangement of the bridging visas 050 where effectively people have work rights and are largely left to make their own way in the community but stay in close contact with the department.

CHAIR: Thank you.

Senator CASH: How long does the department anticipate that people will actually be on the bridging visas?

Mr Metcalfe: Again, it would depend on the pathway for the person. If the person is ascertained to be a refugee it would then be a question of how long that refugee process takes. If the department refuses the person; how long the appeal process takes. If the review process says no; how the litigation process takes. It would vary substantially.

Senator CASH: Is there a potential for years?

Mr Metcalfe: There is a potential for the particular group who are on a negative pathway. As we have seen with people in detention, those people can be on those arrangements for many months if not well beyond a year or two as they work their way through those various processes that are available, which of course have been widely understood now, since M61, to be available whether you are in detention or not.

Senator CASH: Has the department given any thought in relation to the actual costs of putting people onto the bridging visas as a result of the new onshore processing regime?

Mr Metcalfe: That is part of the overall budget update. I would expect that it would be significantly less expensive to have people on bridging visas than in held detention because the security guarding costs are removed. But there will, of course, be costs because some, many, depending on the cohort we have, may have difficulty accessing work as a practical matter and, therefore, would be reliant upon the social security system. They are the 89 per cent and there is obviously the health issue. They would be provided with health care in detention. There are all of those variations. Ordinarily you would expect that it would be substantially less expensive to have people on bridging visas. Another factor, of course, is that we know there are many people pursuing claims against the Commonwealth in relation to damage allegedly done to them as a result of being detained. One would hope that if people are detained for shorter periods of time that the potential for those damages claims would be significantly reduced.

Senator CASH: There were reports in newspapers on the weekend about putting the asylum seekers into the regions. What are the policy thoughts around that?

Dr Southern: I think that is again one of the issues that we are working through. It could be effected through the kinds of requirements you might place on a bridging visa E to do with reporting requirements and living at a certain location. Again, it would be one of those matters that we would be working through—

Senator CASH: Has much thought been given to where the asylum seekers may be placed?

Dr Southern: There are a number of regions in Australia where particular communities have settled successfully. One thought might be that we would look to those areas of success and perhaps link people from the same communities with them. Beyond that the thinking will be worked through as we get through the details.

Senator CASH: When do you actually anticipate the first bridging visa to be granted?

Mr Metcalfe: We do not have a set date on that. No doubt the government will make an announcement.

Senator CASH: Is this going to be a quick policy turnaround?

Mr Metcalfe: I think the policy direction was articulated last Thursday and no doubt detailed announcements will be made as we discussed earlier. I do not have an indication yet as to when that announcement might occur.

Senator CASH: Is it fair to say though that putting failed asylum seekers on bridging visas indefinitely, which it would appear there is the ability to actually do, sends the wrong signal to people smugglers and in fact may well be contributing to another pull factor? If I come to Australia, even if I fail, now that we have onshore processing, the government has the ability to put me on to a bridging visa until it is time for me to go.

Mr Metcalfe: A couple of thoughts there, firstly, I think it is not the intention it would only be failed asylum seekers who would be eligible for the bridging visa arrangements but people who are pursuing an asylum claim. The issue of whether or not this would represent a pull factor or more does detention represent a reason for people not to travel is exactly the question I asked the joint select committee on detention which is being conflated with my personal views on this issue which I have not canvassed publicly and I do not intend to now. I would simply point out that since mandatory detention in its current form was introduced in the early 90s well over 20,000 people have come to Australia, so one would be entitled to ask the question: does detention act as a deterrent? The obverse of that is: would release from detention act as an attraction?

The reality is that the current state of Australian law is that we cannot pursue the flexible offshore processing arrangements that we would wish. It is clear that detention is important for immigration processing purposes to establish who a person is and whether they represent any health or other risks. There is no immigration processing requirement for a person to be detained after that unless the person indicates through their behaviour that they will lose contact with the department and therefore detention is required to ensure availability for removal. That is the policy basis of immigration detention—availability for process, whether it is a process of initial identification and checking or a process of removal. Our experience with community detention and other arrangements such as people who arrive by air is that while people are still looking for an outcome from the department they will stay in touch with us. So it is a very key issue that you are raising.

My view is that demonstrably for any suggestion that detention has deterred people from coming, you only have to have a look at the lessons of the last 30 years noting of course that there was an earlier form of detention introduced by the Fraser government in 1980 which had a sunset period of three years and which was not renewed in 1983. All of this material is available through the department's submissions to the joint select committee and those are available on that committee's website. We are happy to refer you to particular parts of those submissions if need be.

Senator CASH: Thank you but with all due respect that was not my question. The evidence that has been given to the committee is that failed asylum seekers can potentially remain in Australia indefinitely on a bridging visa. That is the evidence. If I refuse to cooperate, which is what we heard this morning, I just say, 'I won't return home. You cannot involuntarily return me.' Do you agree that that will be a pull factor?

Mr Metcalfe: No.

Senator CASH: Upon what basis?

Mr Metcalfe: Because of the basis that detention clearly has not been a deterrent.

Senator CASH: They are not in detention though. We now have onshore processing.

Mr Metcalfe: That is what I am saying. Detaining people for years has not deterred anyone from coming.

Senator CASH: But they will not be detained for years.

Mr Metcalfe: The question is: is not detaining people going to encourage people to come?

Senator CASH: Not detaining people and providing them with a bridging visa for an indefinite period.

Mr Metcalfe: We know a feature for many years has been people trying to beat the Australian visa system through using false passports when arriving by air, or misleading or not fully indicating to us their reasons for coming to Australia by air and then seeking asylum after they come here or, indeed, the circumstances they face may change in the intervening period. That has been a regular pattern for a long period of time.

Will moving away from detaining people for very long periods of time serve as an attraction for more people to come? My view is no. Why do people come to Australia? Because Australia is a terrific place and we all like living here. Some people are coming from very difficult circumstances overseas and are looking to pursue their lives in western developed countries like Australia. The thing that people are coming for is freedom and the life to live in Australia. Whether or not detaining a person while they are being processed acts as a deterrent or attraction, I suspect it does not deter people coming. People will continue to come but they will not come for that reason. They will come for the reason that they want to live in Australia.

Senator CASH: With all due respect, Mr Metcalfe, your view in relation to the Malaysian solution as stated on several occasions at the budget estimates hearing was that it would 'break the people smugglers' model'. Based on the fact that was a total and utter failure—

Mr Metcalfe: I disagree.

Senator CASH: why should we have any confidence in the view that you are now expressing that that is not a pull factor? You were proven wrong.

Mr Metcalfe: The High Court significantly changed the view of Australian law that had been accepted by the previous government and by this government. The views I have expressed are not simply my views. They are the views of people like me who have over 30 years experience in the portfolio, so we do know a little bit about what we are saying.

Senator CASH: But you still managed to get a significant area of policy totally and utterly wrong.

Mr Metcalfe: I disagree. I still think the Malaysian arrangement would work and would work effectively.

Senator CASH: Is that the advice you have provided to the government?

Mr Metcalfe: Absolutely, and it continues to be. If the parliament was able to establish the law in a position that met the High Court's requirements, the Malaysia agreement has a very high chance of succeeding. Did I predict that the High Court would change the view of

the law that was strongly understood by many legal commentators and based on sound legal advice? No, I did not. I do not regard it as a failure on my part; I regard that as a very substantial change in the understanding of the law that was not predicted by anyone.

And, with respect, these views are not only held by me, but also by senior colleagues who have spent many years working on these issues overseas and in Australia through several governments as well as others who have joined us and who have brought fresh inquiring minds to these issues and officials from other portfolios who work on this matter. This is not Andrew Metcalfe off on a frolic of his own. You know that I am far more serious in what I do than that.

Senator CASH: Mr Metcalfe, you are still not answering my question. My question was on failed asylum seekers, under onshore processing, being able to live in Australia indefinitely in the community and access welfare payments under a bridging 070 visa.

Mr Metcalfe: And has been for many years in relation to people who come on an aeroplane.

Senator CASH: Absolutely. How is that not a pull factor? Is that not a new product that the people smugglers can now market? You do not need to get on a plane; you can come by boat.

Mr Metcalfe: The people smugglers will market anything. They will seize on comments—

Senator CASH: Especially a policy that they can exploit.

Mr Metcalfe: The question is: does this of itself represent a major selling point? I do not believe it does. I believe the answer is 'no' to your question. I have said that a couple of times. I think that what people are looking for is a life in Australia. They will continue to look to come to Australia. The only way to stop people risking their lives when coming to Australia is to adopt a successful offshore processing solution. My view is that the Malaysia arrangement was the best contemporaneous means to put that into place. I think Mr Fleming is going to assist us.

Mr Fleming: In your question you were linking it to people routinely having an 070 bridging visa—

Senator CASH: Not routinely getting them but having the ability to get them.

Mr Fleming: They can only get them based on a personal intervention decision by the minister, so there is no certainty or entitlement. It would be a case-by-case consideration and, as I have mentioned in earlier evidence, you would think the usual bridging visa would be a bridging E visa, which ceases if the person reaches the end of a negative pathway.

Senator CASH: In relation to the unemployment rates of asylum seekers, my understanding is—and I believe this was also given at the last estimates hearing—that it is shown that 83.5 per cent of asylum seekers given protection visas are still unemployed after five years. Upon what basis do you believe that failed asylum seekers will have the ability to hold down a job when they are given these work rights, given that the evidence that has been presented shows that 83.5 per cent of them are still unemployed after five years?

Dr Southern: Thinking back to the evidence at the May estimates, where we talked about the outcomes of some research that had recently been done, we did note that the employment

outcomes for humanitarian entrants had improved over a period of time. Yes, unemployment was very high, but a large proportion of those people were in some form of either vocational training or education at the time, and there were very high rates there. I do not have the breakdown of figures in front of me but I believe that, if we compare humanitarian entrants who have come directly from overseas as part of our refugee program with asylum seekers who have been granted protection visas onshore, the employment outcomes are actually better for people who have come through IMAs. I do not have the figures in front of me and I can certainly take that on notice for you.

Senator CASH: Thank you. Mr Fleming, given your comment that it is via ministerial intervention that a subclass 070 visa is able to be provided, how does that sit in relation to the evidence that we heard earlier? In particular, Mr Metcalfe, you have stated that we should not be keeping people in detention indefinitely. If the minister does not intervene and the person refuses to go home, and we are unable to return them, are we not then in a situation whereby they will be detained indefinitely?

Mr Metcalfe: That was precisely the reason the previous government established the 'return pending' bridging visa. I think ministers at that time became quite alarmed at the potential for wrongful imprisonment actions to succeed and therefore needed to find some other way through this—hence the establishment of that visa, to be used not in very large numbers but as a tactical device for those extremely intractable cases that you find from time to time.

Senator CASH: With the number of people here at the moment who are potentially able to access the subclass 070 visa, if the minister does not intervene then they will be detained indefinitely, because we are unable to return them home.

Mr Metcalfe: I am getting a little confused. Other colleagues may not be having this problem, but you seem to be moving in context between the 050 and 070 visas. The bridging visa that would normally be provided to someone who is pursuing an asylum claim—

Senator CASH: Is a 050 visa?

Mr Metcalfe: That is correct. And then in relation to a person who has no right to stay in Australia—

Senator CASH: A negative outcome that they cannot be returned home?

Mr Metcalfe: Precisely. They are unable to be returned and are otherwise facing indefinite detention.

Senator CASH: Yes.

Mr Metcalfe: What we do know is that the High Court has ruled on this issue and that immigration detention, by its constitutional nature, does not permit indefinite arbitrary detention. It is unconstitutional.

Senator CASH: And that is my point exactly. So they should be given a subclass 070 visa. Otherwise what do you do with them?

Mr Metcalfe: They stay in the community until they go home.

Senator CASH: And that is the point. Therefore, if they are going to stay in the community even though they have received a big cross—a negative pathway—saying, 'You should be going home,' how is that not a pull factor?

Mr Metcalfe: Sorry, Senator, but I do not think you need to raise your voice.

CHAIR: Because how many of them are there in this country at the moment?

Mr Metcalfe: I think we talked about 34.

Senator CASH: That is the point. It is a pull factor—

CHAIR: It is 34.

Senator CASH: It is another product for the people smugglers to now sell. You have stated quite clearly in evidence, Mr Metcalfe, that it is unconstitutional—

Mr Metcalfe: Senator, I—

CHAIR: Order, Senator Cash!

Senator CASH: to keep people—

CHAIR: Senator Cash, order!

Senator Carr: Senator Cash, this was a program introduced by your party in government to deal with intractable situations where you actually cannot remove the person from the country and you cannot lock them up. Now, what is your policy proposal? How do we deal with it?

Senator CASH: It is not for you to ask me questions, Minister. This is additional Senate estimates—

Senator Carr: Well, unfortunately, I have!

Senator CASH: so I get to ask you the questions. That is the way it works—unless of course you want to be in opposition; then you can sit here.

CHAIR: Senator Cash.

Senator Carr: I was just indicating to you, Senator Cash, that we are going round and round in circles. The officers have explained to you on numerous occasions what the circumstances are. A proposal introduced by your party in government is still being used for intractable circumstances.

Senator CASH: And now that we have onshore processing—

CHAIR: Senator Cash. Just to clarify for my purposes, Mr Metcalfe, could you reiterate how many people are on that visa in this country at this point in time.

Mr Metcalfe: I think Mr Illingworth indicated that around 34 were currently here.

CHAIR: 34.

Mr Metcalfe: I think the point that Senator Cash is trying to make is whether the availability of the 070 visa represents a pull factor. My view is that, while the people smugglers are smart and adaptable, they probably do not sit around thinking about and flogging off the 070 visa as a particular marketing tool. What the people smugglers sell is life in Australia. What the people whose use people smugglers want is life in Australia or in another developed Western country. Often it is because they are facing persecution and terrible circumstances overseas. Sometimes they are not, and they are simply looking to improve their prospects, which is a perfectly rational thing for a person to do. That does not mean that it should occur, and Australia has a universal visa system for that very purpose. I think that is the reason, together with the evident risk to life of travel in an irregular manner,

why both major parties have agreed that an offshore processing arrangement, denying people the ability to come here, is the best policy solution. But that is not where we are.

Senator CASH: No, it is not; we are at onshore processing. I would like to move now to the current operating capacity of each of the detention centres and facilities. What is the current spare capacity?

Mr Metcalfe: I think we covered some of this with Senator Hanson-Young earlier.

Senator CASH: You did, but unfortunately I had to step outside and take a phone call during that evidence.

Mr Metcalfe: Okay. I will ask Mr Moorhouse to repeat his evidence.

Mr Moorhouse: In notional terms, including all of the contingency capability that is available to us—

Senator CASH: What do you mean when you say 'contingency capability'?

Mr Moorhouse: That involves putting beds into the education rooms on Christmas Island—

Senator CASH: Yes, so beds and tents—

Mr Moorhouse: it involves utilising Aqua and Lilac, and it involves putting people two to a room in most of our facilities. The capacity—I am just doing a quick calculation because I have to take one thing away from the other—is approximately 5,200.

Senator CASH: That is the current operating capacity?

Mr Moorhouse: That is including all contingency capabilities. The reason I am saying 'approximately' is that the figures I have here include community detention, so I have to take those away—

Senator CASH: So 5,200 beds is what we are referring to?

Mr Moorhouse: Approximately 5,200.

Senator CASH: Okay. And that includes Christmas Island, so it includes what is on Christmas Island and what is also in Australia?

Mr Moorhouse: That is correct.

Mr Metcalfe: Just noting that Christmas Island is part of Australia, Senator.

Senator CASH: I just wanted to make sure it was offshore and onshore—

Mr Metcalfe: On the mainland of Australia—

Senator CASH: to make sure we were including all of them.

Mr Metcalfe: including Tasmania.

Senator CASH: Well, that was what Eric Abetz was just in here for—to ask you questions about Tasmania. What is the current operating capacity—5,200?

Mr Moorhouse: Approximately, yes.

Senator CASH: What is the current spare capacity?

Mr Moorhouse: The numbers that I have here date from 10 October, and they show approximately 1,117 within IDCs and 1,267 within alternative places of detention.

Senator CASH: So there is some spare capacity at this present point in time.

Mr Moorhouse: Those numbers may be slightly different to the numbers that the Prime Minister and the minister used on Thursday. That is because they used the figures of 13 and 14 October. These are of a few days before that.

Senator CASH: How long does the department expect it will take before the spare capacity is exhausted?

Mr Moorhouse: I am not able to predict that.

Senator CASH: Has there been any discussion surrounding how long it will actually take—based on the fact that the Malaysian solution has failed and comments have obviously been made that we could be looking at 600 a month coming to Australia—to exhaust that spare capacity?

Mr Moorhouse: I think the mathematics are relatively straightforward, but the question is being able to accurately predict the numbers.

Senator CASH: When will the new centres at Wickham Point and Northam be brought online?

Mr Moorhouse: The first stage of Wickham Point is expected to become available in early- to mid-November.

Senator CASH: How many beds will that provide you with?

Mr Moorhouse: That will provide us with 500.

Senator CASH: Is that in addition to the 5,200 operating capacity?

Mr Moorhouse: That is correct.

Senator CASH: That is the first stage. What about the subsequent stages?

Mr Moorhouse: We will bring another 1,000 beds online in approximately February.

Senator CASH: So that is 1,500 by February of next year. In relation to Northam, what are we looking at?

Mr Moorhouse: I beg your pardon, Senator; I stand corrected. The second stage is likely to become available in May. The Yongah Hill—

Mr Douglas: If I could help here, Wickham Point will have 500 in November, a further 500 three months later in February and a further 500 in May, three months later.

Senator CASH: Thank you very much. So the figure of 1,500 does not change.

Mr Moorhouse: No, it does not change.

Senator CASH: And in relation to Yongah Hill?

Mr Moorhouse: At Yongah Hill we are encountering a number of challenges with the site. At the present time we are expecting the construction to be finished in mid to late December. There is normally a couple of weeks in which we have to do due diligence and to make sure that everything is operating correctly, so it is likely that Yongah Hill will not come online until January.

Senator CASH: When you say 'February', are we talking about the beginning of January or the end of January?

Mr Moorhouse: I think it would be misleading of me to seek to be precise in that regard because of the complexities we have encountered with the site.

Senator CASH: What are those complexities that you have encountered with the site?

Mr Moorhouse: The ground is pretty much solid granite and it is a complex construction. That is the primary complexity.

Senator CASH: There have been some rumours in the community that have been brought to my attention about the Yongah Hill detention centre as a Western Australian centre in that the capacity that was announced by the department has been revised down to 600 beds. The rumours in the community concern an increase to 6,000 beds. Are you able to advise us exactly what the maximum capacity of Yongah Hill will actually be?

Mr Moorhouse: The number that we are working on is 600.

Senator CASH: Has there been a discussion around that number changing or potentially increasing?

Mr Moorhouse: There is no discussion that I am aware of in that regard.

Mr Metcalfe: And, indeed, the minister made it plain in his comments on Thursday night that there were no plans to build any further detention centres or, by definition—

Senator CASH: That statement has been made before and we have seen Curtin expand over time despite announcements. In fact, several estimates ago we had a delightful discussion regarding how a statement had been made in relation to the Curtin Detention Centre in relation to a certain number that had been increased.

Mr Metcalfe: What I am saying is that that is what the minister said on Thursday. Any rumours in the community about numbers going to that are obviously completely wrong.

Senator CASH: They are also very distressing, let me assure you, especially for Mr and Mrs Edwards who, as you know, back onto the detention centre. And the federal government has done absolutely nothing to alleviate any of the concerns that they have in relation to the disruption of their peaceful lives.

Mr Metcalfe: I disagree completely with that statement.

Senator CASH: What has the federal government done? If you have done something, I would be delighted to know what you have done to alleviate the concerns that they have raised with the minister.

Mr Metcalfe: We certainly have talked to the Edwards quite regularly.

Senator CASH: What have you done to alleviate their concerns?

Mr Moorhouse: There have been a number of measures that we have undertaken to take into account the concerns of the community, including those Mr and Mrs Edwards.

Senator CASH: I am specifically interested in Mr and Mrs Edwards.

Mr Moorhouse: We have agreed to relocate the sewerage provisions so they are not in their line of sight.

Senator CASH: Has that been undertaken?

Mr Moorhouse: It was agreed.

Senator CASH: It has been agreed to, but has it actually been done?

Mr Douglas: We have not constructed it yet, but the relocation is part of the new plan.

Senator Carr: You could not put the sewerage pipe in before everything else.

Mr Moorhouse: We have undertaken modifications to lighting and to the PA arrangements, so we are not using the PA system for general announcements. We have done a whole series of things to take into account the concerns of the Edwards and the other members of the community, as we do for other sites. We do try to be model neighbours to the extent that we can.

Senator CASH: I think the fundamental difference between this and other sites is that Mr and Mrs Edwards back onto the detention centre.

Mr Metcalfe: I am very concerned if you have the understanding that we have done nothing because clearly that is not true. If there is any information that you have about any further contact we can have, we would be prepared to do that.

Senator CASH: Perhaps you could take on notice to provide the committee with a complete list of the concerns that the Edwards have brought to your attention, and the department's response in each circumstance. I can then follow it up Mr and Mrs Edwards.

Mr Metcalfe: Subject to any privacy concerns, we will do so. We would want to talk to Mr and Mrs Edwards about whether they would be happy for us to do so.

Senator CASH: I am sure they would be delighted to have their concerns aired.

Mr Metcalfe: I am assured by our officers that Mr and Mrs Edwards are well known to us. We have had a constructive dialogue with them because we do recognise their concerns. I have been to the site and I know how close they are.

Senator CASH: You know exactly where they are.

Mr Metcalfe: We are not there to make their life difficult. A suggestion that you clearly have in your mind that that has not occurred worries me. I would be interested if you have any information that I should be aware of so that further action can be taken.

Senator CASH: In relation to the cost of the building facilities at Northam, what has been expended on the Yongah Hill facility to date?

Mr Douglas: As at 31 August, the capital expenditure was \$9.45 million.

Senator CASH: What was the original estimate of the total cost of the facility?

Mr Douglas: When the facility was reduced in size to 600, the budget was revised to \$124.5 million.

Senator CASH: Is that still the estimate?

