



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

Reference: Convention on the status of refugees

MONDAY, 6 MARCH 2000

CANBERRA

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JOINT COMMITTEE ON TREATIES

Monday, 6 March 2000Monday, 6 March 2000

Members: Mr Andrew Thomson (*Chair*), Senator Cooney (*Deputy Chair*), Senators Bourne, Coonan, Ludwig, Mason, Schacht and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mrs Crosio, Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Wilkie

Senators and members in attendance: Senators Coonan, Cooney, Ludwig, Mason and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mr Byrne, Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Andrew Thomson

Terms of reference for the inquiry:

Convention of the status of refugees.

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Committee met at 10.05 a.m.

MASON, Mr David Johnston, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

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ZANKER, Mr Mark Andrew, Assistant Secretary, International Trade and Environment Law Branch, Attorney-General's Department

CHAIR—Welcome. We are seeking information today on a number of issues relating to how Australia meets its international obligations under the Convention on the Status of Refugees. This hearing was prompted, first of all, by publicity over recent months concerning the illegal arrivals of people who purport to be refugees and by the reaction that almost all members of the committee have received as elected officials, either as members of the House of Representatives or as senators, from constituents generally.

In normal cases this committee takes evidence regarding particular treaties that have been tabled in parliament as part of its normal duties. We felt that in this case it is time the committee fleshed out its role and took some evidence for its own information about the obligations that Australia must meet under this particular convention. We also are interested to hear how other countries that are party to the same convention seem to meet their obligations in different ways. They seem to treat illegal arrivals who purport to be refugees in different ways. This is a cause of some concern to the Australian public generally.

The deputy chair and I have just discussed generally the order in which we would like to proceed. We ask the representatives from the Department of Immigration and Multicultural Affairs to go first, followed by the Department of Foreign Affairs and Trade and then the Attorney General's Department.

Ms Bedlington—We do not have an opening statement per se but we are happy to answer questions.

CHAIR—Mr Potts or Mr Mason, would you like to make an opening statement or deal with questions.

Mr Potts—I am happy to deal with questions.

Mr Zanker—Yes, so am I.

Senator TCHEN—I have one question. I am not sure who I should direct it to. I have looked at the material supplied to us. Article 31 of the Convention on the Status of Refugees says it applies only to refugees coming directly from a territory where their life or freedom were threatened. Do you consider that an exclusive statement? Should it be taken as a statement of exclusion?

Mr Zanker—Excluding people who have not come directly?

Senator TCHEN—Yes, indirect arrivals.

Ms Frost—Perhaps Immigration may say something further, but there is certainly some overseas authority in the commentaries which talk about the fact that sometimes refugees come en route from other countries. For example, they may not necessarily come directly to Australia; they might come via other places. The question then arises: were they able to seek protection or avail themselves of protection in other countries en route or was their transit through another country simply for the purposes of getting to another country where they actually wanted to seek asylum? In that sense, the terms of article 31 are not completely exclusive. So if someone has not come directly from the place where they fear persecution, it does not necessarily exclude them from the coverage of the convention.

Senator TCHEN—A lot of the comments or statements provided by various organisations, including the Human Rights Commission, seem to take article 31 as the basic foundation of their argument. Yet, when I look at article 31, there are these words 'coming directly'. Is the interpretation strictly according to the article as

written or has it been broadened? Perhaps you could also tell us about the interpretation by other overseas countries and whether they have broadened the interpretation as well or whether they are faced with a situation where they need to broaden the interpretation.

Ms Frost—Perhaps I will take it in reverse order. As I said in my earlier answer, if you look at overseas practice, and I am thinking here particularly of English authorities, if someone comes from another country or they have made stopovers en route, that does not necessarily exclude them from the protection of the convention. However, if someone has actually stayed in another country, let us say, for a substantial period—for example, they could have availed themselves of protection in that country—while that would not necessarily of itself exclude them from the protection of the convention, it could be that that would go to their issues of credibility, say, if they arrived here in Australia and then sought to seek the protection of the convention. However, you would actually have to look at the reasons that they spent so much time in another country, or what have you.

Even if there was a substantial delay in another country, that could be explained by the fact that it took a long time for someone to either get the means or the necessary documentation in order to come to the country where they were actually seeking asylum. As I said, in that respect, it does not actually exclude people from seeking the protection of the convention.

That is how we apply the law in Australia as well when it comes to determining an asylum application. The person may not necessarily have come straight from the country of persecution directly to Australia, but may have gone via other countries. The question then becomes: were they actually able to seek or have they received protection in another country? That could then go to their issues of credibility.

