



**DEPARTMENT OF IMMIGRATION AND MULTICULTURAL  
AND INDIGENOUS AFFAIRS**

Ms Louise Gell  
Acting Secretary of the Senate Legal and  
Constitutional Legislation Committee  
Parliament House  
Canberra ACT 2600



Dear Ms Gell

I am writing to provide clarification in respect to a response provided to Senator Sherry at the Senate Estimates Hearing on 4 November 2003 by Mr Vincent McMahon, Executive Coordinator of the Border Control and Compliance Division, Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

Senator Sherry had sought information regarding a whole-of-government working group that was established to examine the effectiveness of current responses to people trafficking in Australia and to consider options for improving Australia's approaches to the prevention of trafficking, prosecution of offences and the provision of support for victims. In particular, Senator Sherry had sought clarification as to the length of time the whole-of-government working group had been established. (Hansard Page L&C 115)

In response to this question, it was stated that the working group had been running for over 12 months. However, the formation of the Interdepartmental Committee (IDC) was announced by the Minister for Justice and Customs, Senator Ellison, in April 2003. In the months preceding the formation of the IDC, a number of relevant government agencies discussed the issue of people trafficking.

I would appreciate it if you could take the necessary action to ensure that the correct response to the question is noted in the official record of this hearing.

Yours sincerely

Todd Frew  
Acting Executive Coordinator  
Border Control and Compliance Division





Australian Government

Department of Immigration and Multicultural and Indigenous Affairs



Ms Louise Gell  
A/g Secretary  
Senate Legal & Constitutional  
References Committee  
Parliament House  
CANBERRA ACT

Dear Ms Gell

I refer to the Senate Legal and Constitutional References Committee hearings conducted on 4 November 2003. I provided evidence at the hearing on behalf of the Immigration and Multicultural and Indigenous Portfolio.

Whilst page 22 of the draft Hansard accurately reflects the information I provided to the Committee I wish to advise that that information was itself incorrect. I refer to a question asked by Senator Crossin, highlighted on the attachment, regarding payments to the three panel members involved in the ATSIC Review. The figures were inadvertently transposed in evidence. Mr Collins has in fact received \$51,000 whilst Ms Huggins has received \$96,000 to date.

The department has provided this correction to the Committee as part of the normal editing and correction process of the transcript.

*yours sincerely*  
*Peter Vaughan*

Peter Vaughan  
Executive Coordinator  
Office of Aboriginal & Torres Strait  
Islander Affairs  
Department of Immigration & Multicultural  
and Indigenous Affairs

*20.11.03*

Senator Marise Payne  
Chair  
Senate Legal and Constitutional Legislation Committee  
Parliament House  
CANBERRA ACT 2600



Dear Senator Payne

I refer to a question asked by Senator Andrew Bartlett in relation to Output 1.4 Safe Haven at the supplementary round of estimates for the Immigration and Multicultural Affairs portfolio on 4 November 2003.

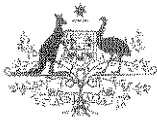
In response to Senator Bartlett's question regarding the number of people who are still in Australia on Safe Haven visas and their country of origin, I replied that there are currently 18 persons on Subclass 449 Humanitarian Stay (Temporary) visas of whom 14 are Ambonese, one is an Iranian and two are Iraqis. There are in fact three Iraqis on 449 visas, the additional person being the child of one of the visas holders. I apologise for this oversight and any confusion this may have caused.

I would also like to take this opportunity to advise that the 449 visas held by the Ambonese cease on 29 March 2004.

Yours sincerely

Robyn Bicket  
Assistant Secretary  
Humanitarian Branch

November 2003



Australian Government  
Aboriginal and Torres Strait Islander Services



Ms Louise Gell  
The Department of the Senate  
Legal and Constitution Committee  
Secretariat  
Parliament House  
Canberra ACT 2600

Dear Ms Gell,

At the Supplementary Hearings on 4 November 2003 Senator Crossin asked the following question (Hansard L&C 13 refers):

*'It was estimated that the cost for ATSIC salaries alone would be nearly \$8 million. You mention that a moment ago. Now that ATSIC only represents the elected arm and their support staff, is that still a correct amount for salaries?'*

I am reported as saying that the figure included support staff for Regional Council Chairs. I in fact should have said that the figure included support staff for Commissioners. I apologise if the Committee was in any way misled by this error.

I would appreciate it if you could note this amendment on your official records and inform the Senators of this correction.

Yours sincerely

Pat Watson  
General Manager  
Corporate

26 November 2003



Senator Marise Payne  
Chair  
Senate Legal and Constitutional Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator Payne

### **QUESTIONS ON NOTICE**

The Senate passed a resolution on 30 October 2003 not to entertain any claim to withhold information from the Senate or a committee on the grounds that it is commercial-in-confidence unless the claim is made by the Minister and accompanied by a statement setting out the basis of the claim.

At the hearing of the Senate Legal and Constitutional Legislative Committee in November 2003 my Department took on notice a series of questions. Two questions remain outstanding – Question 41 from Senator Kirk and Question 116 from Senator Sherry. Those questions were considered to have commercial-in-confidence implications and referred to me. Responses to both questions are now provided and I have indicated where I consider the information sought is regarded as commercial-in-confidence. I now provide a statement to the Committee through you as required by the Senate resolution, which provides my reasons for not providing some of that information.

The matter sought by Senator Kirk in Question 41 was a copy of the quarterly performance assessment made by the Department on Australasian Correctional Management Pty Ltd (ACM).