Mr Douglas: Yes.

Senator CASH: You do not anticipate any increases because of the site conditions you have run into?

Mr Douglas: No, but a lot of factors can change between now and the final figure, of course.

Senator CASH: Absolutely.

Senator ABETZ: I have a number of questions about the Pontville Immigration Detention Centre. Is there an anticipated closure date as yet?

Mr Moorhouse: The minister has indicated that the facility will be open for six months from the date that it became operational which was early September.

Senator ABETZ: Officials told us at a public meeting in April in Tasmania that it would be six months from the time of the announcement, so it would definitely be over and out by Christmas. We now have been given another date. I wonder if there is going to be a third update in relation to the closure. You say definitely March next year.

Mr Moorhouse: There is no further update that I am aware of. The minister has been very clear in recent times that it will be operational for six months. I think the issue really was the amount of time it took to establish the facility. We were initially of the view that it would be able to be stood up within a very short period of time because of the existence of buildings on the site but, as we discussed previously, there were some complexities in terms of getting the regulatory approvals for the site. In particular, we were of the belief that all of the regulatory approvals that would be necessary were available, yet when we came to look into the detail we identified that it was not clear that that was the case and therefore we undertook the necessary heritage and Indigenous clearances.

Senator ABETZ: I am aware of all that. I do not blame the department for that; I blame the government for the rushed announcement without doing the due diligence beforehand. We have traversed that ground before. I refer to a document entitled 'Managing Australia's borders Pontville Immigration Detention Centre: frequently asked questions'. Mr Moorhouse, is that document familiar to you?

Mr Moorhouse: It is not immediately familiar to me. I deal with very large numbers of documents like that. I am sure my colleagues are familiar with it. Please ask your question.

Senator ABETZ: I will. It states:

What consultation with the local community has taken place?

- The minister has been in contact with the Tasmanian premier and with the local federal member.

I have in fact asked a question on notice about the contact, as to when people were advised. I was not provided with an actual answer. I wonder if you can assist me. I refer in particular to question BE11/0580 that was taken on notice at the budget estimates.

Mr Moorhouse: In relation to the first part of your question, when were various people advised, the advice I have—and this was before I came into this role—is that the minister had personally contacted the Premier of Tasmania before the announcement.

Senator ABETZ: Yes, I have been given all of that on notice, but I specifically asked:

Once the government decided upon this course of action, with whom did they communicate it? I am particularly interested in the Premier, the local mayor and the local federal member, and how much notice was given of the announcement?

I was given a long answer that says that on 5 April 2011 the decision was announced and:

Key stakeholders were advised of the news prior to the public announcement.

I specifically asked how much notice and I was deliberately, I suggest, not given that answer.

Mr Moorhouse: I apologise if you were not given that answer. I do not have with me the period of notice but, based on experiences in other locations, I would imagine it would be almost just immediately before the announcement. In other words, people were advised before the announcement was made but not a long time before. Things were done very quickly in relation to the establishment of the centre.

Senator ABETZ: That is my understanding of it. That is why I sought some specificity. I put another question on notice on 30 September asking for the actual detail as to how much notice. We are now another fortnight through the process and we still, even at these estimates, are unable to tell how much notice was given.

Mr Moorhouse: I apologise on behalf of the department for not having been clear in the advice to you in relation to the question you mentioned. We will do everything we can to get back to you as quickly as possible in relation to the period of notice, but I indicate my expectation that that would have been a very short amount of time before the announcement.

Senator ABETZ: As I understand it from the rumour mill, and I do not put it any stronger than that, what you are saying, Mr Moorhouse, is absolutely right, that it was only a matter of an hour or so or hours beforehand. Yet in this document that was circulated and in fact attached to a letter from the Premier of Tasmania, on what consultation with the local community had taken place, we are told that the minister has been in contact with the Tasmanian Premier and with the local federal member suggesting that actual consultation may have taken place. In fact, no consultation took place; they were just told that an announcement was imminent. That would be correct?

Mr Metcalfe: The minister has made it plain that he regards himself as having spoken with and consulted people. I do not know whether there were other conversations that he had. We certainly know there were conversations immediately prior to the announcement and of course there has been a broader series of consultations as to the particular implementation of the arrangements for the centre with local councils and other stakeholders.

Senator ABETZ: Then take it on notice yet again, Mr Metcalfe, as to what consultation occurred prior to the announcement on 5 April. I think both you and I know what the answer to that is.

Mr Metcalfe: I will take that on notice.

Mr Moorhouse: What I would like to mention is that, whilst we can be precise in terms of the amount of notice that was provided to the stakeholders before the announcement, the department has undertaken an extensive range of consultations since then.

Senator ABETZ: I do not want to go down that track. I know that there have been some, but that is consulting people after they have been told what is going to happen to them rather than being part of the decision-making process.

Mr Moorhouse: I appreciate your point. The point I was trying to make was that from the department's perspective we have tried to be as engaged and informative and involved with the community as we could.

Senator ABETZ: As I said before, I am not blaming the department in this. You have been given something to administer that was done in haste, and the problems have arisen ever since. Has the memorandum of understanding with the local police being finalised and, if so, when?

Mr Kelly: The MOU is currently still under negotiation with the Tasmanian police. As recently as 6 October there was a discussion between each of the jurisdictional state and territory law enforcement agencies, the AFP and the department to progress the MOU. We have a formal proposal from the Tasmanian police for consideration. The initial discussions around the MOU commenced on 19 April, when all the jurisdictions, the AFP and the

department met in Canberra. At that time a recommendation from the discussions was that an overarching MOU would be put together, sent out for consideration by each of the jurisdictions and then each of the state and territory jurisdictions would have their independent annexure attached to the overarching MOU.

Senator ABETZ: Thank you for all that. When were the first detainees in Pontville?

Mr Kelly: Early September.

Senator ABETZ: So we have been going for about six weeks now without an MOU in place. Do we have any indication as to when the MOU might be finalised?

Mr Kelly: The latest draft of the MOU is expected to be sent out for state and territory consideration tomorrow. That was as a direct result of the meeting in Adelaide on 6 October.

Senator ABETZ: How much time was provided for feedback on that draft?

Mr Kelly: The initial draft went out—

Senator ABETZ: No, the draft that will be sent out—

Mr Metcalfe: I think that we are now getting to a pretty advanced draft. We will provide a proper time. I have looked at this issue recently and said that in my view it was time that we sought to bring these discussions to a proper conclusion.

Senator ABETZ: Not before time, if I might be so bold as to say that.

Mr Metcalfe: With all of these issues it takes two to tango. We are very keen for the arrangements to be formalised, but there are strong informal arrangements in place on the basis of appropriate roles being undertaken by responsible agencies. This is an issue that has taken a while and I have written to police commissioners recently saying that I would like to talk with them. Frankly, once we are through today, I will be looking forward to some discussions as to how we can quickly bring these matters to a proper conclusion.

Senator ABETZ: That is all very good, but it seems to me the chances are the detention centre will be closed before the MOU is in place. How much time has been given to the various state officials to respond to this latest draft?

Mr Moorhouse: As my colleague Mr Kelly has mentioned, we have been working on an MOU that would apply across all of the state and territory jurisdictions. So there is a degree of complexity inherent in that. However, we have had informal operating arrangements with a number of state and territory police forces over the years. Indeed, in relation to this MOU, the feedback I have received is that we have had a very positive and cooperative relationship with the Tasmania Police.

Senator ABETZ: With respect, I have been told that there has been a good cooperative atmosphere et cetera from day one, which was 19 April. Two more days and we will have been on this for six months with still no MOU in sight.

Mr Moorhouse: I appreciate the point you are making.

Mr Metcalfe: I think an MOU is in sight.

Senator ABETZ: You must have better glasses than I have.

Mr Metcalfe: I have a very good optometrist. Seriously, there have been strong engaged working discussions, but I agree: I think it is time that we sought to finalise these issues, not just in Tasmania but around Australia. There are questions of funding—how much

appropriate resourcing should go to the various jurisdictions and those sorts of issues—which we have to obviously work on properly. But I agree this is something we would all like to see sorted out quite quickly.

Senator ABETZ: Call me old-fashioned, but I would have thought that the chances of having the arrangements with the local police forces in place might have been something that you would do before any detainees came to the various states rather than trying to patch it together afterwards.

Mr Metcalfe: I am not aware of any issue that has arisen in the practical relationship that has not been properly resolved. The MOU will formalise and finalise those arrangements. In the meantime, we are getting on with our job and the police are doing their job, quite properly.

Senator ABETZ: We will watch this space further. Time is at a premium. What is the cost of the air travel to Tasmania of these charter flights that have brought detainees?

Mr Moorhouse: I do not think we have that with us at the moment.

Senator ABETZ: You can take that on notice.

Mr Metcalfe: We will take that on notice.

Senator ABETZ: Did these detainees come direct from Christmas Island or from other places?

Mr Moorhouse: No, they came from the Curtin Immigration Detention Centre.

Senator ABETZ: Are you able to provide us with how much the medical and dental service provided is costing? How is that arranged? Is it a monthly contract, a daily contract or an as needed contract?

Mr Moorhouse: Are you talking across the network or specifically in relation to Pontville?

Senator ABETZ: No, only Pontville.

Mr Douglas: We have a contract with IHMS, International Health and Medical Services, which is a branch of International SOS. It provides health and medical services across the detention network. This will become a variation of that contract to include those services in Pontville. I do not have those estimated costs here. I will take that on notice.

Senator ABETZ: Is there a permanent doctor at the facility?

Mr Douglas: There are both nursing and medical staff at the facility.

Senator ABETZ: Full time?

Mr Douglas: Some will be full time, some will be part time. I can give you the details on notice.

Senator ABETZ: What about dental services?

Mr Douglas: For the most part, dental services are accessed by appointments made through the community, unless there is a particularly high level of need, in which case a dentist might be brought on to a facility. I will take that on notice.

Mr Moorhouse: I could probably answer that for you. The arrangement that IHMS has is that it contracts with or has arrangements with community providers. We would expect IHMS

in each jurisdiction to arrange for community providers for these sorts of facilities such as dental. So IHMS would have a community dentist that they would use and people would be referred through IHMS to the dentist as they had a need to do so.

Senator ABETZ: What is the current workforce at Pontville?

Mr Moorhouse: If you will just excuse me for a second, I will get that for you.

Senator ABETZ: As in numerical.

Mr Moorhouse: We have eight case management staff and nine immigration detention operations staff. I do not have the numbers of Serco staff.

Senator ABETZ: Could you take that on notice?

Mr Moorhouse: I am not sure that I can provide you with those numbers because Serco are normally reluctant to divulge the number of staff they have for security reasons. Also it is not a contractual obligation on them to have a particular number of staff, simply to have sufficient staff to operate the centres effectively.

Senator ABETZ: How does the government then make the promise and the boast that there would be 100 local people employed courtesy of this venture?

Mr Moorhouse: I would expect that that would be the projection from Serco in terms of their total staffing requirement.

Senator ABETZ: Not by Serco, I do not think.

Mr Metcalfe: That would have been based on advice from Serco. Serco are clearly the organisation that is contracted to provide the majority of services. It has been a usual expectation of the government that they seek to employ a local workforce as far as possible. That workforce over time becomes a mobile workforce in that it provides opportunities for people from somewhere like Tasmania to work elsewhere as well. Our advice would be based on advice that we discussed with them as to their likely recruitment pattern.

Senator ABETZ: Could you ask your contractor how many people they have there because undoubtedly you pay them on the basis of how many employees they have I would assume?

Mr Moorhouse: No, that is not correct. We pay them based on a range of a number of indicators or measures. Staffing numbers are not part of the contract.

Mr Metcalfe: The principal component is the number of people being detained rather than the number of staff employed.

Senator ABETZ: Then do you have a requirement with Serco that they provide a staff ratio for the number of detainees?

Mr Metcalfe: No, we provide Serco with an expectation as to a series of outcomes. In some respects we require them to have certain standards or training of their staff but particular decisions about the number of staff required to fulfil the particular task are issues that Serco are required to decide themselves.

Mr Moorhouse: They are required to have a range of different positions. For example, they are required to have a security manager, an activities manager and a dietician. They are required to have a number of positions but there is not a precise staffing formula that they are required to follow.

Senator ABETZ: So you cannot tell us how many staff Serco employ there?

Mr Metcalfe: That has pretty well been the position ever since this matter was first outsourced in 1997.

Senator ABETZ: Then it would be singularly unwise to make an assertion to the Tasmanian community as to how many people will be employed. I will leave that there. In relation to the fencing who was contracted to build the security fence?

Mr Moorhouse: I do not think we have the individual contractors named in our briefing.

Senator ABETZ: Could you take that on notice for me and advise whether or not the contractors and builders of that fence were actually flown into Tasmania for the purpose? If that happens to be correct—it may be wrong and it may be that Tasmanians were employed—but in the event that they were not why in the document that was handed out for information does it say:

Any construction at the site (such as the erection of fencing ...) will provide employment opportunities in the Pontville and Hobart region.

If you could take that on notice.

Mr Moorhouse: I think it is fair to say that any construction will provide the opportunity and I know that that opportunity has actually delivered significant benefits to the local community in some respects.

Senator ABETZ: They are still waiting I can tell you.

Mr Moorhouse: Well, I have seen a number of articles in the media about the employment that has been created in the construction of some of the transportable buildings and other construction activity that has been undertaken in Pontville.

Senator ABETZ: I have some questions on notice in relation to the methodology, because I understand a lot of the buildings are in fact not being bought but only being leased.

Mr Moorhouse: That is correct.

Senator ABETZ: Do we know how many detainees are currently in Pontville?

Mr Moorhouse: I can get that for you straightaway. At 10 October, there were 109 detainees in Pontville. The number has been larger than that, but a number of people who were transferred to Pontville have subsequently been granted protection visas.

Senator ABETZ: So do we anticipate that, over this period of six months that it is operational, it will ever get to full capacity?

Mr Moorhouse: We will utilise that capacity to the extent that we are able to do so. We have undertaken to place low-risk people in Pontville—

Senator ABETZ: I know that; but are we anticipating that the centre will be filled?

Mr Moorhouse: Yes, and I am trying to answer your question. One of the challenges of that is that 'low-risk people' means people who have a reasonably positive prospect of being granted a protection visa, which means that to some extent we are chasing a moving target: as we move people there, some of those people will be granted visas and will move out of detention. So we will utilise that capacity to the extent that we are able to do so. Whether we will ever get to the 400—

Senator ABETZ: Able to do so or need to do so?

Mr Moorhouse: As we are able to do so, in the sense that, while we will be moving up to 400 people there, they are people who are being processed and some of them will be granted visas and will be leaving at the same time.

Senator ABETZ: Surely the department would wish that there was nobody in any detention centre—surely. So it is on a needs basis, rather than you wanting to fill up all these detention centres based on the capacity or ability to do so.

Mr Moorhouse: No—

Mr Metcalfe: The best detention centres are like St Edward's Hospital of *Yes, Minister* fame, Senator!

Senator ABETZ: Yes, that is what I would have thought. Our terminology should be around the 'need', not the 'ability', to fill them up, surely.

Mr Moorhouse: There is an important dimension here, Senator. The Pontville facility is one that we have been able to construct in a planned way—

Senator ABETZ: Oh, please!

Mr Moorhouse: if I may, the level of amenity—

Senator ABETZ: When was it planned to open? How long was it delayed before it could be opened?

Mr Metcalfe: Senator, Mr Moorhouse is trying to answer your question.

CHAIR: Senator Abetz, could you let Mr Moorhouse finish.

Mr Moorhouse: I am trying to make a point, Senator—

Senator ABETZ: Obviously.

Mr Moorhouse: and that is that the amenity and the facilities that are available to detainees in Pontville are significantly better than the facilities and amenities that are available in some of our other facilities, like NIDC in Darwin. Consequently, yes, we would seek to fully utilise those better facilities. That is one of the things we are trying to do across the network at the present time: we are trying to ensure that, if we are required to detain people, we are at least detaining them in the best conditions that we can offer them.

Senator ABETZ: So why was it only ever a temporary, six-month facility until certain other facilities were complete?

Mr Moorhouse: Because—

Senator ABETZ: If this was the best you-beaut place to house them, why wouldn't you have announced it as a permanent fixture in the detention network?

Mr Moorhouse: I cannot answer that question, but the point is that Pontville is a facility that is intended to bridge the gap between where we were when we made the announcement and where we will be when we have facilities such as Wickham Point online. Wickham Point will also be a much better detention facility, with a reasonable level of amenity. What Pontville offers us is the capacity to accommodate people in a better manner than we are able to in some of our other facilities. I mentioned earlier today that NIDC, the facility in Darwin, was initially constructed for the temporary accommodation of illegal foreign fishers, and we have been in a situation where that has been utilised for longer-term detention. Now, Pontville gives us the capacity to move people around the network, to take people out of some of that

contingency accommodation and move them to accommodation that is more suitable for a longer-term detention than some of the contingency capacity is.

Senator ABETZ: I thought Pontville was only for a short-term contingency, and now you are telling us it is for the long term.

Mr Moorhouse: No, I said that it is a bridge.

Mr Metcalfe: No, we are not saying that. What we have said is that Pontville gives us a bridge between where we were when it was announced to where we will be when Yongah Hill and Wickham Point come on stream but that, in the meantime, it does provide a greater level of amenity than some other centres, particularly the one in Darwin, the Northern Immigration Detention Centre, which has been the subject of significant management difficulties because, essentially, it was constructed for Indonesian fishermen for short periods of stay, not for asylum seekers, who may be having long periods of stay. So, as Mr Moorhouse has said, we are seeking to use the facilities available to us in the most sensible way to provide for the amenity for staff and our clients in detention as a way of reducing the potential for protest, self-harm or mental health issues that another committee has been exploring in a lot of detail.

CHAIR: Senator Abetz, are you finished?

Senator ABETZ: If I may quickly move on to the issue of the Comcare report into the detention centres—

Senator PRATT: I have a run of questions I have been waiting to ask.

CHAIR: I had promised Senator Pratt 5.30. She needs to go by six.

Senator ABETZ: All right, fine.

CHAIR: So I might just jump to Senator Pratt and I will come back to you then.

Senator PRATT: Thank you very much, Chair. I wanted to begin by asking about the UNHCR's 2010 report, some of the statistics that outlines and how they compare to Australian statistics. I would like to know the number of asylum applications across European and non-European countries and how they compare to Australia's burden, I suppose, of asylum seekers.

Mr Metcalfe: Mr Fleming and Dr Southern will assist us here, I think.

Dr Southern: The 2010 UNHCR report that you are referring to estimated that 358,800 asylum applications were recorded in the 44 European and non-European countries included in that report. Of that number of applications, Europe received nearly 270,000, predominantly in France, the United Kingdom and Germany. The United States received 55,500 new asylum claims, and Canada received 23,160. In comparison, the 8,250 people who sought asylum in Australia in 2010 were about two per cent of the total number in global terms.

Senator PRATT: Does that deal specifically with industrialised countries?

Dr Southern: That is correct. Those are the countries who accept and receive asylum claims globally.

Senator PRATT: With respect to detection onshore of unlawful noncitizens—this is a slightly different area—I think, Mr Metcalfe, that you used a statistic before of about 35. I

was not sure if you were referring to 35 asylum seekers whose claims had been rejected and who were now here unlawfully.

Mr Metcalfe: I think the figure that I gave and that Mr Illingworth gave Senator Cash was in relation to holders of a 'return pending' bridging visa, which is quite a small subset of the overall numbers of people we service.

Senator PRATT: How many people have the equivalent of a 'return pending' visa across the whole of the department and visa categories?

Mr Metcalfe: For that particular visa, I think the number is 34 presently, of whom I think 28 had held that visa for more than 12 months. As we indicated in earlier evidence, that visa is very much associated with people who are extremely difficult to remove—otherwise they would have been—but for whom long-term detention would not appear to be a practical or legal reality.

Senator PRATT: How many people in general are awaiting removal because they are non-compliant with their visas in general terms?

Mr Metcalfe: There are a series of subsets of figures around here. There is one figure for how many people have overstayed their visa and are living in Australia, and those figures have been published in the annual report. The figure is something in excess of 50,000. The department expends significant efforts each year to locate those people and to have them depart Australia. Mr Illingworth will be able to give you some precise detail. I think around 10,000 to 12,000 people left Australia following that action over the last 12 months.

Senator PRATT: How many?

Mr Metcalfe: About 10,000 or 12,000 people. That figure is primarily people who came here on a tourist visa and simply failed to go home at the end of it. Mr Illingworth probably has some more detail around that. While 50,000 is a significant figure, it has largely remained around that for many years. It represents a very small figure, proportionally, compared to some other Western countries. For example, the figure for illegal immigrants in the United States is not properly known because they cannot count people in and out to the same extent we can, but I think the best estimate is that there are around 12 million people in the United States who have overstayed their visas, roughly three per cent of their population. The 50,000 in Australia are well under one per cent of our population—0.2 per cent of our population. Australia's illegal immigration issue is minute compared to that of other major countries. We would like to think that is because of the sorts of actions that the Australian government takes.

Senator PRATT: I note in your annual report that about 15½ thousand pieces of information come into the department. I assume that includes dob-ins, callers and the like. How useful is that information?

Mr Metcalfe: I will get Mr Illingworth to give you some more precise information.

Mr Illingworth: Some 15,590 pieces of sourced information come into the department. That is used for a range of purposes. Some of it relates to individual cases, which then goes to the relevant state or territory office and becomes part of their prioritisation, decision-making and compliance work about what cases they will investigate and in what order. Then there are other parts of the department that do more analytical examination of that dataset to see if there are trends, significant issues of concern or risks that might be identified that need further investigation.

Senator PRATT: So it is used both in relation to individuals and in relation to trends; is that right?

Mr Illingworth: That is right.

Senator PRATT: Does the department follow up with callers, if they choose to be followed up with, to see if they have further information that might assist in the department's compliance duties?

Mr Illingworth: It depends on the level of detail that is provided with the original call. It would be fair to say that some pieces of information are more valuable than others!

Senator PRATT: How much of that information is useful?

Mr Illingworth: It is hard to put a figure on it because of the different purposes to which that information is put. For example, a call from somebody who perhaps does not even identify themselves but indicates that they are concerned that a person might be working when they have no permission to work might not have much value in terms of our capacity to find the individual who is allegedly working, but a pattern of such calls can give you concern that there might be a particular phenomenon going on or a particular area of misuse.

Senator PRATT: In a particular locality or among particular groups, yes.

Mr Illingworth: That is right.

Senator PRATT: I note the department has changed the nature of its field activity in relation to its projects around locating unlawful noncitizens. Why and how have those activities changed?

Mr Illingworth: It is largely reflecting our judgment about where we get the best pay-off from the best commitment of resources. We have tended to move away from large-scale field activities to more targeted activities. As part of our general planning work, there is more thought being given to the consequences of field activity. So planning will take into account what the impact on the detention network might be and preparation for removals so that we have a better end-to-end idea of what we are getting ourselves into as a department before we go out and do field work.

Senator PRATT: Does that mean, in a sense, that you are tracking down individuals, or are there small groupings of people behaving in an illegal way so that you are able to drill down and have effective projects to target some of those activities?

Mr Illingworth: It is a bit of both. A lot of the shaping of what work goes on is undertaken at a local level. It will be, as I said, affected by some other considerations around what we will do with the people when we find them and linking our compliance work more closely into our case resolution work. You would be aware that over recent years there has been a continuing emphasis on strategies that work with people voluntarily in the community to engage them with us and work with them to get a voluntary solution to their situation.

Senator PRATT: I note that over the last couple of years there has been an increase in the number of clients located. Is that because there are more people or are there more successful strategies being employed?

Mr Illingworth: The increase in locations is quite interesting because it is reflected largely in an increase of voluntary locations. That is a term we use for when the person who is an unlawful non-citizen actually engages us rather than the more resource-intensive

traditional method where we have to go out and find them. We are finding that, because of the strategies that we are employing through things like assisted voluntary return arrangements and more effective linking of bridging visa management with getting visible signs of progress to resolution from the client, we actually have something to offer and clients are coming in to talk to us because we can discuss how we can help them. It is paying off in their willingness to be located. It is also paying off very well in the rate at which we are getting case resolution.

Senator PRATT: That is good to know. Some of these questions relate to other outcomes, but some of them relate to outcome 4 in relation to the department's work with employers who are employing non-citizens who do not have the right to work. Why does the department just issue first-time offenders with a warning notice rather than prosecuting? I suppose that might depend on whether many of these employers are knowingly employing people without visas.

Mr Illingworth: I suppose that goes to the issue of the tool set that is available to the department. At the moment we have the illegal worker warning notice—that is a stern rebuke—and, at the other end of the spectrum, there is the capacity to mount a criminal action against the individual. The thresholds of evidentiary burden for getting a successful prosecution or, indeed, even amassing enough evidence to get a case that will be accepted by the public prosecutor to present to the court are very high. The investment of resources is very high and we have found that without anything in the middle we are stuck with those two polarised choices of a warning or trying to take court action. We have only had two successful prosecutions under that criminal sanction regime since the existing regime was introduced.

Senator PRATT: I note that in 2010 Stephen Howells was appointed to conduct a review of the sanctions in the Migration Act 1958, and I think that report has been finalised. Is there a timeline as yet for a government response to it?

Dr Southern: The minister made an announcement some weeks ago in relation to the Howells review, noting that the government accepted the recommendations of the review in principle but that further consultations would be undertaken with employers, unions and other interested parties before the final response would be made.

Senator PRATT: That is since the annual report of 20 September?

Dr Southern: That is correct. The response is still being finalised, but those consultations are now complete and we are in the process of pulling that together for government consideration.

Senator PRATT: We have had some discussion at previous estimates about the removal of persons who have committed criminal offences but who had come to Australia as minors. I want to ask about the current consideration that is given to the length of time a person has been resident in Australia prior to engaging in the conduct for which they are being deported and how we weigh up our international obligations in relation to those issues.

Mr Illingworth: The minister has issued binding guidelines to the department.

Senator PRATT: When were they issued?

Mr Illingworth: In 2009. They outline a range of considerations that are to be considered when a decision maker in the department is considering whether to exercise the discretion to cancel or refuse a visa under the character provisions. One of those factors is the length of time that a person has stayed in Australia; it is that issue of recognising the consequence to a

person who has spent most of their life in Australia even though they are not an Australian national. It is one of the factors that will be weighed up.

Senator PRATT: Do those guidelines put an emphasis on children whose parents may not have ever resolved their migration status for them and who fall into limbo, I suppose, in terms of making an adult choice to take out citizenship?

Mr Illingworth: We would be dealing with people who are no longer children.

Senator PRATT: I understand that, but I suppose that if someone has a somewhat difficult life in any case, which is often the path when people end up breaking the law, it would not be uncommon, if they had been a permanent resident since childhood, for them not have made their own decision to resolve their migration status because their parents never did it for them.

Mr Metcalfe: This is one of the ongoing policy conundrums in this space: the rights of victims and the Australian community to have a person removed from Australia if they have committed very, very serious crimes as opposed to the rights for an offender, having served their sentence, to remain in Australia where they may have family or other contacts. And it is most acute, I suppose, if that person came to Australia as a young person. This is an issue that successive ministers have grappled with for a long period of time.

Senator PRATT: I have a couple of questions about the people-trafficking visa framework. As a start I was wondering what involvement the department had had with today's announcements in relation to people trafficking. I do not know that that relates specifically to the activities of this department, but I am inquiring about the interrelationship between those two.

Mr Metcalfe: I might make an introductory response and other officers will have elements of detail to fill in gaps. The department obviously is involved in the issues seeking to prevent people trafficking. Indeed, one of the objectives of the Bali process is not just to deal with people smuggling but also with people trafficking, and that has been under way now for over 10 years. We have across our visa programs some people seeking to use our visas, whether tourist, student or other visas, for improper purposes which may include people being trafficked here to engage in activities against their will, particularly in the sex industry, and we have seen some recent reporting on that following the *Four Corners* report. We have specialist officers involved in visa decision making to uncover and appropriately respond overseas to these issues. We also have a range of programs we administer to provide support for people who may be temporarily in Australia and who have been identified as the victims of trafficking. That is an important area as well. In addition, we are using some of our high-end intelligence capability to look at the patterns and trends in cases we have known to see if there is more that we can do to try and identify potential trafficking victims, but also to work closely with the Australian Federal Police and other agencies involved in this area. Dr Southern or Mr Illingworth may have a bit more on that.

Senator PRATT: Can I ask how you distinguish between victims of trafficking? In some instances there will be people who were not expecting to work in the sex industry, in some instances there will be people who were, but not under the conditions in which they find themselves. How does the department distinguish those issues?

Dr Southern: During any compliance activity which involves people who may appear to be involved in trafficking, our compliance officers are specially trained to ask questions and elicit information from people about whether they are working voluntarily in the sex industry—and if they have a working visa they may be entitled to do that—or whether they have been drawn to Australia under false pretences and have effectively been trafficked. It is part of our compliance program to draw that information out. If we have any suspicion at all that trafficking is involved, we do refer it to the AFP and it is a fairly low bar to make those referrals to the AFP. Then they follow up with investigations as necessary.

Senator PRATT: Are the community projects that exist done through the Department of Immigration and Citizenship or through the AFP? I am thinking of organisations like the Scarlet Alliance and ACRATH.

Dr Southern: The Attorney-General's Department certainly has a role here and also FaHCSIA. They have a support for victims of people trafficking program as well, so I am not quite sure which portfolio supports that program. But it would be one of those two portfolios, I think.

Senator PRATT: Probably the AFP. Just lastly, I wanted to ask how many visas has the minister considered and cancelled on character grounds? Sorry, I am going back a step.

Mr Metcalfe: Back to section 501, so I am sure Mr Illingworth will be able assist. Are you talking about just the minister personally?

Mr Illingworth: I can give both figures.

Mr Metcalfe: We are back at 4.1 There has been a lot of moving around between 2 and 4 today.

Senator PRATT: I have been very much at the beginning part of outcome 4 with most of my questions.

Mr Metcalfe: You are right.

Mr Illingworth: With character cancellations in 2010-11, there were a total of 132 visas cancelled—126 were by a delegate of the minister and six were by the minister.

Senator CASH: What electronic games or internet games and other internet sites are available to the unaccompanied minors generally and more specifically at Leonora?

Mr Moorhouse: The internet is made available to all people in detention. When I say available, normally it is on a rostered basis. People might have access to the internet for an hour a day.

Senator CASH: I understand all that.

Mr Moorhouse: So it is not freely available.

Senator CASH: But in relation to unaccompanied minors?

Mr Moorhouse: I will ask my colleagues if they are able to provide more detail, but at all of the centres the internet is subject to an internet filter—

Senator CASH: We have been through this before in estimates.

Mr Moorhouse: which is intended to block out—

Senator CASH: My questions are specifically in relation to unaccompanied minors. What electronic games or internet games that you can get in the library are available to them?

Mr Moorhouse: I do not have that precise level of detail.

Senator CASH: Who here would have that information?

Mr Moorhouse: I am not sure whether Mr Douglas does or whether we have to take it on notice.

Mr Douglas: We will have to take that on notice.

Senator CASH: You are aware that there are libraries at each of the sites and there is one at Leonora in which they can actually take a game and go and play it.

Mr Moorhouse: I am aware that Serco have purchased a number of electronic gaming consoles and that they are available for the use of people in detention.

Senator CASH: In relation to the unaccompanied minors what is the classification of those games and the sites?

Mr Moorhouse: I would need to take that on notice. I do not have the precise details.

Senator CASH: Do you have a policy? Would they be able to watch or play adult games?

Mr Moorhouse: They should not be able to.

Senator CASH: Is there a restriction on access to adult sites, games and those with an age classification for unaccompanied minors?

Mr Moorhouse: I would expect that to be the case but I would need to confirm that for you.

Senator CASH: Is the department aware or has the department been made aware that unaccompanied minors have access to violent games and internet sites?

Mr Moorhouse: I am not aware of that. Under the contract I would expect that Serco would be applying appropriate control over the access by people who are in detention particularly in relation to unaccompanied minors.

Senator CASH: If they were not doing that, would that be a breach of the contract?

Mr Moorhouse: I would need to clarify whether that is a breach of the contract. I would expect it to be if they were not providing appropriate care.

Senator CASH: Does the department condone that type of behaviour if indeed it were true that unaccompanied minors have access to violent games and websites?

Mr Moorhouse: Absolutely not.

Senator CASH: The shadow minister for immigration, Mr Scott Morrison, was recently at Leonora with Mr Tony Crook, the member for O'Connor, and when they went into the computer room where the unaccompanied minors were playing games they actually witnessed the unaccompanied minors playing Mortal Kombat. Do you know what the game Mortal Kombat is?

Mr Moorhouse: I have heard of it but I do not know what it is.

Senator Carr: My lad plays it all the time.

Senator CASH: Excellent, let me just read into the *Hansard* the controversy surrounding the 2011 edition of Mortal Kombat. In February 2011 the game was refused classification by the Australian Classification Board due to 'violence that exceeds strong in impact.' Warner Bros unsuccessfully appealed the decision to the Classification Review Board who ruled that

'the impact of the violence in Mortal Kombat is higher than strong and thus could not be accommodated within the MA15+ classification. The Australian Customs and Border Protection Service listed the game as a prohibited item. The Australian Minister for Home Affairs, Brendan O'Connor, had asked to be briefed on the Mortal Kombat decision citing 'public disquiet on the issue'. There are a number of versions of the game Mortal Kombat. I do not know which game the unaccompanied minors at Leonora were actually playing but I understand that all Mortal Kombat games are MA15+. Is it appropriate for unaccompanied minors at the Leonora site to be playing the Mortal Kombat game?

Senator Carr: If they are 15.

Senator CASH: We do not have proof of their age, they are unaccompanied minors.

Senator Carr: But if you are in the business of vilification, surely you should at least establish that.

Senator CASH: I am just asking whether that is the type of game that you actually like seeing unaccompanied minors being given access to—games where they cut people up?

Senator Carr: I am not an expert on games of this type but I do know that these games are extremely popular—Men of War and various other types of games are extremely popular.

Senator CASH: That does not make it right to provide those games to unaccompanied minors—

Senator Carr: 15-year-olds.

Senator CASH: when the evidence is that these unaccompanied minors have potentially suffered torture and trauma and that is the reason they have come to Australia to seek asylum. Does the department condone—

Mr Metcalfe: We would certainly expect that the contracted service provider adheres to all appropriate Australian laws and standards in relation to this issue. As to whether or not there are particular sensitivities associated with the torture or trauma of unaccompanied minors that is a important point that you raise and certainly it is our expectation that the provision of services should take into account whether or not that would exacerbate those issues. We could check on the particular version of the game that may have been viewed by Mr Morrison and Mr Crook. That is the first time I have heard of this issue. It is some days since they were there. If it were of strong concern, I would have appreciated a contact prior to now but I am very happy to deal with it in this place. Also, as the father of an 18-year-old son I am aware, as is Senator Carr, that this appears to be a method of entertainment for young people. Indeed, video games far outsell movies now in terms of the worldwide entertainment industry. So it is a fact of life—

Senator CASH: Is that your personal opinion or a policy opinion as the department head?

Senator Carr: It is a statement of life.

Mr Metcalfe: It is an observation as a father—

Senator CASH: We are talking policy here, Minister, not 'statements of life'.

Senator Carr: You are talking about a particular game which you do not even know the detail of, you are asserting that it was a prohibited item, it is not quite clear what particular version you are speaking of and we are not quite certain how old these ads are. I just think

you may well be trying to stray into a whole area of vilification here, Senator. This is about you seeking to get a cheap headline—

Senator CASH: I can assure you, Minister, you are wrong in that regard.

Senator Carr: a cheap headline—that is what you are about.

Senator CASH: Mr Metcalfe, is the department able to undertake an investigation at the Leonora facility of the games it has in its library that it provides to the unaccompanied minors to play with?

Mr Metcalfe: I have indicated we will do that, Senator.

Senator CASH: Thank you very much.

Mr Metcalfe: We will take your questions on notice. Certainly, I am concerned that there is any suggestion of a prohibited item being present and we will check on that very quickly. The broader issue, then, is obviously the balance constantly being struck between keeping people entertained and keeping them safe, while also knowing that many young people around the world enjoy video entertainment of this nature. But I have taken it on notice.

Senator CASH: Is there a policy under which Serco is or is not able to provide unaccompanied minors with certain types of entertainment?

Mr Metcalfe: Certainly, our expectation is that Australian standards and laws are adhered to. We have spent a fair bit of time at previous estimates, I think, on access to the internet, particularly any prohibited sites or sites we would regard as inappropriate, and the use of social networking and those sorts of issues. This is an issue that we are well aware of. Our overriding objective is to provide a safe environment for people required to be in detention, and that would include any issues that go to their mental health.

Senator CASH: In relation to the age testing of those who claim to be unaccompanied minors, what is the department doing to verify the age of asylum seekers, particularly those claiming to be under the age of 18?

Mr Metcalfe: This is an important area of work, Senator; I am glad you have raised it. Ms Wilson can assist in this regard.

Ms Wilson: Sorry, Senator; could you just repeat your question?

Senator CASH: Yes. What is the department doing to verify the age of asylum seekers, particularly those claiming to be under the age of 18?

Ms Wilson: I think we have briefed you previously. We undertook a pilot in terms of age determination which involved a detailed interview technique, with two skilled DIAC officers interviewing people who had declared themselves as being under 18 but whom we suspected might have been older. Following that pilot process, which was undertaken in July-August 2010, out of 60 people interviewed, about 33 were found to be over 18 years of age. We have since extended that pilot to a larger group of people, and that process has taken place since August this year. Over the period from 5 August to 30 September, we interviewed 121 unaccompanied minors, and 30 of those have been assessed as being adults.

Senator CASH: And, under the initial pilot, how many were assessed as being adults? It was slightly over 50 per cent.

Ms Wilson: Out of the total 60 that were interviewed, there were 33.

Senator CASH: Okay. How many investigations does the department carry out to verify age? Is it just the one interview or is there a process that is actually gone through?

Ms Wilson: The process, basically, is an extended interview process in the presence of an independent observer. As you would know, Senator, we involve Life Without Barriers in interviews where the individual claims to be under 18 so that there is an independent person involved. What we do is basically that through a lengthy interview—it is normally one interview—with two officers involved, as well as Life Without Barriers, we look at questions about schooling, age of siblings, birth dates, travel and how they came to be in Australia, and we try to unpack the whole story of their life, attempting to find issues and chronology issues to explain the whole period of the age they have identified as being.

Senator CASH: In relation to the 30 who were found to be adults out of the 121, are you able to provide on notice what their actual ages were?

Ms Wilson: The technique does not involve us determining a specific age; rather, it is whether they are an adult or not.

Senator CASH: So that is the extent of it—whether you are over the age of 18.

Ms Wilson: That is right.

Senator CASH: How many so-called minors currently at the Leonora facility have had their ages verified?

Ms Wilson: I do not have a number for how many we have interviewed at Leonora.

Senator CASH: Could you take that on notice and provide that to the committee.

Ms Wilson: I can.

Senator CASH: How many unaccompanied minors are there currently at Leonora?

Ms Wilson: I might turn to my colleague Mr Moorhouse for unaccompanied minors in Leonora.

Mr Moorhouse: We have 72 unaccompanied minors at Leonora.

Senator CASH: Thank you. Will all of those be subject to an interview process, or is it only some of them that are subject to an interview process? What is that process whereby you determine those who will be subject to the interview process?

Ms Wilson: We work through the case managers and through the detention operations people to identify groups that our staff advise us they believe to be—

Senator CASH: Okay. You will take it on notice as to how many of those 72 have had their age verified. In terms of total numbers, how many claimed minors have in fact been found to be over the age of 18 years—not just at Leonora but across detention facilities in Australia?

Ms Wilson: That was my comment: between 5 August and 30 September, out of the 121 interviews—

Senator CASH: That is all that has been done, is it?

Ms Wilson: Thirty were found to be adults.

Senator CASH: Is that a second pilot program?

Ms Wilson: No. The first was a pilot; the second one is basically transferring the outcomes of the pilot into 'business as usual' processes.

Senator CASH: So we are now in the 'business as usual' phase of that.

Ms Wilson: That is right.

Senator CASH: In terms of those 30 adults you referred to—the 30 persons who claimed to be unaccompanied minors and that you found to be adults—will any punitive action be taken against those people?

Ms Wilson: We always err on the side of caution by putting them into facilities that are for children. When they are determined to be adults, they would be moved into adult detention facilities.

Senator CASH: But in terms of the fact that they have for all intents and purposes lied—they are not unaccompanied minors; they are adults—are there any punitive measures that can be taken against them?

Ms Wilson: We certainly draw that to their attention as part of the interview, and that will be on their file—that they have provided misinformation. So, as part of broader consideration of a client's details, that will be on their record.

Mr Metcalfe: There is not a prosecution process as such, but it would be an issue that would go to a person's overall credibility, which is an important part of the assessment. Just because someone says that they are a certain age and we believe they are a different age, it does not necessarily stop them from being a refugee or make them a refugee. But it is an issue that goes to whether you believe what this person is saying, whether they are credible and what were the reasons for them seeking to mislead us in this particular way.

Senator CASH: How soon after you have determined that they are an adult are they moved into the adult facilities?

Ms Wilson: It depends on where they are and what arrangements we have to make in place.

Senator CASH: Is there a time period in which they have to be moved out of—

Ms Wilson: In Christmas Island it happens fairly quickly where there is capacity, but if we have to move them across states, for example, then that would have to be taken into account.

Senator CASH: I now turn back to the current operating capacity at the detention facilities. In terms of the new centres at Wickham Point and Northam, can I just confirm that, when they are brought online, the extra capacity that it will give the department is 2,100 beds, which is the 1,500 at Wickham Point when it is brought online in three tranches and the 600 at Northam—which equals you getting an extra 2,100 beds?

Mr Metcalfe: It will, but we have also indicated, I think, that Pontville would be closing as a result of that. That is the indication that Pontville, as a bridging facility, would not be required.

Mr Moorhouse: By the time that the last stage of Wickham Point is opening, Scherger will be just about to close. The lease on Scherger comes up in the middle of next year.

Senator CASH: Has the department ruled out the Borallon Correctional Centre for use as an immigration detention centre?

Mr Metcalfe: I think the Queensland government has.

Senator CASH: Okay, so there are no plans to use the Borallon Correctional Centre?

Mr Metcalfe: We had some discussions with the Queensland government. We were quite interested, because ultimately we believe that a detention accommodation network that provides a range of flexible accommodation outcomes would be a good thing for Australia, but my understanding is that the Queensland government has advised that it is not available for us to use.

Senator CASH: So that was the reason: the Queensland government advised that it was no longer available to be used as a detention centre.

Mr Metcalfe: Yes.

Senator CASH: I turn to the purchasing policies for detention centres across Australia. What is the purchasing policy in terms of purchasing goods for the detention centres?

Mr Moorhouse: Can you be clearer? Do you mean in terms of ongoing requirements?

Senator CASH: Absolutely. For example, where does the department, or Serco, source cigarette purchases for detainees?

Mr Moorhouse: We do not purchase cigarettes; that is a matter for Serco. We ask Serco to use local suppliers where it is practical to do that. For things like cigarettes, it is probably not economic for those to be sourced at the local supermarket.

Senator CASH: I think they are being sourced at the local supermarket on Christmas Island.

Mr Moorhouse: That may be in some instances. The way it tends to work is that the larger contracts are let centrally and then in many instances are topped up by local providers. The expectation we have of Serco and the expectation on ourselves during the construction phase is that we will source local providers wherever it is economic for us to do so.

Senator CASH: So, for example, in terms of pharmaceuticals, fresh fruit, groceries, clothing and shoes, do you have specific purchasing policies?

Mr Moorhouse: I am not aware of what Serco's policies are. I would expect that they are primarily driven by value for money, with the expectation that, subject to the value for money criterion, they will be sourced locally.

Senator CASH: Are you able to provide the committee with what the department's policy is in relation to Serco having a purchasing policy? I am assuming it is more than just an understanding or a conversation, and that you have your expectations in writing.

Mr Moorhouse: On whether it is in the contract or whether it is an understanding, I would need to seek advice.