The matters sought by Senator Sherry in Question 116 were as follows:

1. Since February 1998 to the present on how many occasions have DIMIA served default notices pursuant to the Detention Services Agreements on Australasian Correctional Services/ Australasian Correctional Management (ACS/ACM)? What were the reasons and particular IDCs that the default notices pertained to?
2. Will the Minister now tender the default notices; ACM/ACS's cure plans in response to the default notices; DIMIA's assessment of ACS/ACM's cure plans; all documents demonstrating DIMIA's monitoring and execution of the defaults notices?
3. In relation to DIMIA's FOI responses to the BRW, does ACM claim that its business reputation would cause unreasonable harm to its reputation or is this a claim that DIMIA asserts on behalf of ACM?
4. On what date was the Knowledge Enterprises report commissioned by DIMIA on 18 October 2000 on breakouts from the WIRPC and additional incidents provided to (a) DIMIA and specifically (b) the Secretary of DIMIA, William Farmer?

5. What action did DIMIA undertake to assess and implement the findings and recommendations of the Knowledge Enterprises report?
6. What other reports did Knowledge Enterprises undertake for an on behalf of DIMIA? What were the findings and recommendations of those subsequent reports and when were they received by DIMIA?
7. What action did DIMIA undertake to assess and implement the findings and recommendations of these subsequent Knowledge Enterprises report?
8. Will the Minister now tender: all the Knowledge Enterprises reports into immigration detention centres from October 2000 onwards; all documents encompassing DIMIA's assessment and implementation of the findings and recommendations of the said Knowledge Enterprises reports
9. What is the total dollar value of performance-linked fees paid by DIMIA to ACS/ACM since October 1997 to the present?
10. What are the actual and projected fees paid to ACS/ACM by DIMIA from October 1997 to January 27, 2004.
11. Has or is DIMIA's monitoring of compliance and execution of the ACS Detention Services Agreement ever been subject to an external and independent review by either external consultants, the ANAO or any other body or person since October 1997 to the present?.
12. On whose insistence are parts of the new detention services contract between Group 4 Falck Global Solutions and the Commonwealth of Australia (DIMIA) deemed to be 'commercial in confidence': Group 4 and/or DIMIA? .
13. What assessments has DIMIA undertaken of the findings, comments and recommendations of the NSW Deputy State Coroner, Carl Milovanovich, into the death at Villawood IDC on 26 September 2001 of Ms Puongtong Simpalee?
14. Has DIMIA implemented the D/S Coroner's recommendations and comments and how?
15. Has ACS/ACM and/or any employee of ACM suffered any penalty on the basis of their treatment of Ms Simaplee at Villawood IDC as disclosed in the coronial inquiry into her death?

I have already responded to the Senate on the matter of the default notice and the Knowledge Enterprise report and I draw the Committee's attention to that statement. I made the offer of a private briefing to interested Senators which was only taken up by two members.

At the outset, I have always acknowledged my intention to be helpful to the Committee. I believe there is a limit to the provision of certain information. This is in no way intended to be disrespectful to the Committee or to deny the opportunity for this Government or my Department to be accountable.

One such limit relates to information which may be properly classified as commercial-in-confidence. In arriving at this decision, I am mindful of the provisions of the Freedom of Information Act which provides that material may be considered exempt where it could reasonably be expected to unreasonably and adversely affect a person or undertaking in business, professional, commercial or financial matter. I am of the opinion that the material sought would not be made available if sought under that legislation under that provision. As I have stated before, I have reservations about providing information through the Parliamentary process which has the capacity to circumvent the provisions of the FOI Act.

That said, there are additional implications for the workings of Government. By providing such information, it is likely that the number of private companies willing to do business with the Government will be reduced if they know that the detail of their business affairs are subject to the scrutiny of this Committee and available in the public forum. Additionally, such public discussion may have the capacity to damage the reputation of the contractor in the market if details of performance, including underperformance where this may happen from time to time, are made available publicly.

In assessing the question of commercial-in-confidence, I have also applied the criteria published by the Department of Finance as to what might constitute commercial-in-confidence material within the contractual framework. While those criteria were devised to assist departments to assess what might be considered commercial-in-confidence in publishing contracts, it is also relevant in this matter.

The criteria consist of four tests which must all be passed to be considered commercial-in-confidence. Firstly, the information sought is specific and not of a global nature. There is no intention to put a blanket ban on on all information relating to the contract.

Secondly, the information has the necessary quality of confidentiality. The information sought by the Committee is not currently in the public domain and any release of the information will possibly be to the commercial detriment to the contractor.

Thirdly, the disclosure of the information will reasonably be expected to unreasonably and adversely affect the contractor in its business affairs. This may come about because of concerns the Department has taken up with the contractor as part of its monitoring of detention services. This may give the impression to other entities in the market that ACM would not be a reliable business partner.

Lastly, the information was provided under an understanding that it would remain confidential. The information sought can be divided into two parts. The first area relates to those matters which are the subject of clauses in the contract which have been deleted from the public version released. There is an expectation by the contractor that such matters will remain out of the public arena. The second area relates to those areas of concern on service provision which the Department has raised with ACM, for example, the issue of the escapes from Villawood which prompted the default notice and those areas where the Department has identified a service level contrary to the IDS. It is a natural part of the business arrangement that the discussion of such detailed matters and any sanctions invoked under the contract will remain between the Department and ACM only and not be discussed in the public domain.

As a final point, I would like to remind the Committee, as noted in the reply to Senator Sherry, that the Australian National Audit Office is currently conducting an audit to assess the effectiveness of the Department's management of the detention centre contracts. That report will be provided to the Parliament and is a further avenue of accountability in this matter.

Having made this decision in relation to the material sought through the Committee, I remain committed, as I noted earlier, to providing the Committee with as much information as possible without venturing into those areas such as those above.

AMANDA VANSTONE