Senator CASH: Is it true that facility managers use the local shops to purchase goods for detention centres?

Mr Moorhouse: I am aware that that does happen on a number of occasions, particularly for top-up items—basically on a top-up basis. I am aware that that occurs. If it is economical

to use a local supplier—a local butcher or something like that—then I would expect that Serco and IHMS would use local suppliers as well.

Senator CASH: When you say you 'would expect', this is obviously taxpayers' money that is being expended. What proof do you require from Serco that what they are doing is, in fact, economical and is a good spend of taxpayers' money?

Mr Moorhouse: We do not require proof of them. They are contracted to run the facilities. The expectation that I am expressing—and I indicated that I am not sure whether it is in the contract or whether it is just a general expectation—is something that we have expressed to Serco. But Serco's purchasing policies are a matter for Serco; they are contracted to run the centres.

Senator CASH: So the department itself does not have any purchasing policies, and these are questions I may ask Serco through another inquiry.

Mr Moorhouse: That is correct.

Senator CASH: In relation to the operating capacity, how many beds will be closed at the Northern Immigration Detention Centre when Wickham Point is opened?

Mr Moorhouse: That is a difficult question for me to answer, because we are currently undertaking a long-term strategic review of our detention capability. The point that I would make in relation to NIDC is that it was originally intended as short-term accommodation for illegal foreign fishers. We have added to the amenity of the place to try to make it more suitable for contingency accommodation for people who may be in detention for a longer period of time, but I think it is fair to say that when we have choices we will be seeking to utilise NIDC in its contingency role and its originally intended role as short-term accommodation for fishers and compliance cases. So whether we would be closing beds there or not is probably not the right way of putting it.

Senator CASH: Could you confirm for the committee what the capacity currently is of the NIDC.

Mr Moorhouse: NIDC has an operational capacity of 536.

Senator CASH: It has 536 beds?

Mr Moorhouse: Yes.

Senator CASH: And at this stage there is no intention to close it, even when we can point—

Mr Moorhouse: No. When possible, it would revert to its original role as short-term accommodation for illegal foreign fishers and local compliance locations.

Senator CASH: But if that is not possible, it will stay open as—

Mr Moorhouse: It will continue as a contingency site. If we are not able to accommodate all of the people we need to accommodate in Darwin at Wickham Point then we have access to it.

Senator CASH: You will have NIDC. How many detainees or ex-detainees of immigration detention centres and facilities have sued the department for compensation?

Mr Metcalfe: We will have to get Ms Hardy to come and join us. Ms Wilson can assist.

Senator CASH: Thank you. Whilst that is happening, I will ask one more question of Mr Moorhouse. What is the capacity of Berrimah in Darwin?

Mr Moorhouse: It has a core capacity of 12 and a surge capacity of 16.

Senator CASH: Will that be closing when Wickham Point is fully operational?

Mr Moorhouse: I would not expect that to be the case, in the sense that there are fishers and crew members who are under 18. Berrimah House is used for unaccompanied minors who are fishers and crew, so we would still need to utilise that capability.

Senator CASH: Ms Hardy, how many detainees or ex-detainees of immigration detention centres and facilities have sued the department for compensation?

Ms Hardy: For any particular—

Senator CASH: For any particular reason.

Ms Hardy: Over a particular period?

Senator CASH: From November 2007 onwards.

Ms Hardy: I will just have to do some recalculations. What I can give you is the figure from 2000-11. Over an 11-year period we had 110 cases.

Senator CASH: Have all of those cases been successful?

Ms Hardy: Sorry; those 110 are cases in which compensation has been paid.

Senator CASH: What was the payout in each case? If you do not have that on you, could you provide it on notice.

Ms Hardy: I can give you the total amount that has been provided.

Senator CASH: Thank you very much.

Ms Hardy: For those 110 cases over that 11-year period from 2000 to 2011 the figure was \$17,426,747. All of those relate to matters of people in detention prior to August 2007.

Senator CASH: All of them?

Ms Hardy: Yes.

Mr Metcalfe: They are essentially cases that came from the old detention caseload. Just to clarify, you are after each individual payment. I would be reluctant to provide that because it may—

Ms Hardy: In fact, we are unable to provide it.

Mr Metcalfe: It would be a substantial task to look at each particular case, and there are a couple of notorious cases which might be identified where those particular figures have been withheld. Reporting in an individual way would release that information. We have given you the aggregate and hopefully that is sufficient for your purposes.

Senator CASH: If not, I will provide questions on notice.

Ms Hardy: The deeds of settlement are usually subject to confidentiality anyway, so I am unable to provide the details.

Senator CASH: Mr Moorhouse, just returning back to Serco's purchasing policy, how can the department be sure that they are getting value for money if they are not requiring proof from Serco that they are actually getting what is most economically appropriate?

Mr Moorhouse: Because those costs are not passed on in a direct way to us. It is not that Serco purchase groceries and then give us the bill and get reimbursed.

Senator CASH: It is taken out of the contract.

Mr Moorhouse: It is taken out of the contract.

Mr Metcalfe: The way we are establishing value for money is that we went through a tender process to appoint Serco as the contractor-provider.

Senator Carr: And, presumably, if they run out of milk they can go down to the supermarket without real cause for offence, Senator.

CHAIR: Senator Cash, how many more questions do you have in outcome 4? Senator Furner has about half a dozen here.

Senator CASH: I have potentially several hours on outcome 4.

CHAIR: You are not going to get several hours.

Senator CASH: And I do have outcomes 1, 3, 5 and 6. What would you propose?

CHAIR: I am asking if you have five minutes to go or no minutes to go?

Senator CASH: I have five minutes to go.

Mr Metcalfe: Chair, we have one item: Senator Hanson-Young asked a question earlier about media access policy that we can provide an update on. I know she is not here. We could either do that now or when she comes back later. It is a very short response.

CHAIR: Do it now.

Ms Wilson: Senator Hanson-Young was talking about media access policy. Just to update and provide some clarification, the minister has in fact approved the media access policy and we are in the process of operationalising it, basically figuring out how we are going to implement it, and we expect it will be out in the public very shortly. In the discussion earlier we might have implied that it has to go back to the minister for final tick-off, but it does not. It is ticked off and ready to go, and we are just doing the practical details about how we go about operationalising it. I just wanted to clarify that for the record.

CHAIR: Thank you. Senator Cash, are you happy to stop?

Senator CASH: I would like to keep going, if that is possible. In relation to the government provision of cigarettes to detainees for essentially no cost, is the department concerned that detainees can sue for breach of care as a result of the provision of free cigarettes if someone develops one of the many diseases associated with smoking?

Mr Metcalfe: I dispute the basis of your question.

Senator CASH: That they are not free cigarettes or that they have to wait to attend a bingo lesson to get money?

Mr Metcalfe: The cigarettes are provided by the detention service provider. They are done in exchange for points the person accumulates—

Senator CASH: So if I attend bingo I might get 10 points?

Mr Metcalfe: If the person accumulates points they have a choice as to how they spend that in the shop, remembering that this is administrative detention, not a punitive place that we are running here, and indeed that in some cultures cigarette smoking is very common, far

more so than in Australia. I think you are also aware from information provided to the other committee and material provided on notice that appropriate information about quit campaigns is provided. Having said that, some people wish to smoke, do so of their own free will, accumulate sufficient discretionary points to purchase cigarettes and that is something that they are allowed to do. I suspect we would strenuously resist any potential litigation on the basis that this was something a person was doing of their own free will, having had access to appropriate information campaigns.

Senator CASH: But the government clearly sanctions Serco, under their contract, providing asylum seekers with the option to—

Mr Metcalfe: We provide for an immigration detention environment to try and replicate as far as we can, notwithstanding the fact that people are in held detention, the normal amenity of life and the ability for people—

Senator CASH: Even though we are trying to stop smoking in Australia.

Mr Metcalfe: No-one has ever suggested, and I do not think you are suggesting, that immigration detention is punitive, that we are seeking to punish people. Are you suggesting that?

Senator CASH: No. I think it is slightly ironic, though, that the government is spending a lot of money on trying to tell Australians to stop smoking but we are quite happy to provide cigarettes to detainees.

Mr Metcalfe: What we are saying is that the normal amenity of life, which includes something that—

Senator CASH: It is not a normal amenity in my life.

Mr Metcalfe: And nor mine. I had a father who died of emphysema, so this is fairly personal for me.

Senator CASH: So what about those people who choose not to smoke in detention centres?

Mr Metcalfe: What I can say is that we do not seek to make decisions for people in circumstances where normal people in the community make similar decisions themselves. We provide the range of facilities. The cigarettes are not given away freely.

Senator CASH: No, you attend a bingo lesson, you get some points and you go and expend them in a shop.

Mr Metcalfe: They are purchased by people through points accumulated.

Senator CASH: Has the department sought any legal advice about the potential for litigation if someone by passively smoking or smoking themselves were to contract a smoking related illness in detention in Australia?

Mr Metcalfe: Smoking is to occur in open areas. I will take on notice whether there has been legal advice obtained on any legal liability.

Mr Moorhouse: Senator, could I just clarify one of the answers I gave to you earlier. It appears that most groceries are paid for on a pass-through basis, so indeed Serco does charge us for those items. We will follow up, though, on how we ensure value for money in relation to those matters.

Senator FURNER: Mr Metcalfe, I just want to go back to the discussions we had with Nauru earlier today. How would you characterise Nauru as being an effective deterrent in respect of people-smuggling activities?

Mr Metcalfe: I think I have placed on the record, in relation to questions earlier, that Nauru was one component of a successful series of strategies around 10 years ago, but in my view Nauru, of itself, was not the only determinant factor. In fact, Nauru accommodated a large number of people. The facilities were not large enough to accommodate those who came. I have also placed on the record my view that the circumstances that prevailed in 2001 cannot be replicated in 2011 in terms of what was previously uncertain, which is a very important point here: no-one knew what was going to happen. Now, of course, people know what happened.

Senator FURNER: So, as a stand-alone deterrent, was it effective?

Mr Metcalfe: I think that my views and advice, based upon my involvement across the last 10 years on this issue, are pretty clear.

Senator FURNER: What proportion of resettlements from Nauru ended up in Australia and New Zealand?

Dr Southern: I have not got the proportions here, but I have the actual numbers. Of the 1,322 people who were sent to and processed on Nauru, 847 were resettled, and of those 847 573 were resettled in Australia and a further 229 in New Zealand. There were about another 50 people who were settled in Canada, Denmark, Norway or Sweden.

Senator FURNER: Were those that were not resettled involuntarily repatriated?

Dr Southern: No, 474 people returned voluntarily to their home countries and there was one person who, sadly, died.

Senator FURNER: So 474 returned—

Dr Southern: Voluntarily. There were no involuntary returns.

Senator FURNER: Why would they choose to go home?

Mr Metcalfe: Many were Afghans and Iraqis, and of course there were very large movements of people back to those countries given the international conditions following the fall of the Taliban and the fall of Saddam Hussein. So it was quite a different international environment from what we see now. Also, there were, quite properly, significant reintegration packages offered to people to ensure that, when they did return home, they would be able to resume their lives and not be destitute upon return. So I would not regard it as a financial incentive that was so significant that it would be the only thing that determined your mind, but it certainly made it easier for people to say, 'Yes, I will go home.' But it is clear no-one was deported from Nauru.

Senator FURNER: I have one last question, Mr Metcalfe. Considering contemporary issues at current times in regard to policy solutions and the way forward, would the Malaysian arrangement that the government put forward, as presented, be the best deterrent to send a clear message to people smugglers that—

Mr Metcalfe: My view on this—and I have provided briefings on this—is that the Australian government, whichever party forms government, needs flexibility to be able to appropriately respond to the tactics of people smugglers and to the international situation.

Australia will always be an attractive destination. I believe that the circumstances that were very effectively put in place 10 years ago would not have the same effect now, and I believe that the arrangements with Malaysia which the government has pursued and came very close to putting in place would have provided the most effective way to send a clear message that there was no point coming to Australia because people would need to pursue any refugee status claims in Malaysia. It is my view that it would not have taken all that many people having to go back, if that policy had been given practical effect, for that message to have been extremely profound.

Senator FURNER: Okay. Thank you.

CHAIR: We just want to clarify some figures, I think, by the look of things.

Senator CASH: Dr Southern, would you repeat those figures that you stated in relation to the question from Senator Furner—on the number of people who were detained at the Nauru and Manus Island facilities and who were resettled?

Dr Southern: Senator, the figures I gave in response to Senator Furner's question were just in relation to people who went to Nauru.

Senator CASH: Ah, okay. Thank you.

Dr Southern: So we will have had some figures about Nauru.

Senator CASH: Exactly, because the minister's press release—from Senator Chris Evans—included the Nauru and Manus facilities.

Dr Southern: And I have those figures here as well, if you want them.

Senator CASH: Could I confirm them with you, then?

Dr Southern: Yes.

Senator CASH: There were 1,637 people detained in total?

Dr Southern: That was the number processed on Nauru and Manus, yes.

Senator CASH: Okay. And 1,153 were ultimately resettled?

Dr Southern: That is correct.

Senator CASH: Thank you.

Senator HUMPHRIES: Dr Southern, could I also clarify your figures. Of the people who were sent to Nauru, less than 50 per cent were ultimately resettled in Australia?

Mr Metcalfe: In Australia, Senator?

Senator HUMPHRIES: In Australia, yes.

Dr Southern: Of 1,322 people, 573 were resettled, so yes.

Mr Metcalfe: Essentially, New Zealand said it was prepared to take quite a few people who had arrived on the *Tampa* and who were processed by UNHCR. UNHCR then withdrew support for those arrangements and it was up to Australia. We were left to have to deal with the issue unilaterally, and a small number of countries took a small number of people, including some people with very special needs whom the Australian government was not prepared to resettle in Australia.

Senator HUMPHRIES: Thank you.

CHAIR: All right. We are going to go to dinner. Perhaps we could come back just a bit after eight o'clock—ten past eight, thanks.

Proceedings suspended from 18:36 to 20:07

CHAIR: I now reconvene the Senate Legal and Constitutional Affairs Legislation Committee's examination of supplementary budget estimates. We are now moving on to consideration of outcome 1—Managed migration through visas granted for permanent settlement et cetera. Senator Cash, we are going to start with you.

Mr Metcalfe: Chair, we have an update on one issue that Senator Cash raised before dinner, and we checked on that over the dinner break. That was the issue that Senator Cash raised about concerns that Mr Morrison had passed on about the use by young men, minors, at Leonora of a game called Mortal Kombat. Firstly, I understand that the concern was raised when Mr Morrison, Mr Crook and others were at Leonora, and I thank them for raising that concern. Mr Moorhouse can provide some information on what our inquiries over the dinner break have revealed.

CHAIR: Thanks. Mr Moorhouse.

Mr Moorhouse: I have confirmed that the electronic games available in Leonora are both PlayStation 3 and Nintendo Wii games. For PlayStation 3, there are three G-rated games, two PG-rated games and one M-rated game. There are no MA-rated games. The one M-rated game is Mortal Kombat vs DC Universe, and I will come back to that in a moment. For the Nintendo Wii, there are 18 G-rated games and two PG-rated games. There are zero M- or MA-rated games. It turns out that the single M-rated game is not subject to an age rating. It is not MA, which is restricted to those aged 15-plus. It is the 2008 version of Mortal Kombat, which is called Mortal Kombat vs DC Universe.

CHAIR: Thanks very much.

Senator CASH: Thank you.

CHAIR: Before you continue, Senator Cash, I should welcome the Parliamentary Secretary to the Prime Minister, Senator Lundy, here to our estimates this evening.

Senator Lundy: Thank you, Chair.

Mr Metcalfe: I will just add to that answer, Chair, if I may, to indicate that, even though the game in question is only an M-rated game—it is certainly not an MA-rated or unclassified game—I think the department will consult closely with Serco as to the appropriateness of a violent game, although it is freely available, being provided in these particular circumstances. So that is an issue that we will follow through on quickly.

Senator CASH: Can I just confirm something in relation to that. The department, I assume, is not condoning minors playing games in which they can kill people or chop them up?

Mr Metcalfe: Certainly not excessively violent or other games. Normally that is determined by the classification, but I understand that this is a violent game. I have not viewed it myself but I think it is appropriate that we have a look at that particular game, noting that it is the only one that falls into that category. And I do thank Mr Morrison and Mr Crook for raising that issue.

[20:11]

Senator CASH: Thank you. Can we turn to outcome 1?

CHAIR: Yes, please do.

Senator CASH: As always, I have a number of questions in relation to types of subclass visas and how many have been issued. Should I just ask the questions?

Mr Metcalfe: Ask them and, depending on the level of detail, we may have to take them on notice.

Senator CASH: In relation to the working holiday visa subclass 417, how many of those visa holders are currently on shore; and what is the breakdown by nationality? Also, what is the average time taken to process a working holiday visa and how does this compare with 12 months ago? How many applications for renewals have been made onshore, and for which nationality groups?

Mr Metcalfe: Mr Kukoc has joined us, so we will see if he can assist or if we have to take it on notice.

Mr Kukoc: In 2010-11, we had 185,480 working holiday subclass 417 visa grants. In addition, we had 7,442 grants of work and holiday subclass 462 visas. Altogether, in 2010-11 this program had 192,922 visa grants, which was a 5.3 per cent increase on last year.

Senator CASH: Thank you.

Mr Kukoc: Looking at country of citizenship, in 2010-11 most of the grants went to the United Kingdom—38,974. There were also a large number of grants to the Republic of Korea—30,527. Then we have the Republic of Ireland, 21,753; Germany, slightly over 21,000; France, over 18,000; and a range of other countries. I can read them all.

Senator CASH: No, that is fine. I will get you to provide that on notice.

Mr Kukoc: As for the processing times, I do have that information as well. I just need to find it in the statistical part. For working holiday subclass 417 visas, 80.6 per cent were decided within service standards in 2011-12. The service standards are on our website, but I do not have that information here. Peter Vardos from Client Services Group may have them.

Mr Metcalfe: Just so that you are aware, Senator, Mr Kukoc is responsible for the policy and program elements and Mr Vardos for the service delivery. The two of them may have to alternate in terms of answers. Mr Vardos's people are responsible for visa processing, service standards, that type of thing.

Mr Vardos: The processing standard for the working holiday maker initial visa onshore is six days and for offshore is six days.

Mr Metcalfe: So in four out of five we are meeting that.

Mr Vardos: For the second, the working holiday maker extension, onshore the processing time frame is 21 days.

Senator CASH: And how many applications for renewals have been made onshore?

Mr Kukoc: For 417 in 2010-11 there have been 22,500 second visa grants, which is the extension onshore. For working holiday, 462, that visa program does not have the second visa. It does not have the extension; it just applies to the working holiday maker. What was the third question?

Senator CASH: For which nationality and groups, but I am happy for you to provide that on notice.

Mr Metcalfe: We will take it on notice.

Senator CASH: In relation to student visas, how many offshore applications have been received by post and visa category so far in 2011-12?

Mr Kukoc: I would probably need to take that one on notice in terms of a detailed answer. We do have some information.

Mr Metcalfe: We have 60 posts; so to give you a detailed answer we would have to take it on notice. We might see what we can put on the record now.

Mr Kukoc: From January to August 2011 lodgements in each month except April 2011 have been consistently higher than the previous year. Total student visa lodgement during the period 1 June to 31 August 2011 was 78,734, which was high compared to the same period in 2010, where there were 72,567 lodgements. Student visa grants also increased by 9.4 per cent during the period 1 June to 31 August 2011. We had 65,488 grants compared to, in the same period in the previous year, 59,872 grants.

Senator CASH: We are talking offshore at the moment.

Mr Kukoc: This is in total. Offshore applications in 2010-11 decreased by 19.9 per cent. Onshore applications increased by 16.7 per cent compared to the previous year. Our regular publication on student visa statistics, the next quarterly statistics, will be published by the end of this month. It contains very comprehensive statistics across the board. We can say that the decline in offshore student visa applications and grants has now stabilised. It appears that the applications and grants are picking up again, including offshore. That is what the next release of our quarterly statistics will show at the September quarter.

Senator CASH: Will it also make a comparison with the previous financial year, or is it just for this financial year?

Mr Kukoc: It will contain a range of statistics, with the year to date compared to the previous year to date. It will also compare the September quarter statistics to the September quarter of the last year. I do not have the figures with me—they will be published by the end of the month—but I have seen some early draft statistics, and those statistics have shown a pick-up in both onshore and offshore applications, particularly in the higher education sector.

There are two publications. One is student visa program trends and the other is student visa statistics. The last one was published, I believe, in June. The next one is the September quarter. That is due by the end of October. It will be on our website.

Senator CASH: I will turn to some compliance issues now. The ANAO report, at page 26, paragraph 45, states:

The backlog of NCNs—

non-compliance notices—

was not effectively addressed by DIAC following its identification and acknowledgement as a problem in 2006, and the backlog had grown to over 350 000 NCNs by mid 2010 ...

In the first three months of 2011 alone, more than 30,000 new non-compliance notices were issued every month. The Knight review found that around 35 per cent fell into high-risk

categories. Of the non-compliance notices that have been issued, how many were related to people who had not commenced their course or who had not attended their course?

Mr Metcalfe: This takes us back across into the compliance area.

Senator CASH: That is fine. Is that outcome 3?

Mr Metcalfe: Outcome 4.1, I think. But Mr Illingworth is here, and I am advised that Mr Frew is here. We will try and answer the question to the extent we can.

Senator CASH: Thank you.

Mr Metcalfe: We might just get you to repeat the question, if you would not mind.

Senator CASH: Of the non-compliance notices issued, how many were related to people who had not commenced their course or who had not attended their course? My next question is: of the non-compliance notices issued, how many related to people who had worked more than 20 hours per week?

Mr Frew: I am sorry; we do not have the breakdown of the data that you have just asked for. We will take it on notice.

Senator CASH: Is it the case that the ANAO has essentially found that the department is unable to tell the government how many students are in breach of their visas, how many are working more than 20 hours a week or how many are not actually enrolled in a course?

Mr Frew: I will make an overarching comment in respect of the non-compliance notices as discussed in the ANAO report. The non-compliance notice is a term of art rather than a statement of noncompliance. I know that may sound bizarre. It is generated by a student course variation arrangement. The student course variations may be relatively benign—they are changing course—or they may be a higher risk situation, where the student has not commenced their course. The ANAO report found that yes indeed there was a large spike in the non-compliance notices, and the report also noted that we had taken significant action to try to eliminate the spike. While I do not have a copy of that report in front of me, I think I recall that it said that at the time of writing the department had sorted out 155,000, or a number of that order.

Senator CASH: Considering that the backlog had grown to over 350,000 by mid-2010 and that in the first three months of 2011 alone more than 30,000 new non-compliance notices were issued every month, that is not making a hell of a lot of headway.

Mr Frew: We are now down to fewer than 100,000. I am sorry, but I do not have the precise figure in my mind. This was also addressed in the Knight review as an issue that needed rectification. After the Knight review, a large number of the student course variations which turned into non-compliance notices will stop going into the system later this year. I think it will be December. Eighteen of the student course variations cease going into the bucket. In April next year the remaining two course variations will stop being recorded in this fashion.

What we are doing in the lead-up to this—and, indeed, we have been doing it for a fair period of this calendar year—is attacking the problem from both directions. We are whittling away at the non-compliance notices, clearly looking to get rid of those that are just background noise and are not indicative of high risk. We are also looking at it from the other

end, identifying those where there is greater risk and where we are better able to target our resources.

As the non-compliance regime varies as a result of the outcomes of the Knight review, we will be in a better position because we will not be drowning in background noise and we will be better able to target where the serious risk lies. Once the student course variations stop going into the system such as they are now, and with us working at it from the other end, at a point next year we will be in a far better position to develop a more targeted risk matrix approach to dealing with the student course variation issues.

Senator CASH: Why hasn't this been done previously?

Mr Frew: The non-compliance notices becoming a large issue was another issue which stemmed from the enormous growth in students in 2008-09. Work has been ongoing, but the volume of the work as against the other areas I wish that we were addressing left us in the position in which we find ourselves.

Mr Kukoc: In my opening statement to the Joint Standing Committee of Public Accounts and Audit I clearly said that policy on legislative settings has contributed to an enormous spike in students coming to Australia, particularly in the vocational and educational sector, many of whom were non-genuine students. Also the system settings, which is related to previous a policy on legislative settings, developed at the time created a system where any student course variation was transmitted through the prisms which is the joint system between DEEWR and us into an automatic non-compliance notice on which the department had to act. That system was clearly unsustainable because any ordinary student course variation, like changing the sector of study, would automatically trigger a non-compliance notice on which the department had to act. That led to an enormous growth in non-compliance notices that were of very low risk and clogged up the system. We ended up with the system creating 350,000 notices on which the department had to act.

That was one of the key reasons for the review of the whole system—Michael Knight's review—recommending to the government, which the government finally accepted, that we effectively stop the system of student course variations turning automatically into non-compliance notices. That information on student course variations will still come to the department, but the department will develop a separate integrity based and risk management analysis on which high-risk course variations will be acted upon while low-risk ones will be considered within the context of other information we have. In anticipation of the implementation of the recommendations of the Michael Knight review, we have acted to stop student course variation turning into non-compliance notices in most circumstances apart from two, which are whether the student is making sufficient progress in the course or whether the student is attending the relevant course. Even these two student course variations will no longer lead to a non-compliance notice once we implement Michael Knight recommendations. That information will still come to the department, but it will not automatically trigger a non-compliance notice. That is what Mr Frew was referring to in his explanation.

Senator CASH: If the government wanted to know how many students are in breach of their visas at this present point in time, is the department able to advice the government or the minister of that figure?

Mr Frew: In terms of being able to report on those student course variations that are still extant, the answer is yes.

Senator CASH: Okay. Is the department able to tell the government how many students are working more than 20 hours a week?

Mr Frew: That is a different question.

Mr Illingworth: I will make a few comments here. In this area, it is extremely difficult to give an absolute figure for how many people are in breach of any of their visa conditions. It is rather like criminal conduct in society. There are criminals out there, but we do not know precisely how many until we find them.

Senator CASH: But in relation to the non-compliance notices that have been triggered, is the department able to look at that number and break it down so that they can say, 'These are students who are in breach of their visas; these are students who have worked more than 20 hours a week; these are students who are not enrolled in a course'? Or are you not able to do that at this particular point in time?

Mr Illingworth: We can provide information about the number of visas that are cancelled, for example, on the basis of breach of the work restriction.

Senator CASH: But could you tell the government how many are working 20 hours per week based on the current situation with the non-compliance notices or will that be rectified with the system that you are going to put in place?

Mr Illingworth: A non-compliance notice in relation to the work provision generally would not come from the educational institution. A breach of work restrictions would be something that we find through, for example, compliance field work.

Mr Metcalfe: The answer is that that particular system of non-compliance notices—

Senator CASH: Is monitored differently.

Mr Metcalfe: would not give you perfect knowledge of people working more than 20 hours a week. Indeed, the only way to know whether someone is working 20 hours per week is if you had someone standing next to them for 20-plus hours a week. Mr Knight provided some recommendations about the inflexibility of the 20-hour rule, given part-time work and rostering and overtime and other issues. He recommended a 40-hour fortnight to try and make that an easier area to police. It is an area in which there has been substantial work done. My summary of the last 10 minutes is that the very high volume of non-compliance notices reported by the Audit Office has been a concern to us as well and in fact it has been a problem because it has not really allowed us to deal with the real issues; it has been a sort of false reporting issue based upon indicators. What we have been trying to do, and what we are now getting close to, is work out the real problems and to deal with those. That, combined with some of Mr Knight's recommendations being implemented, will further reduce the potential for non-compliance, allowing us to use our resources—which are finite—in an intelligence led and directed way rather than with a scatter gun approach.

Senator CASH: Why did the government accept the automatic cancellation and mandatory cancellation provisions for student visas?

Mr Metcalfe: That was introduced by the previous government. To be honest, my memory fails me a bit on that issue. Mr Frew spent many happy hours answering questions from Senator Carr on this issue, but that dates back quite a long time.

Senator CASH: And it is being repealed; the recommendation is to repeal it.

Mr Metcalfe: The recommendation is to modify it. I thought that your question was asking for the original basis of it.

Senator CASH: No, it was: why have you accepted the recommendation to repeal it?

Mr Metcalfe: Okay; for sure. Mr Kukoc can explain that.

Mr Kukoc: I understand the government accepted the recommendation because this information will still come to the department but will be looked at in the context of other information that we have about the visa holder. The department will then act only if the department is convinced that this is a serious non-compliance. What we are saying is that having a more flexible system based on the total intelligence and information we have about student visa holders is needed before acting. There is nothing to stop the department acting on that information. It is all about whether that information becomes automatic mandatory cancellation.

Senator CASH: What compliance measures will replace the automatic and mandatory cancellation provisions? If they are repealed, what will you be replacing them with?

Dr Southern: The evidence that we have been discussing here is that freeing up resources that are no longer dealing with the automatic cancellation notices—and, as Mr Kukoc said, we have to act on those—gives us the opportunity to take our compliance resources and apply them, as the secretary said, in a more intelligence directed way. So we can pick out the cases which are going to be of high risk and put our resources there to investigate them and determine whether or not a visa should be cancelled.

Senator CASH: So there will not be any compliance measures that are introduced to replace the former measures. It will be a reallocation of resources to effectively monitor—

Dr Southern: To better target them.

Mr Kukoc: In accordance with risk matrices and risk priorities. We are talking now about risk theory that is being developed between the compliance and the program management areas.

Senator CASH: Does the department currently have an annual compliance plan?

Mr Kukoc: Mr Illingworth will be able to talk about that.

Mr Illingworth: Yes, we have a number of planning mechanisms. We have an annual program based plan which identifies risks and outcomes, and we develop our strategies around that. We have recently introduced a field priority matrix which is at the operational end of the spectrum. It is meant to be an operational tool that helps guide our investment of resources on the ground. We are looking in the longer term at whether there are other more published tools and documents that might help inform the public about what we are doing.

Senator CASH: Are you able to table your last annual compliance plan?

Mr Illingworth: We can table our business plan.

Senator CASH: But you do have an annual compliance plan?

Mr Illingworth: We have a business plan.

Mr Metcalfe: What Mr Illingworth is saying is that within the department we have a cascading series of plans. We have a broad strategic plan for the whole department that is widely available and then each business area or organisational unit has a business plan for its activities. That is what Mr Illingworth is referring to here. You call it the annual compliance plan; he is calling it the business plan for his area. We will take that on notice.

Senator CASH: I now turn to questions re financial resources for students following the Knight review. My understanding is that the amount of financial resources students have to demonstrate as available to them during their course of university study will no longer be tested. From next year a student simply has to declare that they have the means to pay tuition and living costs for a year. What was the rationale behind this change, in particular as I understand this change it is actually more than what universities lobbied for?

Mr Kukoc: The rationale for these changes streamlining the evidentiary requirements for university students at bachelor degree and higher level was clearly outlined in Michael Knight's report. Michael Knight recommended that we commence streamlining of student visa processing with the universities which generally have visa applicants who are of lower risk. Most visa applicants who come to universities as bachelor and higher degree students are already at the AL1—assessment level 1—level, which at the moment does not have evidentiary requirements in terms of their financial capacity to support their studies or of their English language proficiency. At the moment this applies to many university applicants already. The university sector was chosen as a low-risk, highly regulated subsector within the higher education sector. That was essentially the rationale: to start with that subsector in the higher education sector and test the streamlining arrangements in that low-risk area.

Senator CASH: What will the actual declaration be?

Mr Kukoc: It is a statutory declaration. What we are saying is that all these students will still need to meet the requirement. That is, they need to be financially able to support their studies while in Australia. They need to have sufficient English language proficiency. They need to have sufficient academic background. But effectively all they will be required to do is make a statutory declaration. Plus we will have confirmation on re-enrolment from the university as assurance that the university has already done some work in checking the credentials and attributes of those students, which will give us some assurances to proceed with the streamlining of the visa process.

That does not mean that we will drop our integrity work in any way. We will still reserve the right to trigger a referral for particular risk profiles based on our safeguards in the system. If that referral is triggered we may conduct more investigation interviews and seek documentary evidence. It will not apply across the board, but we will carefully target the risk to a small percentage of people who are chosen based on our risk profiling and safeguards.

Senator CASH: How does the department intend to monitor vulnerable students who may not be able to continue to afford to meet the live-in tuition and transport costs yet have provided a statutory declaration that they were able to? What monitoring will you have in place?

Mr Kukoc: Effectively the new arrangement with universities will be an opt-in arrangement. It is open to all universities. However, universities that wish to participate will

need to prepare a plan and provide certain information to the department. The department will also be providing integrity statistics about their students to the university. That sort of information exchange will happen on a regular six-monthly basis. If the integrity statistics worsen over a period of time, the universities will be requested to act upon that or be put on the public record, or eventually they may be taken out of the streamlining arrangements.

Senator CASH: The minister has said that universities would need to sign up to checks and balances before they would get access to the streamlined visa arrangements you have just alluded to. What exactly are those checks and balances?

Mr Kukoc: The university will need to provide us with information on, for example, how many international students they intend to recruit, the ratio to international to domestic students, strategies they will have in place to influence and control the behaviour of their overseas agents, the checks and balances they will put in place to make sure students have sufficient financial ability to pay their tuition fees—because this is effectively a financial risk for the universities—and strategies they will put in place to ensure that students have sufficient English-language proficiency and academic background to perform well in the course. We will put most of that information on the public record. We also intend to share the integrity statistics about student visa holders of that university with the university. We will do that on a six-monthly basis and have a continuous engagement with that university. If the integrity statistics show a decline and worsen over time then there will be an action plan by the university to address that. The next step is to put it on the public record, and the final step is that the university will be taken out of the streamlining. So it is a three-step process.

Senator CASH: You were quite specific about what those integrity measures were. Is there a document that you are providing to universities to say: 'These are the integrity measures. This is the information you do need to provide us with'?

Mr Kukoc: This is what we intend to do. We are of course consulting with universities on that process. This is not a finalised process. We are still in consultations with the university sector. I had a meeting with Universities Australia where I socialised this concept with them, and they were generally comfortable and supportive of that approach. Now we are at the stage where the department will write to each university with that plan of action, offering them an opt-in arrangement and what will be required from them.

Senator CASH: When do you expect that to occur?

Mr Kukoc: Before the end of the year. As we speak, the letter is being drafted. The letter will go out probably within the next two weeks.

Senator CASH: In relation to work rights, the government has accepted the Knight review recommendation that university graduates are able to apply for visas to allow them to remain in Australia for two to four years and work. Are there any limitations placed upon this employment or are these jobs channelled towards areas of skills shortage or need?

Mr Kukoc: No. For university students with bachelor and higher degrees—which is master's by research, master's by coursework and PhD—there will be no limitation in terms of which occupation or type of work they will be working on. At the moment, we have a 485 postgraduate visa that is available to all international students in Australia provided that they meet certain criteria. Access to that 485 18-month postgraduate work visa is based on their

occupation being on the new skilled occupation list. But for the universities we will not have that restriction.

Senator CASH: What was the rationale behind the government not placing any limitations? Isn't the better view to argue that migration should be approached with a view that, where possible, jobs should be filled from within the Australian population and workforce and then there should be a targeted approach as to where these jobs should actually be?

Mr Kukoc: I understand the rationale, as outlined in Michael Knight's report, was that this is part of the overall international student experience in Australia. In addition to their educational qualification obtained in Australia, it helps them to gain some work experience in Australia with which they could top up their educational qualification to pursue their career globally or in their home country or perhaps later down the track in Australia if they obtain a permanent residence visa. That was the rationale.

Senator CASH: From a migration perspective, though, would it not be more appropriate to actually channel these people towards areas of skills shortages?

Mr Kukoc: I am not in a position to comment on the policy and what would be more appropriate; I am just explaining the rationale in Michael Knight's report.

Senator CASH: The government then accepted the rationale that was set out in the Knight report.

Mr Metcalfe: This was a report to both the Minister for Immigration and Citizenship and the Minister for Tertiary Education, Skills, Jobs and Workplace Relations. That policy issue, I am sure, would have been considered by the government. I think it is probably seen as a significant attractive issue in terms of promoting the international education industry in Australia, which is a very large employer and a very large export earner, and no doubt the ongoing large numbers of overseas students will add to many Australian jobs in those sectors.

Senator CASH: I would like to turn very briefly to the 456 visas, the business short stay visas. How many instances of abuse—

CHAIR: I will interrupt you for a second. Do you have a series of questions under this visa category?

Senator CASH: I have one question under the 456 visa category.

CHAIR: Let us do that, and then we have got Senator Furner and Senator Pratt who have questions as well—

Senator CASH: Under this outcome?

CHAIR: Yes.

Senator CASH: How many instances of abuse of condition 8112 on the subclass 456 visa have been identified by the department? We canvassed this at the previous estimates, and I am just looking for an update.

Mr Kukoc: The information I have is that in March 2011, following information from the Australian Workers Union, the department found that two Filipino painters on the Nan Hai 6, an oil rig on the North West Shelf, in Western Australia, were working in contravention of their visa conditions. Subclass 456 visas were granted as their applications presented them as crew joining a vessel outside Australia's migration zone. Instead, they were working on an

ongoing basis inside the migration zone on a subclass 456 visa. I understand that the Fair Work Ombudsman has lodged a statement of claim in the Federal Court against the employers in Hong Kong, the Philippines and Australia involving the substandard employment of the Filipino painters.

Following that incident, just to assist in determining visa requirements for workers engaged in offshore resources work and to mitigate the risk of the misuse of the 456 visa, the department has disseminated support materials to departmental staff to help identify when a maritime worker is working in the migration zone. We have also revised policy advice regarding appropriate use of the visitor visa for people transiting through Australia. This includes advising that low-skilled maritime workers should transit Australia on a tourist subclass 676 visa, which has a mandatory 8101—no work in Australia—condition. That was following that.

Mr Metcalfe: Not quite an answer to your question, but it helps a bit, I think.

Senator CASH: It does, thank you. Chair, that is all the questions I have on that outcome. I will put the remainder of my questions on notice for outcome 1. I am happy to move on to outcome 3 when you have finished.

Senator PRATT: I want to ask about regional migration agreements. At what stage of development are regional migration agreements currently?

Dr Southern: We are currently conducting stakeholder consultations around the design of the regional migration agreements program and, following that consultation, we will put together draft parameters for the program for consideration.

Senator PRATT: What are the things that are going into that consultation that are likely to define it differently to its previous iteration?

Dr Southern: The regional migration agreements are, if you like, a new initiative announced in the budget, so they do not exactly have a previous iteration. They will really be about bringing together employers, local and state governments, unions and local community interest groups to cooperate on addressing skills and labour shortages in regional Australia—areas that will identify themselves as having an interest in pursuing this. It will enable local areas to implement workforce strategies that will support their growth while ensuring that Australian workers remain the first choice for employers. Working through those issues will be very important as we conduct specific negotiations with areas. At the end of the day, each agreement will be custom designed and geographically based. It will set out the occupations and the numbers of overseas workers that would be needed in the area, and then individual employers would be able to directly sponsor workers under the terms of the RMA. Workers would actually be employed under 457 visas, so it uses the 457 visa class but puts it into the framework of a regional agreement.

Senator PRATT: What is the difference between that and a regional sponsored migration scheme?

Dr Southern: I might pass to colleagues who have a bit more detail on that. I guess the difference would be that regional sponsored migration arrangements are between individual employers or state governments.

Senator PRATT: Who are in the regions?

Dr Southern: Who are in the regions, rather than drawing them together for a specific region and a group of employers.

Mr Kukoc: Regional migration agreements will likely use a range of visas—most likely 457, predominantly 457, as a temporary skilled workers visa. They can also use permanent RSMS, regional skilled migration visa. That is the difference. The Regional Skilled Migration Scheme is a permanent visa program within our skilled program.

Senator PRATT: I just wanted to be clear that one was not replacing the other. Can I ask what the definition of a region is.

Mr Kukoc: We do not have a definition for—

Senator PRATT: Does it include capital cities?

Mr Kukoc: Regional migration agreements will be a coordinated, localised response to labour needs in regional areas experiencing acute skills shortages arising from significant economic growth. So we will be targeting growing regions. That can include—

Senator PRATT: So do you mean a region of Australia as opposed to country and regional Australia? Does it include capital cities or not? Clearly capital cities can be distinctive and have particular regional needs for labour. So I would assume that it does; I am just seeking some clarity.

Mr Kukoc: I would like to invite the branch head of the Labour Market Branch in my division, Peter Speldewinde, who has conducted the consultation on the regional migration agreement with a range of stakeholders.

Senator PRATT: I know that Perth has been brought in, but I am not sure which regional migration scheme it was under.

Mr Metcalfe: We will get Mr Speldewinde, our expert on this, to take you through it.

Mr Speldewinde: It is theoretically possible for a capital city to be classed as a region. The difficulty with putting a regional migration agreement into place with a capital city is that capital cities tend to have very large and diverse labour markets. Also the mobility of people within that capital city labour market tends to be much higher than that of people who might be in more ruralised areas. So you could not rule out having a regional migration agreement for a capital city, but it would be a very complex beast to negotiate. The approach that the department is taking is that we are looking to start small to get the methodology right, as Deputy Secretary Southern said. We will have a set of guidelines out in the next few weeks that regional areas will be able to look at and consider. To date we have consulted with a couple of areas in Western Australia—in Esperance and around Broome. We have consulted in the Northern Territory and in the Gladstone region of Queensland. We are using that information now to develop those guidelines. Essentially you could not say that you could not have an RMA in a capital city, but the bigger the area, the larger the labour market, the more difficult it would be to establish a case.

Senator PRATT: That makes sense. I understand that Perth came on the list for some regional skills shortages. I just wanted to clarify the difference between the two.

Mr Speldewinde: Perth was gazetted as an eligible centre under the Regional Sponsored Migration Scheme. That allows employers in Perth to access a broader range of people with skilled occupations than what they would do if it had not been gazetted that way.

Senator PRATT: Okay. So if there was a need to perhaps better coordinate that work or develop it you could. That is why you cannot rule out a regional migration agreement. That makes sense, and I certainly appreciate the needs that WA has and the commitment to getting those agreements up. What feedback have you had so far? Clearly, you have been consulting with those regions. What kinds of stakeholders within those regions are you consulting with?

Mr Speldewinde: Firstly, we are consulting with the relevant state or territory government. We are consulting with the regional development authorities and the town councils. We are consulting with relevant interest groups in those regional centres. For argument's sake, in Broome the consultations included a very wide cross-section of people, such as people from the fishing industry, the hospitality industry and the tourism industry and local retailers and wholesalers. So we consulted with a very broad range of people who may have a stake in this.

Senator PRATT: What kinds of consultations have you done in the Pilbara?

Mr Speldewinde: We have not done any consultations in the Pilbara yet.

Senator PRATT: Okay. But I imagine that you will have them at some point.

Mr Speldewinde: It is highly likely. It is difficult to speculate with any certainty, but it is likely that we will get a proposal for a regional migration agreement from the Pilbara at some point.

Senator PRATT: What areas are most likely to be eligible? Clearly, they are areas with skills shortages of various kinds.

Mr Speldewinde: The areas that are likely to be most eligible are areas where there is a below threshold level of unemployment, areas where there is likely to be high growth and areas where there is clearly the potential for migration to assist and to facilitate expansion on either a temporary or a longer term basis. The RMAs are not viewed as a mechanism for running a regional repopulation process. Their purpose is to develop infrastructure and tide areas over. For argument's sake, in the Northern Territory the Territory government advised that they saw some real issues over a five- to seven-year period with the coming on stream of a series of major resource projects likely to pull people away from local labour markets such as Alice Springs and Tennant Creek et cetera.

Senator PRATT: How does the department view tackling labour shortages? Is migration truly an appropriate fix for it? For example, there are significant labour shortages in the Pilbara in sectors like community services, aged care, retail and hospitality. But in part those labour shortages come from the very high cost of living in those areas because of the booming economy. In a sense, identifying the skills shortages and saying we want to open up the labour market is not going to necessarily address those problems. There are housing and accommodation shortages, for example, that anyone migrating to access those work opportunities would also experience.

Mr Speldewinde: Your summary is correct. Those are key issues. One of the things that we have made clear through the consultation process is that in order for a proposal for a regional migration agreement to go forward the local area—however big that might be defined—would need to demonstrate that in fact it has the capacity to house and support workers. Some areas may in fact not have that capacity and they may opt for single workers. Others with more capacity may be quite happy to bring in workers and their families under a

regional migration agreement. We would have to look at each of those situations on a case-by-case basis.

Senator PRATT: So in negotiating with the states and other stakeholders, part of the agreement can go to some of those other questions, such as housing? I suppose if it is an agreement it has to have a broader set of solutions in it than just the migration outcomes.

Mr Speldwinde: Absolutely. The signing of a regional migration agreement will involve a number of Commonwealth agencies who will provide input, even though the final signatory is likely to be the minister for immigration. But it will consider all of those things. There are state development plans; there are regional development plans; there are issues around ensuring that the training of Australian workers and Indigenous workers is also paramount. The regional migration agreements are then intended to be the final top-up, if you like.

Senator PRATT: What kinds of protections are in place to maintain job opportunities for Australians as part of those arrangements?

Mr Speldwinde: We have not completed the guidelines yet, but we would certainly be looking to ensure that signatories to the regional migration agreement observe the 457 training benchmarks. We would be looking to ensure that there is evidence of ongoing commitment for the local population in terms of its development and employment. There would be agreements around salary levels and work conditions. Those are the sorts of protections that we would be looking to build into each RMA.

Mr Kukoc: Given that RMAs will be mostly using 457 visas, the standard protections available under the 457 following the passage of the worker protection act in 2009 will be available under RMAs. Essentially it will be a 457 visa under RMAs.

Senator PRATT: I suppose, seeing as it is not just one-off visas, seeing as they are regional agreements, it will actually enable a discussion, a dialogue, about the extent of a shortage for any particular skill or group of skills.

Mr Kukoc: Yes. It will contain an additional element, which is workforce planning and training. RMAs will be a deed of agreement between the Commonwealth government and regional bodies and state and territory governments, which will also, on top of the 457 requirements, have some planning objectives and training requirements for the whole region.

Senator PRATT: I want to ask some questions about CHOGM and visas for that. How many heads of state do we have visiting, as far as you are aware?

Mr Vardos: I guess the first point to make is that the Department of the Prime Minister and Cabinet is the lead agency in relation to CHOGM.

Senator PRATT: I am really just looking for the broad number of visas that are being processed, to get a sense of how many people Perth will be showcased to.

Mr Vardos: We do have some data. I am not sure whether it is current as of last Friday or—

Senator PRATT: Approximate figures are fine. I am looking for a general impression of what it is going to be like.

Mr Metcalfe: We can give you the most up-to-date stuff. Essentially what we are particularly focusing on, of course, is the delegates who are registered to attend the official government functions of CHOGM itself or related issues, where we have been very much

working with CHOGM members to ensure smooth visa arrangements, something we do with any of these big events. No doubt there are a separate group of people that we may not be able to track who are simply applying for tourist visas to attend some of the associated events. But Mr Vardos will be able to give you some figures on those folks who are actually registered to attend some of the official functions.

Mr Vardos: Mr Frew has a number, but I will just point out that, counting Australia, there are roughly 61 Commonwealth countries and it is uncertain whether all will attend and how many will be on the delegations. Of the 61, seven are ETA eligible, so it would be a seamless process for them to get visas that we would not necessarily be aware of being linked to CHOGM. And of course New Zealand has special access to Australia. But, of those that are registered on the entry management system—

Mr Frew: So far we have granted about 1,680 visas. That was current as at last Friday.

Senator PRATT: They are to official government delegations?

Mr Frew: Included within that number are some of those folk who are attending parallel events—the Business Forum, the People's Forum. So that includes everybody, however described, who is registered within the CHOGM registration system.

Senator PRATT: How many media are coming from overseas that we are aware of?

Mr Frew: I do not know that I have a precise number, but I think it is of the order of 700.

Senator PRATT: Would 700 of those 1,600 be media, or are they are accredited separately?

Mr Frew: 1,680 is not likely to be the final number. It is a number greater than 2,000.

Senator PRATT: Do you have a sense of how many visitors you are expecting during CHOGM?

Mr Frew: No. What I would say to you at the moment is that, despite the best efforts of our department, the Department of Foreign Affairs and Trade et cetera, people are lodging their applications quite late.

Senator PRATT: Believe you me, I know.

Mr Metcalfe: We always encourage people to get in early. I think some of your questions would probably be better addressed to the Department of Prime Minister and Cabinet, who have the overall responsibility for the issue. In terms of the total number of travellers, as I have said, that is difficult for us to identify unless they self-identify as people who are coming for a particular event. Some of the larger CHOGM countries—the UK is a good example—are eligible for electronic visas that would not be normally, and of course New Zealand fits into a related category. No doubt Perth will be full of people attending CHOGM events next week and I am sure it will go very well.

Senator PRATT: And there are a number of athletes from the sporting teams attending.

Mr Vardos: There are a number of sporting activities associated with it. I do have some information drawn from PM&C. These are estimates. Approximately 3,000 delegates, including up to 53 heads of government ministers and senior officials, are expected to attend—whether they do or not, we are not sure—along with 1,000 international and domestic media. I do not have a split between the two. The number that Mr Frew quoted is pretty much on the mark.

Senator PRATT: Okay, you are going to have a busy time in Perth.

Mr Metcalfe: One interesting legal curiosity is that Her Majesty, of course, does not require a visa to come to Australia, being the Queen of Australia. She is in a unique constitutional position. We are obviously looking forward to seeing her here in Canberra and elsewhere later in the week.

Senator PRATT: Yes, that would seem logical that she does not need a visa.

Mr Metcalfe: Some people ask that question. While she is not an Australian citizen, she is the Queen of Australia.

Senator PRATT: Thank you.

CHAIR: I am not even going to make a comment.

Mr Metcalfe: It is a pity that your look could not be captured somehow on the record, Chair.

CHAIR: Well, I am a very proud member of the Australian Republican Movement. I think Senator Furner has some questions.

Senator FURNER: Yes, in two areas, firstly starting with the new Brisbane 457 processing centre. When did the centre commence operations?

Mr Metcalfe: While the officers are checking their notes, I do recall it was actually a couple of years ago. They will correct me if I am wrong, but I thought it was an initiative of the former minister, Senator Evans, to establish a series of specialist 457 processing centres, of which Brisbane was one. That would probably take us back a couple of years. The budget contained information about expansion of that centre, which is possibly what you are referring to, Senator.

Senator FURNER: That is correct.

Mr Metcalfe: We can come back to you on that question if you want to keep going.

Senator FURNER: I will ask the questions and if answers are not available I will put them on notice. How many visas have been processed since the Brisbane centre commenced operations?

Mr Metcalfe: I imagine we will have to take that point on notice.

Senator FURNER: How many staff are employed in the new centre? What has happened with processing times as a result of the new centre? What sorts of improvements have occurred subject to the centre coming into operation?

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

Senator FURNER: The other area of questioning concerned the 2011-12 migration program—the net overseas migration. I would like to question you in regard to the processing. Is the migration program on track to deliver the number of program places allocated in the 2011-12 budget?

Mr Metcalfe: It is broadly on track. We are now a bit over three months in, a bit over a quarter of the way. I get a regular report as to progress, and my recollection is that in the visa group's various visa categories we are on track or certainly have plans as to how to make sure that we are on track. As we do each year, it is an area of close management. It is usually managed in very closely.

Mr Kukoc: As you know, we delivered last year's program on target. As at 31 August 2011, the migration program had delivered 33,328 places, which was 8.1 per cent above pro rata, so we are heading above pro rata at the moment—

Mr Metcalfe: A bit above pro rata, but we manage that across the year so as to bring it in on target. That is not a suggestion that we are running over; we are just running a bit ahead of pro rata.

Senator FURNER: Would you identify what the level of demand has been for the employer nominated visas?

Mr Kukoc: The skill stream as at 31 August 2011 had delivered 23,658 places. In the employer-sponsored outcome, we delivered 7,275 places, which was slightly—5.1 per cent—below pro rata. That does not mean that there is low demand from employers; it just talks about the processing. Usually—and my colleagues from the Client Services Group can explain this a bit better—we run slightly below pro rata with the employer-sponsored program in the first few months and then catch up down the track towards the end of the financial year. This is how the system works. So far we are delivering the program on target. Actually, it is slightly above pro rata. The employer-sponsored outcome is slightly below pro rata, but by a very small percentage.

Senator FURNER: Do you have projected levels for the overseas migration—what they might be?

Mr Metcalfe: Is that net overseas migration?

Senator FURNER: Yes.

Mr Kukoc: We publish the net overseas migration forecast. The publication is called *The outlook for net overseas migration*, on our website. I have the statistics. That forecast is for the forward estimates period, so for four years in advance, based on the current policy settings, based on the current trends in the temporary visa category and based on the current Migration Program places. I refer you to our publication *The outlook for net overseas migration*, on our website. My colleague has some figures there.

Dr Southern: The latest quarterly DIAC forecast showed that net overseas migration will slowly increase in the year ahead to around 189,000 persons by the end of this year, by December 2011. Beyond December 2011 we are expecting that the net overseas migration should stabilise between about 190,000 and 200,000 persons per year, with that growth largely due to subclass 457 visas—a slight increase there.

Senator FURNER: How is that—

Mr Kukoc: For the year ending 31 March 2011, it was 167,100 persons, which was 47 per cent lower than the peak net overseas migration recorded for the year ending December 2008, which was at the time 315,700.

Mr Metcalfe: Just to complete that evidence, that large number of net overseas migration reflected the very large growth in the student visa program. As we indicated, we were sure that that was going to fall back to what we see as the sort of longer term correct number, which is around that 180,000 level. In fact, it fell back below that and it is now back up towards that figure.

Mr Kukoc: There was actually an uncommonly high impact on net overseas migration from student visas. Normally, student visas as temporary visas should not impact on the net overseas migration levels, because the years of inflow of students will be followed by the years of outflow or departure of students. What happened was that policy and legislative settings contributed to overseas students staying for prolonged periods, applying for other visas and applying for permanent residence and staying on various bridging visas. That created an almost pyramid effect on net overseas migration. With the range of measures that the government has put in place and the skilled migration and student visa reforms that we have undertaken, we expect that in future years the student visa program will not have a large impact on net overseas migration.

Senator FURNER: I asked an earlier question in respect of the MOU between our government and Papua New Guinea. Is this the right area for that?

Mr Metcalfe: This is the right area.

Senator FURNER: Okay. I want some basic feedback in respect of that MOU. What is the intent behind that coming into place?

Dr Southern: This is the MOU between Australia and PNG in relation to work and holiday makers.

Senator FURNER: 462 visas, correct.

Dr Southern: As you know, it was signed on 12 October here at Parliament House. The memorandum of understanding that we have reached with the government of Papua New Guinea is the standard agreement, if you like, that is offered to all work and holiday partner countries. It is basically put in place to allow young Australians and young people from Papua New Guinea to live and work in each other's countries for a period of up to 12 months. The agreement is subject to an annual cap of 100 places each way. During the period of time people have access to work rights for the duration of their stay, which is limited to six months out of a 12-month period with any one employer. The participants can study in Australia for up to four months as part of the arrangements. In order to qualify, applicants must hold tertiary qualifications or have successfully completed at least two years of undergraduate university study. They must have functional English to come here on the visa. Applicants also must have a letter from the relevant government ministry including a statement to the effect that the government supports the applicant's stay in Australia under the terms of the agreement. It is a fairly standard set of arrangements for the work and holiday maker visa. We are very pleased that we have entered into this agreement with PNG.

Mr Metcalfe: It is terrific. Apart from New Zealand is our very closest neighbour, both geographically and historically. It is great that we have a scheme now in place to enable young people from both countries to live and work in the other country, given the extraordinary ties behind our two countries. The fact is that many people from PNG attended school and vice versa. This is a very good development in terms of our relationships with a good friend and neighbour.

Senator FURNER: Other than the tertiary reciprocal arrangements between the two countries, is there any other set criteria in regards to age or anything like that?

Dr Southern: Applicants must be between the age of 18 and 30. They must possess functional English, as I mentioned, in order to participate.

Mr Metcalfe: It probably rules you and me out, Dr Southern.

Dr Southern: It does—absolutely.

Senator FURNER: When are we expecting to see the arrangements commence? Have there been any discussions in regards to setting up the administrative and legal arrangements?

Dr Southern: It will take a little while to put in place the administrative and legal processes to give effect to the agreement. That process is underway at the moment. I would not like to put a time on it, but it is underway.

Senator FURNER: Okay. Thanks for that.

Mr Metcalfe: This comes at a time when we have also undertaken another important initiative in relation to our own visa services in PNG. We have appointed in PNG and indeed through the Pacific what we call service delivery partners. Rather than having to apply at the Australian High Commission, there are other places at which to apply for a visa. This is an important development in the way that the department provides services overseas. It is occurring in PNG but we have announced arrangements elsewhere, such as in Fiji and New Zealand.

Mr Vardos: Madam Chair, I have some additional information to provide in response to a question Senator Furner asked a few moments ago.

CHAIR: Yes, Mr Vardos?

Mr Vardos: With the secretary's indulgence, I am correcting something that he said. Yes, there were centres of excellence in relation to 457s that were announced by Senator Evans some time ago, but in the budget this year the Brisbane 457 processing centre was announced. When the announcement was made, recruitment action started. The centre itself, the processing facility capability, commenced on 1 July and some 22 staff have been recruited for that capability in Brisbane. But it commenced with the budget announcement earlier this year.

Mr Metcalfe: There are some other parts, but we will take them on notice.

Mr Vardos: The rest we will take on notice.

Mr Metcalfe: But I was right in thinking that Senator Evans had announced—

Mr Vardos: Yes, he announced several centres of excellence.

CHAIR: We will come back after the break to outcome 3. We have finished outcome 1.

Mr Metcalfe: Just on that: I can release any officers on outcome 1? We are done with them?

CHAIR: Yes, as chair I am telling you that you can do that.

Mr Metcalfe: We should still keep 5 and 6 here?

Senator CASH: I would like to be onto outcomes 5 and 6 by no later than 10 o'clock. Depending on how many questions other people have, I will tailor mine appropriately.

Mr Metcalfe: We will keep them here, Senator.

Proceedings suspended from 21:26 to 21:40

CHAIR: We are onto outcome 3.

Senator CASH: I turn briefly to the issue of sex trafficking and tourism. Has the department seen the reports of the increase in sex trafficking to Australia?

Mr Metcalfe: I am certainly aware of the *Four Corners* report last week. We touched on that a bit earlier and are happy to talk about that again if you wish.

Senator CASH: Has the department seen an increase in sex trafficking to Australia?

Mr Metcalfe: We have certainly seen the reports. In terms of the numbers of alleged victims, that is a matter I suggest you talk to the Australian Federal Police about. They have the prosecution policy. We have some involvement with the issue in terms of our own compliance activities, particularly in the sex industry.

Senator CASH: That is my next question. It will segue very nicely into what you were about to say. Has the department seen any evidence of women who have been trafficked to Australia to work in the sex industry in its compliance activities? That is where your focus is.

Mr Metcalfe: The answer is yes. Dr Southern can possibly add to that.

Senator CASH: Thank you.

Dr Southern: I think we were talking earlier today about the fact that our compliance officers who are involved in field compliance activity where there may be evidence of sex trafficking have basically been trained to elicit from people whether there is any indication of trafficking involved. In 2010-11, 33 matters involving 37 people were referred to the AFP.

Senator CASH: Is that by the department?

Dr Southern: By the department, yes. If we were conducting compliance activity and came across anything which suggested to us there may be trafficking involved, we would refer that case to the AFP. It is a fairly low bar, so quite a large number are referred. What I do not have are the numbers that were followed up with further investigation by the AFP.

Senator CASH: That was my question. Is that something that I would put on notice to you, or would I direct it to the AFP?

Dr Southern: You could direct it to the AFP. We could take it on notice, but we would have to ask the AFP. I should say that, of those 33 matters, 20 involved the sex industry, so it is not just the sex industry involved in illegal trafficking.

Senator CASH: It is not just the sex industry that is involved in illegal trafficking?

Dr Southern: That is right.

Mr Metcalfe: We are concerned about human trafficking generally; but, of the cases that our compliance officers uncovered, the number involved in the sex industry was a subset of the overall numbers referred to the AFP. I think Dr Southern has put those figures of 20 in the sex industry out of 33 involving 37 people all up.

Dr Southern: Under the Criminal Code, antitrafficking offences include trafficking in persons, slavery, sexual servitude, debt, bondage and deceptive recruiting, so it is a whole range of matters.

Senator CASH: In relation to those 33 matters, is that 33 individual complaints? My question is: have any women in Australia on a visa reported sex trafficking offences to the department? Does 33 matters equal 33 individual complaints, or does the matter concern—

Mr Metcalfe: I think we said 33 matters with 37 individuals as what we have referred to the AFP. I think the vast majority, if not all of those, were as a result of departmental action rather than the person coming forward to complain.

Senator CASH: So you do not necessarily have women phoning the department and saying, 'I've been trafficked.'

Dr Southern: No.

Mr Metcalfe: I think the nature of this pretty nasty business is that the people are fairly powerless and it tends to be that we find them as part of our routine compliance or targeted compliance activities.

Dr Southern: That is correct.

Senator CASH: How many women has the department provided criminal justice visas to in order to allow these women to give evidence?

Dr Southern: I suspect I am going to have to take that one on notice. There are a range of visas which are available to people who may be involved in providing further evidence in relation to trafficking offences. There is the bridging visa F, which is the specific people-trafficking one. You have mentioned criminal justice visas, but also if a person is here legally on a visa and becomes involved in an inquiry or giving evidence relating to people trafficking then they can remain on that visa. It might be a student visa or some kind of working visa. They do not necessarily have to transfer to different types of visas.

Senator CASH: Are you able to take on notice the numbers of women who have had access to the criminal justice visa in order to allow them to give evidence? How many have subsequently been given permanent residence in Australia?

Dr Southern: Yes, we will take that on notice.

Senator CASH: In relation to section 501 visa cancellations, how many visas have been refused or cancelled by a departmental officer using the delegated powers given by section 501 of the Migration Act in the year to date?

Dr Southern: In the year to date the number of cancellations made by the department is 38.

Senator CASH: Thirty-eight under section 501?

Dr Southern: That is correct.

Senator CASH: And how many has the minister cancelled or refused during that same period?

Dr Southern: The minister has cancelled 12 during that period. In relation to refusals, the department has refused 30 and the minister has refused one.

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

Dr Southern: Yes. The visa cancellations that the minister has undertaken would usually follow submissions from the department.

Senator CASH: So in relation to the 12 cancellations there would have been 12 pieces of advice to the minister?

Dr Southern: That is correct.

Senator CASH: Are you able to provide on notice when each of those pieces of advice was provided to the minister?

Dr Southern: We will take that on notice.

Senator CASH: Are you also able to take on notice what case or cases?

Dr Southern: I suspect there may be some privacy issues.

Senator CASH: To the extent that you can.

Dr Southern: Yes.

Senator CASH: Thank you. How many people subject to a section 501 cancellation remain in the Australian community?

Dr Southern: I would have to take that one on notice. This is people whose visas have been cancelled but we have not been able to locate to remove them?

Senator CASH: Correct. In relation to those people—because there will be some—what is their status? What actually happens to them?

Dr Southern: They would be unlawful if they have had their visa cancelled and they are in the community, so they would be the subject of compliance action.

Senator CASH: So it is just a process of finding them?

Dr Southern: That is right.

Senator CASH: In relation to the destruction of documents, in the 2010-11 financial year and the year to date how many IMAs arriving in Australia did so by flying into Indonesia first?

Dr Southern: We would need to take that on notice. I think we have provided that information to you in relation to previous years.

Senator CASH: Yes, so could you provide now the up-to-date information?

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

Senator CASH: How many of those IMAs who arrive by plane from Indonesia subsequently do not have passports to present to Australian authorities?

Dr Southern: We will take that on notice as well.

Senator CASH: How many onshore visa applications have been lodged by people other than IMAs who arrived without visas or documentation in 2010-11 and the year to date?

Dr Southern: We will take that on notice.

Ms Wilson: In relation to your question on IMA documentation, about 98 per cent of IMAs arrive without passports and about 81 per cent arrive undocumented. That has been fairly consistent over the last couple of financial years based on previous advice we have given you.

Senator CASH: So 98 per cent arrive without passports and was that 81 per cent—

Ms Wilson: About 80 to 81 per cent arrive undocumented with no identifying documents at all.

Senator CASH: Thank you very much. How many IMA crew members are in detention currently and at which locations?

Mr Metcalfe: They are back into four. I think the officers involved in that have left, so we will take that on notice.

Senator CASH: That is fine. In the interest of time I will place all my further questions for outcome 3 on notice so we can move on to five and six.

Mr Metcalfe: Thank you. We will take those on notice.

Senator CASH: Let's do that. Let's move to outcome 5 then.

Mr Metcalfe: There is a changing of the guard. I think Mr Fox is going to join us.

Senator CASH: Thank you for waiting so patiently all day.

Mr Fox: A pleasure.

Senator CASH: Mr Fox, I turn to question on notice 750. It was in relation to the review of accommodation arrangements for clients. I asked you to provide the total number of properties that will need to be looked at across Australia broken down by state. You were kind enough to provide me with an estimate in relation to short-term, long-term and total visits.

Mr Fox: Thank you for inviting me to stay so late in the evening, though we are pretty early compared to normal!

Senator CASH: I know!

Mr Metcalfe: We can always put you on first!

Senator CASH: How many visits have been undertaken?

Mr Fox: We visited, in the end, 434 premises as part of that audit. In some of them a number of our clients declined our offer to go visit, and in some others our records were out of date and we were not able to actually visit them. So we made contact with just under the 540 that we had specified in the answer to the previous question on notice. We visited 434.

Senator CASH: So some clients are able to decline to have you visit? It is up to them?

Mr Fox: Yes.

Senator CASH: They do not have to allow you. Generally, what did the inspections reveal?

Mr Fox: Generally, I am pleased to say, the inspections revealed that the vast majority of premises were very much up to standard and certainly within the community norms that we would expect. We did identify a total of four properties where we thought that it was in the best interests of the clients that they move elsewhere. That was for a range of reasons, including one that had been water damaged through flooding. It was best that they move out rather than repairs be effected to that particular property. There was also one—I think it was an apartment block in Sydney—that had been entered into by the provider as a long-term lease, and we felt that accommodation was inadequate and suggested breaking that lease arrangement and that no clients ought to be accommodated there.

Senator CASH: Could I ask you, then, to provide to the committee in relation to the four properties that were identified as not being acceptable for the clients the reasons for that in each case so we get a better understanding of what those reasons were? I also ask you to provide on notice, in relation to the analysis that you provided me under question 750, exactly how many in each state you managed to visit, broken down state by state, totalling 434.

Were there any general areas of concern that you had other than the four properties which you did identify?

Dr Southern: One of the things we concluded was that we could do better around providing advice to the clients about their tenancy rights. For example, in the case that Mr Fox mentioned about flood damage to the home, the flood damage occurred while the residents were there but they had not thought they had any redress with their landlord to seek to rectify the situation. So clearly there is some work we can do and are doing to provide better information to clients about what their tenancy rights are.

Senator CASH: So what is that work that you are undertaking to ensure that they do understand what their rights are?

Dr Southern: That is around the communication that is provided directly to the clients when they enter the settlement services. So it is through our settlement services providers. I do not know if Mr Fox wants to add to that.

Mr Fox: No.

Senator CASH: In terms of the areas of concern, have any costs been borne in order to rectify any of the areas of concern?

Mr Fox: Costs by the department?

Senator CASH: Correct.

Mr Fox: No.

Senator CASH: Are there any time frames that you are working to to remedy any of the concerns?

Dr Southern: They have all been addressed.

Senator CASH: So in relation to the four properties that were identified the clients have been moved on?

Dr Southern: Yes.

Senator CASH: What then happens to the premises that they were in?

Dr Southern: It would depend a bit on the kind of lease arrangements that the settlement services provider had for the property. In some cases, if it is short-term accommodation, they have had leases which they retain and move people in and out. If it was a property like that, it would be up to them to work out whether they continue to lease that property. But in other cases for long-term accommodation where the clients are the tenants and are renting the properties, the landlord will possibly rent it so someone else or will rectify the problem. But we would not approve it for clients under HSS.

Senator CASH: In terms of the leases for the four properties that you identified, you moved the clients out of the property. What is the obligation of the department or the client in relation to the payment of the balance of the lease? Is it considered a breach or is it the landlord who is in breach because they have not provided a suitable property?

Mr Fox: Of those four cases I think I am right in saying they were all used as short-term accommodation and, therefore, were generally paid for by the service provider on a short-term leasing arrangement. One, as I mentioned earlier, was a longer-term lease, and we felt that was unsatisfactory. What arrangement the service provider had for exiting the lease was a matter for the service provider rather than for us in the department.

Senator CASH: Did the audit that you undertook reveal how many more dwellings, homes or beds were required to meet the client demand?

Mr Fox: No, that was not the purpose.

Senator CASH: The purpose was merely to look at whether or not the premises were acceptable in terms of habitation?

Dr Southern: That is correct.

Senator CASH: Okay. In an article in the *Australian* on 25 May it was stated:

The independent Ernst and Young review released on Monday has prompted a nationwide audit of refugee services after it found refugees were living in substandard accommodation and were frequently charged between \$50 and \$210 a week more than the assessed fair market rental for the properties.

How many cases of rental discrepancies have you identified?

Mr Fox: We have not identified systemic overcharging. What we have done is had a look at the way in which rents are calculated. We give guidance to our service providers that they ought to look at approximately 30 per cent of a client's Centrelink income as a benchmark for accommodation. We are finding that that is probably an unrealistic estimate.

Senator CASH: Too high or too low?

Mr Fox: Too low. Housing New South Wales, for example, uses 50 per cent as a benchmark. We had previously changed our guidance to suggest that people look at fair market rent, and we are now working with all of our own staff as well as our service providers to look at what is a better model for that. In fact, we are having a meeting with all of our service providers next week with a view to looking at both the findings of the Ernst & Young report and how they are going six months into the new suite of contracts. One of the issues on the agenda will be the issue of how best to look at fair market rent for clients.

Senator CASH: So in relation to the Ernst & Young review has the department undertaken an investigation into those findings that there were potentially people who were being charged above fair market rent?

Mr Fox: Yes. You will recall that there was a specific recommendation that Ernst & Young made that we conduct a forensic audit of one of our providers to see whether they had been overcharging clients. I think we advised you at the time that that forensic audit would be undertaken by PricewaterhouseCoopers. As it turned out, PricewaterhouseCoopers had a conflict of interest, and that forensic audit was undertaken by a different company: Protiviti. We have recently received the second draft report from Protiviti. We have not finalised that report, but I think I can say that they have concluded that there was no fraudulent overcharging of clients conducted by that provider.

Senator CASH: Okay. When you say fraudulent overcharging, was there overcharging? Obviously there is a difference between overcharging and fraudulent overcharging.

Mr Fox: There conclusion was that there was no case to answer, to use a shorthand description.

Senator CASH: Thank you. Will you be releasing that report publicly?

Mr Fox: I think the minister indicated previously that his intention was to release that report and the Richmond review that we have been talking about as well.

Senator CASH: In terms of time frames, when can we expect the report to be released publicly?

Mr Fox: We do not have the Protiviti one as an absolute final yet, but I imagine it will be shortly after we receive that as a final. We will look at the final outcomes, consider if there is anything we need to do and then work with the minister's office on a release time.

Senator CASH: So, in terms of taking steps to ensure that refugees are not living in substandard accommodation and being charged excessive rent, even if the Ernst & Young report found that there was no case to answer, what steps can be taken to ensure that this does not actually occur?

Mr Fox: There is certainly guidance in our contractual arrangements with our providers. Working with our providers is the most effective way to do that. As well, Dr Southern mentioned making sure that our clients are made well aware of their own rights and obligations. There is no simple answer to that question given that every individual has a different level of English and a different understanding of their rights and responsibilities. The best mechanism for us to use is to make sure that our providers are aware not just of their contractual obligations in terms of the black-and-white level of the law but also of our expectations about how they will treat people. As I mentioned earlier, we have a meeting with all of our providers nationwide next week, and that will be part of our agenda.

Senator CASH: Is this a meeting to discuss something specific or is this a regular meeting that you would have?

Mr Fox: We have them regularly and we thought that this time it was right, in that it is six months after the commencement of new contracts. People have seen the Ernst & Young review and want to know what the implications are for them. So it is an opportunity for us to engage with them and see how they are going in terms of the new contract. Are we meeting their expectations? Are they meeting ours? It is really an opportunity to get together with all those providers and have that conversation.

Senator CASH: On the *Newcastle Herald* website, on 10 September 2011 there was an article by Matthew Kelly entitled 'Compo call to refugees'. It said:

REFUGEE advocates and a prominent lawyer want financial compensation paid to refugees who were settled in Newcastle under a flawed resettlement program.

I believe we canvassed that particular settlement program at the last estimates hearing. Was any compensation paid to those families?

Mr Fox: There was a recommendation in the Ernst & Young report that where people were out of pocket they be compensated. There was one case where the service provider did provide such compensation direct to the client. I am not aware of any further claims for compensation that have been received.

Senator CASH: What then drove the final decision to provide that compensation in that one case?

Mr Fox: I think that was one that was identified in the report. I cannot remember the exact detail of the nature of the overpayment, but the client has received a refund.

Dr Southern: It was a family who had basically paid rent in excess of the fair market rental value, and the service provider compensated the family in that case.

Senator CASH: Okay. The article also said:

But Newcastle-based refugee volunteer Sister Diana Santleben said on Thursday that the compensation figure should be about \$1000 a family.

In relation to that particular statement, was that form of compensation provided or not?

Dr Southern: I do not have the exact amount of the refund that was paid to this family in combination with the reduction of their rent going forward. I do not know what that figure is. But it was just the one.

Senator CASH: So there was no general compensation paid out to people.

Dr Southern: No. Neither, as Mr Fox said, were we approached—as far as I know—for any such compensation.

Senator CASH: In relation to the answer provided to question on notice 713, in which I asked how much is being allocated per year for each person of the 4,000 resettled under the Malaysian humanitarian program and for what purpose, you gave me a figure in relation to 1,000 places. Increases were estimated at \$16.276 million. The funding provided in the budget measure is for the delivery of settlement services to refugees under the AMAP program, the Humanitarian Settlement Services program and the Settlement Grants Program. Has any work been done in your area of the department subsequent to the failure of the Malaysian solution on what additional resources you may need in the settlement services area should we indeed see, as is predicted, an increase in the number of IMAs coming, in particular now that we have onshore processing and we are going to be giving people bridging visas?

Mr Fox: The simple answer to the question is that we are always working with our colleagues in the financial services division to make sure that our estimates of expenditure are accurate and up to date. I think Mr Sheehan this morning took you through the process which will go to revising the estimates for the costs in the remainder of the program year. Whether settlement services specifically would be given to holders of bridging visas is something that has not been—

Mr Metcalfe: We canvassed that extensively earlier. An important point here is that the Australian government's policy, which has been in place for a long time now, is that for every additional onshore protection visa there is one fewer offshore resettlement. I mentioned that in my opening statement this morning. Therefore, the quantum of settlement services that are provided to refugees—the program of 13,750 people per year—is set regardless of whether they come here on offshore visas or having arrived without a visa and being granted the protection visa subsequently.

On the issue of the rights and entitlements of people who have not been granted a permanent visa but who are on a bridging visa, that is an issue we discussed extensively this morning or this afternoon. I would refer you back to that evidence.

Senator CASH: In relation to settlement services as opposed to general welfare payments—I completely understand the welfare payments under the visa—are there any rights to access settlement services under the Settlement Services Program?

Mr Metcalfe: No. I will indicate now that the settlement services program is for permanent visa holders. Unless we were to see a very large increase that would completely

destroy the offshore program—and I do not think anyone is expecting that—we know that a total of 13,750 will be granted visas.

Senator CASH: Other people will be able to access.

Mr Metcalfe: That is right—whether they have arrived on visas because we granted them a visa or they have arrived without a visa and got a protection visa subsequently. On the issue of the rights and entitlements of a person on a bridging visa, we covered that this morning, and that went to the extent of work rights, the issue of asylum seeker assistance set at up to 80 or 90 per cent of the special benefit and the ability to access health care—which, of course, is provided to people in detention in any event. Dr Southern referred to the issue of particular torture and trauma services for survivors of torture and trauma, but those are not general settlement services of the type that we talk about under outcome 5.

Senator CASH: No. So the settlement services apply to the 13,750, not to however many may be on the bridging visas.

Mr Metcalfe: That is right. It is true, to complete the answer, that by definition if a person has arrived here without a visa and has subsequently been granted a protection visa then they are entitled to settlement services, but one more onshore is one less offshore, so the net number does not change.

Senator CASH: In relation to those who will be given bridging visas and the fact that they may well be provided with community accommodation if they do not have to go find accommodation themselves, does that impact in any way on the settlement services side of the equation and the accommodation provided by the settlement services, or is the accommodation that is provided by the government under the bridging visa program entirely separate?

Mr Metcalfe: We have indicated that there is no accommodation provided by the government under the bridging visa program. The only community accommodation provided in this broad area is the community detention program where the Red Cross and a consortium that they lead have provided accommodation for people in community detention. But that is quite separate to the bridging visa arrangements that would be in place.

Senator CASH: Now under the settlement services program, are you able to identify the number of families and the total number of people in short-term housing for longer than three months as it currently stands?

Mr Fox: We do not have reporting that will show us that explicitly. I think there was a question on notice to that effect last time around.

Senator CASH: There was, yes.

Mr Fox: I am working on improvements to our reporting capability, but right now the only way I could do that would be to go to each individual provider and ask them that question. That is not something I have done. Certainly the guidance we give is that people should not be in short-term accommodation for more than four to six weeks, but I do not have the reporting capability at the moment to be able to answer that question specifically.

Senator CASH: Is it a breach of a service provider's contract if they do actually have a person in that accommodation for longer than, say, three months, when the guidance is four to six weeks?

Mr Fox: It would be a technical breach of the terms of the contract, but it would not be something I would seek, just because they had had someone there for, say, eight weeks instead of six, to invoke under the terms of the contract.

Senator CASH: My point is that if you do not have a process in place at the moment to actually identify the number of families that are in short-term accommodation for longer than the four- to six-week period, and it is a technical breach of the contract, why is that so? Is it a lack of resources? Is it that the department has never turned its mind to it?

Mr Fox: The way in which we specified that was as a change in the contractual requirements in the latter stages of the previous suite of contracts, and our system that we used to record that data did not have that as a field. As I mentioned to you earlier, I am working to address that.

Senator CASH: So what steps are you actually taking to address that?

Mr Fox: We are working towards improving the reporting capacity on the database, called HEMS, that we use to record data about our clients. In the meantime, though, it is not that we would never know of that. We do have regular client contact visits. I think I explained those in the last estimates.

Senator CASH: Last time, yes.

Mr Fox: And one of the things that we are looking at in those client contact visits is the length of time that people are in short-term accommodation and/or long-term accommodation and the quality of that as well. We use that vehicle, if you like, rather than having a specific report that comes out of our system.

Senator CASH: But you are not saying that the one-on-one contact is the be-all and end-all? You will be implementing this change so you do have the report coming out of the system?

Mr Fox: Correct. The combination of a different focus to the client contact visits—which is something I am looking at in terms of the relationship and the wellbeing of the client as opposed to just a report to me out of those client contact visits on whether everything is as I would expect in the contract—is something that I am working towards as well. That combination, together with the enhanced reporting capability in my system, will help me to get a much better handle on that.

Senator CASH: When do you expect the enhanced reporting capabilities of the system to be in place so that you are getting those reports?

Mr Fox: I do not have a date in mind at this stage. We have a significant capital plan within the department, and I will need to bid for the resources under that plan.

Senator CASH: So at the moment it is something you would like to do but you do not have the resources to do it?

Mr Fox: We have started that process but we do not actually have a date through which that will be delivered.

Senator CASH: How much does something like that actually cost to change a system?

Mr Fox: That is one of the questions we are working through.

Senator CASH: Can I just ask you—

Mr Metcalfe: Always more than more people think at the start.

Senator CASH: You refer to your number of clients and the one-on-one visits. How many clients are you actually responsible for across Australia?

Mr Fox: At any given time?

Senator CASH: Yes, at any given time.

Mr Fox: The maximum number in the program each year is 13,750. In the 2010-11 financial year we had just over 12,718 clients that we provided assistance to. There are people who are coming into and out of the program on a regular basis, but that is the sort of number that we are looking after.

Dr Southern: It would be a stock and flow situation.

Senator CASH: In terms of actually undertaking one-on-one client visits, how do you manage 12,718 people?

Mr Fox: We do it on a risk assess basis. We obviously do not visit every single client every single day. We have a target that we aim to visit 10 per cent in any rolling period.

Senator CASH: So you visit around 1,271 clients?

Mr Fox: Yes, and at the moment we do those quarterly on a rotating basis.

Senator CASH: Do you provide information that is publicly available as to your KPIs and whether or not you are meeting them? Did you meet your 10 per cent target of one-on-one meetings last year?

Mr Fox: I think I have provided to you some of the examples of the reporting we receive from our providers, which includes that, and also summaries of those client contact visits. As I said, I am starting to change the nature of those. But we should be able to make available some of the summary data once we change that process. In fact, I think you have just given me a challenge.

Senator CASH: We talked about that change in the process last time. Where are we at in changing the process?

Mr Fox: Of the client contact visits? I said that was one of the issues Mr Richmond was going to be looking at in his review. He has given us a report, which was received on 30 September.

Senator CASH: Is that a publicly available report?

Mr Fox: My understanding is that the minister intends to make it public, but it is not yet publicly available. That includes recommendations that go to that area. We will take those into account in implementing those new client contact visit arrangements.

Senator CASH: We talked at last estimates about implementation of new programs and we have not quite got there. This is obviously a group of vulnerable people who we need to be providing a very good service to. I would hope that at the next estimates hearings we can talk about some more concrete processes that have been put in place. Can I now turn to the Navitas HSS Hunter region contract. In question BE11/0754, I asked about the total amounts paid under the contracts. The response said:

Under the IHSS program the Hunter region was incorporated into the Northern Metropolitan contract region of NSW. It is not possible to separate the Hunter region from the Northern Metropolitan contract

region ... The Navitas HSS Hunter region contract commenced on the 3 April 2011 and ends on the 2 April 2014. The total contract value is \$5,123,985.94.

Are you able to provide a breakdown of the payments under the contract within that \$5 million? What is the \$5 million for?

Mr Fox: Yes, I can do that on notice.

Senator CASH: HSS service providers must have some budgetary expectations as to where they will spend that money. Where is this \$5 million going to be spent?

Mr Fox: The way in which that figure is derived is that there are a number of deliverables within the contracts. I have previously provided to the committee the shell contracts. Within that you will see there are requirements they provide—for example, a package of basic household goods. Included in those costs would be rent for the first four weeks of a rental period. There are basic infrastructure costs that we have prepaid to the provider. The list I will give you will give a complete breakdown of each of those cost elements. Within each individual contract over the three-year period there are about 60 different items.

Senator CASH: That have to be provided?

Mr Fox: Yes.

Senator CASH: Does the service provider report back to the department on how and where the money was spent?

Mr Fox: Yes.

Senator CASH: How does that process occur?

Mr Fox: Essentially, they are paid on invoice.

Senator CASH: So if I were to go and purchase the whitegoods I invoice the department for that, and that comes out of the \$5,123,985.94?

Mr Fox: Yes.

Senator CASH: Is the oversight that is provided by the department the fact that it is paid on invoice?

Mr Fox: Yes.

Senator CASH: So you do not just give out the \$5 million?

Mr Fox: No, we do not. Those payments are made from time to time, but as Dr Southern has just explained to me they do not present us with the invoice for one fridge. It is bulked up and then we check those invoices before making the payments.

Senator CASH: If they go and buy 100 fridges, do you have a process whereby you track where those fridges go so you know they are not going off to the man down the street but are actually going to people from within the settlement services program?

Mr Fox: They tend to include in their invoices client details as well so we can see which family group or which individual has received those goods. There are also follow-up visits that we do to check.

Senator CASH: To ensure that the whitegoods have been delivered. Do you find that to be an adequate level of scrutiny under the contract?

Mr Fox: You can always do more scrutiny, but I think the framework we have in place is pretty good. Mr Richmond's report gives some guidance as to ways we can improve that.

Senator CASH: Are you able to share with us at this time what those improvements could be?

Mr Fox: We would prefer to wait until the report is publicly released and we can then take you through those.

Senator CASH: Okay. In relation to the answer to question on notice 718—the \$5.1 million for the short-term accommodation; the contract—how many clients are expected to be serviced out of that money?

Mr Fox: I will double-check what was said in that answer. That figure is the total contract value. I do not have with me the breakdown of how many clients we are expecting to send into the Newcastle region. I can provide that to you on notice.

Senator CASH: I now turn to the NAATI. You will recall that at the last estimates we talked about the cash injection that NAATI received in order to prevent its bankruptcy. Has any more funding been directed to NAATI subsequent to the last estimates hearing?

Mr Fox: I am checking my memory. Certainly we have a budget item for this financial year that includes a payment to NAATI. I do not recall whether that payment has been made. I can check that for you.

Senator CASH: Was that the cash injection we were talking about last time, which was to ensure that they did not go into bankruptcy?

Mr Fox: That is right. I think that payment was made.

Senator CASH: Can you confirm how much that was?

Mr Fox: In 2010-11 we provided an additional \$1.35 million to NAATI.

Senator CASH: Was that the payment to ensure that they did not go bankrupt?

Mr Fox: It included both our standard contribution plus an additional top-up to make sure that they did not go into insolvency.

Senator CASH: Do you have a breakdown of those two figures?

Mr Fox: I do not recall those off the top of my head, and I do not have that. I think we have previously provided that, but I will take it on notice.

Senator CASH: Subsequent to the \$1.35 million being provided, has any further funding been provided?

Mr Fox: I believe we have made a payment for this current financial year as well.

Senator CASH: What is that payment?

Mr Fox: The contribution we have made this financial year is \$1.24 million.

Senator CASH: Do you anticipate providing any further funding for this financial year?

Mr Fox: No, I do not at this point. We are continuing to work through some of the processes and work with the members to make sure that NAATI is on a sustainable financial model. Other members have increased their contributions this year which has helped to ensure that NAATI is in a situation where the board can continue to operate.

Senator CASH: When you say a 'sustainable financial model', is NAATI currently not operating on a sustainable financial model?

Mr Fox: NAATI's financial situation has been difficult for a considerable period, certainly long before I took up this job. You might recall from previous estimates that we asked Walter Turnbull, as they then were, to look at the business operations for NAATI. Some significant improvements have been made since then. We are now working out what is the best model for the future of NAATI to take it into the future, including consideration as to whether the governance model now in place, where it is a body owned by all the states and territories, is the best model going forward.

Senator CASH: Was an independent audit undertaken of NAATI's financial position?

Mr Fox: As a company it is required to have its books audited every year in accordance with the companies act, and it does so.

Senator CASH: Some senators and MPs have been receiving anecdotal evidence from various people in the community questioning the efficacy of the Adult Migrant English Program. Can you give us a brief overview of the program?

Mr Fox: It is a program that we are very pleased to be able to administer on the government's behalf. It is designed to provide English language training within a settlement context to people who need it. It is open to all humanitarian entrants as well as family spouses and others of skilled migrants coming into the country. There are about 57,000 clients in any particular year.

Senator CASH: Currently?

Mr Fox: Yes.

Senator CASH: How is a participant selected to join a program?

Mr Fox: It is a voluntary program. They have an entitlement to participate in the program.

Senator CASH: But you cannot just go out and select someone and say, 'You need to learn English; you need to come into the program.' It is very much, 'I come to you.'

Dr Southern: With our humanitarian program, for example, the HSS program, as part of our case management approach to clients there would certainly be advice provided to them that the service was available and encouragement for them to participate, and there is advice available through other migrant information centres for people outside the humanitarian program. Obviously with 57,000 people it is more than just the humanitarian entrants.

Mr Fox: The uptake that we have of the AMEP program, particularly amongst humanitarian entrants, is very high. In the order of 90 per cent of eligible entrants do take their entitlements to AMEP services.

Senator CASH: On that, if up to 90 per cent take it up how many follow it through to completion? Do you have that tracking data?

Mr Fox: I do not have that with me but, yes, we do. I think we have previously provided that information on notice.

Senator CASH: Could you provide updated information? Just update the information you have provided to us in relation to those who have joined and who have followed it through.

Mr Fox: There are some who drop out. They already have sufficient English to help them get a job, for example.

Senator CASH: Is there currently a waiting list for entrants to participate or take up English language courses?

Mr Fox: Under the Adult Migrant English Program? Not that I am aware of.

Senator CASH: Is there such a thing as a waiting list for this program, or do you basically cater for the number of people you have on the program?

Mr Fox: I am not aware of any waiting lists for the program.

Dr Southern: Given the preface to your question, which was about some concerns that had been raised around the program, as of 1 July this year, the AMEP service providers have been delivering under a new model—so we went through the tendering process. In fact, the new model has a number of changes that have been made to it to address the kinds of concerns that were being raised. One was around retention in the program. We have certainly asked that individual pathway guides, if you like, be prepared for each client and that there be a greater level of guidance and support for clients through the program to indicate that if they get through AMEP there are further English as a second language programs they could join which might have specific employment focuses. We also included specialised youth classes for 15- to 17-year-olds, something that was better tailored to the needs of younger people who might not be getting everything they need from school, and this program would be for those. We have also put in some incentives into the program in terms of payment through the contract so that service providers get paid for actual hours of tuition delivered, which was a change to the model.

Senator CASH: And that new contract commenced on 1 July 2011. How are you actually tracking the progress being made under the new contract as compared with the old contract?

Mr Fox: In terms of outcomes for the client?

Senator CASH: Yes, the good improvements that have been made. How are you actually going to track them to ensure that, yes, these changes were the right changes to make and there have been proven outcomes under them?

Mr Fox: We have changed part of the assessment criteria so that we actually assess a person's English language capability when they enter the program and then when they exit it. It is measured against a curriculum developed in New South Wales which goes by the acronym of CSWE—I have no recollection of what that means. We track their progress against that curriculum and see how they improve between when they come into the program and when they come out.

Senator CASH: Obviously this program has only been in place for a very short time?

Mr Fox: Yes, it is too soon for us to be able to do a proper analysis.

Senator CASH: Are you able to provide, on notice, a summary of the key differences between the old contract and the new contract and how they are going to be measured under the new contract by way of outcomes?

Mr Fox: In response to the first part of that question, Senator Furner asked that question during the last estimates and I went through a lot of that detail. I will take on notice how we measure the outcomes.

Senator CASH: Are any incentives in place to encourage humanitarian entrants to enrol in the program?

Mr Fox: As I said, even without any specific incentive there is a very high uptake. It is about making them aware that they have the entitlement to the language program. We also try and make it easy for them to take advantage of that opportunity by delivering classes in the evenings. We provide childcare facilities. Those are all part of the costs we meet because we want to make sure there is every opportunity for people to have that experience and to develop English language skills.

Senator CASH: One of the issues that is consistently raised with me is that women from certain ethnic backgrounds find it very difficult to leave the house and get to English language lessons. To what extent do you provide private tutors who can go to the house and sit with the wife or mother and teach her English?

Mr Fox: We have a program within AMEP which does exactly that.

Senator CASH: Do you target specific ethnicities or do you offer private tutoring to every woman that comes to you?

Mr Fox: I do not think it is targeted to specific ethnicities, although some ethnicities might tend to take it up more than others.

Senator CASH: Do you have data on that?

Mr Fox: I do not have data with me.

Senator CASH: Could you take it on notice to provide an analysis of those ethnicities who do take up the private tutoring?

Dr Southern: As a point of clarification, it would not just be available to women.

Senator CASH: It would be available across the board.

Dr Southern: It would equally be available to men who would have a concern.

Senator CASH: The concerns raised with me are specifically in relation to women.

Dr Southern: You could imagine that would be a more likely scenario.

Senator CASH: What are participants assessed against at the completion of the 580 hours of tuition?

Mr Fox: It is 510 hours of tuition, I believe. I think my financial colleagues would be upset if I provided extra hours. I mentioned the CSWE curriculum and that is the criterion.

Senator CASH: Can you receive additional tuition?

Mr Fox: Yes, there is a mechanism through which some additional language tuition can be provided called the Special Preparatory Program for those people who need some additional tuition. There is also the opportunity to go to other English language classes if that is appropriate.

Senator CASH: Does the client pay for them or is that provided by the government as part of the settlement services program?

Mr Fox: That is a part of the program.

Senator CASH: How much additional tutoring can a client have after the 510 hours has expired?

Mr Fox: I do not recall the additional entitlements. I will have to take that on notice.

Senator CASH: How is it decided that a person is able to go down the pathway of additional tutoring?

Mr Fox: One of the things we introduced with the new suite of contracts was an AMEP counsellor. That person would be that one who would work with the individual client to work out whether they had further needs.

Senator CASH: Could you take on notice to provide to the committee how many of your clients undertook the additional tuition and what was the cost of the additional tuition over the last three years?

Mr Fox: Yes, we would be able to break it down within the overall costs of the program.

Senator CASH: Is it possible that a person might complete AMEP and not have functional English or English that will actually get them a job after the 510 hours?

Mr Fox: Yes.

Senator CASH: What happens to those people?

Mr Fox: They can take advantage of the Special Preparatory Program. There are other English language programs that are available. For example, the Commonwealth government runs the Language, Literacy and Numeracy Program in the education portfolio. The states and territories also provide English language programs. So there are other opportunities for them as well.

Senator CASH: If you get to the end of the 510 hours and you are assessed as not having the level of English that is required to get a job or functional English do you have a referral program? Is your department able to step in and say, 'You have completed 510 hours, you haven't passed, we need you to do some more'?

Mr Fox: That is the purpose of the Special Preparatory Program that we were describing earlier.

Senator CASH: So the department can refer? I will put the rest of my questions on outcome 5 on notice.

Mr Fox: Dr Southern has just written me an excellent note that tells me that CSWE stands for Certificate in Spoken and Written English.

Senator Lundy: I would like to add that the *Settlement outcomes of new arrivals* report showed a very high level of satisfaction with the AMEP courses amongst humanitarian entrants. That was probably the best source of feedback from the clients themselves about their level of satisfaction with the courses they have been provided with through AMEP.

Senator CASH: Thank you.

[22:36]

CHAIR: We will go to outcome 6.

Senator FURNER: The government announced a new multiculturalism policy this year—*The people of Australia*. Could you give us some feedback as to how well that has been received?

Mr Metcalfe: Yes, I referred to this in the opening statement I provided this morning. Clearly it was important for the Australian government to again have a policy in relation to

the fact that Australia is a multicultural country and that so many of us were either born overseas or had parents born overseas. It is my assessment, and Mr Fox might be able to add to this, that it has been well received and is seen as a common-sense statement in relation to the issues and areas for further work. One of the key recommendations from the advisory council on this issue headed by Andrew Demetriou, chief executive of the AFL, was that there should be a longer term Australian Multicultural Council established. Senator Lundy has led work on this area for the government and some time ago the Prime Minister announced the establishment of the council. As I indicated that the race discrimination commissioner and I are ex-officio members but it is chaired by Judge Rauf Soulio from South Australia and involves a number of other eminent Australians. My brief report was that the policy has been well received and it has now been well and truly implemented.

Senator FURNER: At a time that, as I understand it, several of the EU countries have considered rolling back their multicultural policies or legislation why was there a need for Australia to adapt such a program?

Mr Metcalfe: I think that we are probably talking about quite different experiences. Australia has had a long history, certainly since the Second World War, of a managed migration program where we have brought people from many countries. Of course, since the wind-up of the White Australia policy in the late 60s and early 70s it has become a non-discriminatory migration program. Over seven million people have come to Australia under those well-managed migration programs in that 66-year period as well as the fact that over 700,000 refugees have now been resettled by Australia. It is not an obligation under the refugee convention that we resettle refugees but it is something that Australia has done as a generous country. Many of those people have gone on to lead very productive lives and their children are doing the same. As I have said, one in four Australians was born overseas, almost one in two of us was either born overseas or has one parent born overseas. When the minister spoke on this issue at the Sydney Institute at the beginning of the year drew some comparisons between comments made by Chancellor Merkel and by the Prime Minister of the United Kingdom Mr Cameron, who had, in their view, made comments rejecting what their form of multiculturalism is. That, of course, had been based on countries where there had largely been unplanned migration programs. As the evidence indicated earlier in relation to asylum seeker numbers, there are very, very high numbers of asylum seekers coming to those countries often with no pathway through to citizenship.

One of the important features of Australia's approach to migration since World War II has been pathways for everyone, who is a permanent resident, to Australian citizenship as a common unifying status. It is a status that is enjoyed whether or not a person is born here or whether they are granted citizenship. As I said this morning, around 100,000 became Australian citizens this year by grant. That is 2,000 people a week and is a terrific figure. The Australian experience, I think by any analysis, is that we have had strong, well-managed and inclusive migration and citizenship programs which provide equal status and access entitlement before the law. That differs quite markedly from the experience that political leaders in the UK and Germany have been referring to.

Why do we need a multicultural policy given that? All of these policy areas require care and attention and I think it is important in a country, where so many of us were born overseas or have a relatively recent migration experience, to ensure that access to services, recognition

of the different language abilities of Australians, a celebration of the cultural diversity that people bring with them are under one law and one unifying citizenship. These issues do need to be looked at, examined and maintain. The issue of access and equity and access to government services, for example, requires a constant reminder that government departments are here to provide services for all Australians rather than simply for people who may speak a particular language or who may have been born in Australia.

Senator Lundy may well have further comments on that. There is a need and we, of course, have had policies in this area in the past, but it is good to have a very up-to-date policy in this area and a council that is very high-quality and very determined to contribute in this important area.

Senator Lundy: Senator Furner, the new policy, as Mr Metcalfe said, was warmly welcomed but it represents a consistent and unwavering commitment that this government has to multiculturalism in Australia, and we have set about systematically implementing the different aspects of that policy as the year proceeds including, of course, as Mr Metcalfe mentioned, the appointment of the new independent Multicultural Council.

Senator FURNER: What is the tenure of the positions on the new council?

Senator Lundy: Two years.

Senator FURNER: Are there any other measures to complement the council in respect to assistance from other parties or other types of people in promoting this particular area?

Senator Lundy: I might ask Mr Fox to explain the secretariat support arrangements for the Multicultural Council. One of the characteristics of our multicultural policy is that it has a whole-of-government character to it. It is not just about policies in the immigration and multicultural affairs portfolio. Mr Metcalfe mentioned access and equity and one of the roles that the Multicultural Council will have is to oversee an inquiry into the Commonwealth's performance with regard to the access and equity provision of service to all Australians. In that way they will have a look at the function and operation right across the Commonwealth. Perhaps Mr Fox could explain briefly the secretariat arrangements.

Mr Fox: We have established a separate secretariat within the department that is dedicated to supporting the council. One of its first tasks, apart from helping the council with organising its first couple of meetings, is to work through a series of applications for a program that the secretary mentioned in his opening address, the People of Australia Ambassadors Program. This is a program we are setting up to complement the work of the Multicultural Council. It will be a group of champions of multiculturalism who will promote the benefits of multicultural Australia throughout the Australian community. We had an excellent response to advertisements seeking expressions of interest to join the ambassadors program. We are working through those now, with a view to providing advice to the council, who will select those people. In some ways they might be a little bit like the Australia Day Ambassadors; that was one of the models that we had in mind in developing the People of Australia Ambassadors. We are very much looking forward to the work that they will do. We hope they will be in place in time to work on Harmony Day, which is in March next year.

Senator FURNER: How many responses did you receive?

Mr Fox: I think it was in excess of 120—because the secretariat is housed separately in the department, I do not have that number with me.

Senator FURNER: How many ambassador positions are there available?

Mr Fox: The total number we are looking at is 40. Sorry, I need to correct that earlier figure: there were more than 300 applications for those 40 positions.

Senator FURNER: What will be their principal role?

Mr Fox: As I mentioned, their principal role will be to promote the benefits of a multicultural Australia and cultural diversity at the local level. We will get them together to give them an information kit about Australia's multicultural policy that they can use at the community level. We would hope that they would be active participants in events around Harmony Day.

Senator CASH: Is there a budget for the ambassadors?

Mr Fox: It is within the budget for the Multicultural Council.

Senator CASH: Is there a separate component for the ambassadors?

Mr Fox: They would not be paid as such. There would be a small cost associated with their travel and preparation.

Senator CASH: So they will not be receiving payment?

Mr Fox: No.

Senator CASH: But there will be certain expenses for which they will be able to invoice the department?

Mr Metcalfe: From the discussions at the most recent meeting, I understand that the ambassadors, once selected, would come to Canberra for an information day or two. So there would be some costs associated with that—reasonably modest but there would be a cost—and there may be some other incidental costs. It is largely to tap into people of goodwill who are prominent in communities right around Australia to talk about the benefits and the reality of modern day Australia that we all see.

Senator CASH: Could you take me through the selection process for the ambassadors.

Mr Fox: There are some criteria that were included with the advertisements calling for expressions of interest. The applications that have been received will be assessed in the first instance by the secretariat to the council, which will then be provided to the Australian Multicultural Council.

Senator CASH: Has the expression of interest period—the application period—closed?

Mr Fox: Yes.

Senator CASH: When did that close?

Mr Fox: I think it was 7 October. If that is not correct, I will let you know.

Senator CASH: When do you expect the announcement to take place?

Mr Fox: The assessment is happening now. They will be making decisions early in the new year.

Mr Metcalfe: We want to make sure that we have the folks in place before Harmony Day, which is in mid March. So the timetable was consistent with that.

Senator CASH: Is there an actual budgeted amount for the ambassadors? You said there will not be any costs—they will not be paid, but they will have certain expenses reimbursed? Is there an amount that they can be reimbursed per ambassador?

Mr Fox: I will have to take that on notice.

Senator CASH: I would like to briefly turn to the make-up of the Multicultural Council. How is the council make-up determined?

Mr Fox: There was an independent panel that received applications and considered those. The panel was chaired by Paris Aristotle, who is probably known to you, and included Ms Karen Benson, who runs the Multicultural Development Association in Brisbane, and Dr Wendy Southern.

Senator CASH: There were three people on the panel?

Mr Fox: Yes.

Senator CASH: Were specific ethnic groups targeted to join the council?

Mr Fox: No, it was an open process.

Senator CASH: My understanding is that there are a number of ethnic groups that are not represented. What processes are in place to ensure that their needs are included in the work of the council?

Mr Fox: I am sure the council will aim to consult widely under Judge Soulio's chairmanship with its constituent members. The ambassadors will also come from all over the country and will be able to provide input. It is not a body that is set up to be a parliament, if you like, of all ethnicities. It is to provide advice on broader multicultural approaches.

Senator Lundy: I draw your attention to the fact that the government also funds the Federation of Ethnic Communities Councils of Australia, FECA, which is the peak body of the state ethnic communities councils, which tend to have the characteristics more of representing different ethnic groups. The Australian Multicultural Council is not trying to replicate FECA or ethnic communities councils. Rather, an independent process was set up to select people on their merits and their capacity to contribute to such a body. To suggest that somehow there is ethnic group representation on the Multicultural Council is incorrect.

Senator CASH: I was not suggesting that. I was making an observation; I was not making a suggestion.

Senator Lundy: I thought you may have been heading there, so I wanted to point out the presence of FECA and the fact that we do fund a peak body that represents ethnic communities councils and therefore ethno specific groups.

Mr Metcalfe: I can confirm that the council's first and second meetings that have now taken place. There has been active discussion about how the council will engage with the broad body politic, including if an organisation is in Australia, and this is very much to be an inclusive consultative process that we go about.

Senator CASH: To become a member of the council what qualifications were required?

Dr Southern: There were a set of criteria established when the positions were advertised. I do not have them in front of me, but they went to things like individual's demonstrated leadership in multicultural affairs, their participation in community organisations, their

demonstrated ability to work on boards and their understanding of governance arrangements as well. There was a combination of the sorts of skills you always look for in a board or council together with some specific skills around multiculturalism.

Senator CASH: How regularly will the council be meeting?

Mr Metcalfe: We have had some discussions about that. We think in the early days—and I would say probably over the first 12 months—we would meet fairly regularly, probably every couple of months, because obviously there is a fair bit of start-up work to do. That may over time settle into a pattern of perhaps quarterly or every four months. Certainly we expect we will need to meet again this year and early next year in the lead up to Harmony Day and associated with the work around the ambassadors program we discussed.

Senator CASH: Where does the council actually meet?

Mr Metcalfe: The first two meetings have been here in Parliament House in Canberra. It is not prescriptive. The members are drawn from a number of cities around Australia and no doubt at some stage there will be meetings elsewhere.

Senator CASH: Do the members have individual travel budgets?

Mr Metcalfe: No, the council is funded from within the department and, as with all our advisory boards, that funding is provided on standard Remuneration Tribunal type arrangements.

Senator CASH: Does the council itself have a charter?

Mr Metcalfe: There are terms of reference for the council.

Senator CASH: Can I turn now in the time we have left to the answer are received to question on notice 769. It stated that as part of Australia's multicultural policy announced by the Minister for Immigration and Citizenship the government had reprioritised the existing scope of the Diversity of Social Cohesion Program to include funding for multicultural arts and festival small grants, and \$500,000 over four years would be allocated to these grants. What multicultural arts and festivals have been funded to date?

Mr Fox: I think we have only relatively recently received applications for funding under that program.

Senator CASH: So was there an application process?

Mr Fox: There was. We advertise that and I will take a notice which ones have actually been funded out of that.

Senator CASH: Will there be funding rounds within the \$500,000 over four years?

Mr Fox: That is the intention, yes.

Senator CASH: When you say that is the intention—

Mr Fox: It will not be that on 1 July every year there will be an application round.

Dr Southern: What we are proposing is that we have information on the website about the grants that are available and we anticipate we will assess them about once every two months against the agreed criteria. So applications can come in—

Senator CASH: Can continually come in and they will be assessed.

Dr Southern: Yes, about every two months we will assess them against the selection criteria.

Senator CASH: When do you expect the first of the multicultural arts festivals to actually receive funding?

Mr Fox: Very soon. As Dr Southern said, we are doing them on a rolling basis. The first tranche that we looked at, we received about 30 applications at the end of September. We are assessing those right now and we expect to give advice to the government very shortly on which ones of those should be funded.

Senator CASH: The answer also states that some funding from the Diversity and Social Cohesion Program appropriation is also being quarantined to fund projects under the community engagement strategy of the international student strategy for Australia. What is the international student strategy? What strategy are you referring to there?

Mr Fox: That is one that was agreed by COAG.

Senator CASH: Okay. In relation to the answer that I received to question on notice 788, it referred to the multicultural Australia policy and outlined the conduct of an inquiry into responsiveness of Australian government services to clients. I asked for a copy of the terms of reference for the inquiry. The answer I received was that the terms of reference for the inquiry into the responsiveness of Australian government services would be further developed and finalised around August 2011. Have the terms been developed?

Mr Fox: The way in which we are undertaking that inquiry is to establish a panel that will conduct that inquiry and provide advice to the Australian Multicultural Council. We have not finalised the composition of that panel at this stage. We have sought input from other ministers and once we have got that panel on board they will finalise the terms of reference of the inquiry and we will be able to provide that to you on notice.

Senator CASH: Today is 17 October and the answer states that the terms of reference will be further developed and finalised around August 2011. Was that just a pie in the sky answer, considering two months have now elapsed?

Mr Fox: That was our intention at the time. Draft terms of reference have been developed but those have not been finalised by the panel conducting the inquiry.

Senator CASH: But the answer specifically states that they would be finalised around August 2011.

Mr Fox: Certainly a draft was finalised around that time.

Senator CASH: That is not what the answer actually says. It refers to the terms of reference. So the terms of reference as referred to in the answer have not yet been finalised.

Dr Southern: That was clearly our intention at the time but we have not met that time frame.

Senator CASH: Thank you. That is all I needed to know. When do you intend on meeting that time frame?

Dr Southern: As Mr Fox just indicated, the panel for the inquiry is currently being established and we have draft terms of reference which will be finalised as we also settle the membership of the panel. As for the time frame for that, we must be very close.

Mr Fox: Very close, yes.

Dr Southern: But, given our August expectation, I will not put a date on it at the moment.

Senator CASH: In relation to the answer I received to question 789, it stated that the inquiry was expected to begin later this year. The question was, when is the inquiry into the responsiveness of Australian government services to clients due to commence? The answer was, it is anticipated the inquiry will commence later in 2011. What is later in 2011?

Mr Fox: Between now and the end of year. The time frames we just went through, we will shortly establish the panel consistent with that.

Senator CASH: Do you anticipate it will commence within 2011 or are you testing for 2012?

Mr Fox: The former is certainly our intention.

Senator CASH: We will check at the next estimates.

Mr Fox: Can I correct one piece of information, Madam Chair? I was mistaken in referring earlier to the special preparatory program under the Adult Migrant English Program. That was a program we had under the previous contracts. The version of that program we have under the current AMEP contract is actually called the settlement language pathways to employment and training, and that provides AMEP clients with an extra 200 hours of tuition which can include up to 80 hours of work experience placement in addition to their AMEP entitlement of 510 hours. That was the employment specific part of the program I was referring to which will help people who need some extra English language to get a job.

Senator CASH: Are there any other programs that provide the extra English language tuition, or is that the only program that provides it?

Mr Fox: That is the only one under AMEP. As I said earlier, there were some others.

CHAIR: We have to finish there. We do not have permission of the Senate to go past 11 o'clock and if we stay any longer we will all turn into pumpkins! We will adjourn these hearings for supplementary estimates. To you, Mr Metcalfe, and all of your staff, I place on record our appreciation of your thoroughness and your professionalism here at estimates. We look forward to seeing you in February.

Mr Metcalfe: Absolutely delighted. Thank you, Madam Chair.

Committee adjourned at 23:01