Senator TCHEN—Do you know whether anyone has actually studied why the convention is worded in that way?

Ms Frost—I think it goes back to the negotiating history of the convention, the travaux préparatoires, in that countries in the course of negotiating the convention were actually concerned to ensure that the country where a person first found themselves would actually be the country that would be responsible for offering protection.

Therefore, it was to avoid, if you like, what we would now refer to as the phenomenon of forum shopping. That is why the convention was worded that way. But obviously in the course of time there has to be some sort of give and take, I suppose, in the interpretation of the convention.

Mr BAIRD—How does the implementation of this treaty differ in other countries? For example, in Britain and the United States where they have similar problems, have they implemented such a treaty as well, and is it implemented in the same way? Within my electorate at present it is top of the pops in terms of people's view of the world. Therefore I think there is real interest in terms of knowing how it is implemented overseas and knowing why we are bound by it, et cetera.

Ms Bedlington—Just to make something a little clearer at the outset, this article of the convention is about how people who arrive unlawfully are treated. It is not about the actual provision of protection per se. This is actually dealing with penalties and so on that might be applicable to refugees who arrive unlawfully.

Mr BAIRD—Yes, and that is why it is interesting to know how they deal in the US with Mexicans and so on.

Ms Bedlington—I just wanted to make that clear at the outset. There is, as you would expect, some fairly considerable variation in terms of the implementation of this, but in relation to detention of unauthorised arrivals, the first point to make is that it is clear that other countries see administrative detention in the same way as we do, that is, that it does not constitute a penalty that comes within the coverage of this article in the convention. For example, there are a number of countries—Canada, France, the United Kingdom and the United States—that actually do detain unauthorised asylum seekers. That detention is for the purposes that have been set out quite clearly in one of the conclusions from the executive committee for UNHCR.

Mr BAIRD—Do any of them adopt the policy which so frequently is put forward by people in my electorate, 'Why don't you just send them straight back?' In terms of illegal immigrants, do any of the countries overseas adopt such an approach? Does signing this treaty prevent you from doing that? Is this the answer and do the other countries abide by similar provisions?

Ms Bedlington—Perhaps I can answer your question in two ways. The obligation to provide protection to a refugee, that is, not to refouler, which means not to return to the country about which there is a well-founded fear of persecution. That obligation not to refouler is not in any way obviated by the method of arrival of the refugee. So if another country were to just send them back it would be, at the most fundamental level, breaching its obligations under the refugees convention.

Mr BAIRD—Okay. So in France, the UK, the US and so on, no matter how people arrive in those countries, they do not send them back if they originate from a country where there is persecution of that particular individual?

Ms Bedlington—It is generally accepted that the countries that you named, and other similar countries with excellent human rights records and a commitment to their international obligations, would not be sending a refugee back in those circumstances. Having said that, a whole range of countries adopt quite rigorous examination of whether, for example, the asylum seeker has prior protection, has a right of residence or the right to return to another country that is prepared to continue providing protection. In those circumstances they may very well not admit to their territory, or decide that they will send them back to that third country. But that does not breach the non-refoulement obligation.

Mr BAIRD—Are they normally held in detention in these countries if they enter illegally?

Ms Bedlington—Increasingly, the countries that I named before, for example, very often do detain on arrival, particularly where the arrival is undocumented or where they have to ascertain whether the person is a threat to national security or where they want to be sure they know who it is they are dealing with and, indeed, what nationality the arrival is so that claims for refugee status can be properly considered.

Mr BAIRD—How long does it normally take in these other countries we have been talking about to process?

Ms Bedlington—It varies. Not all countries detain right through the process. Sometimes they detain them for the period it takes to establish identity and then release, even though the refugee claim may not be decided. But countries like Canada, for example, from the middle of last year have substantially tightened their approach to detention, because they found that when it became time for many of the people they had let out into the community to appear for their hearing for refugee status determination they were nowhere to be found.

Mr BAIRD—How many countries are signatory to this treaty provision?

Ms Frost—We might have to take it on notice, but I think it is in excess of 100.

Ms Bedlington—I cannot remember the exact number either.

Mr BAIRD—Thank you.

Mr HARDGRAVE—Can I just mention at the outset the great deal of admiration I have for the work of DIMA, especially in the last six to 12 months. I think all members and senators appreciate the pressure that has been on that particular agency throughout this refugee crisis, for want of a better word. I must say that I think the point you were making before—if I can paraphrase Mr Baird's cross-examination—

Mr BAIRD—Questions!

Mr HARDGRAVE—I felt it was a cross-examination straight out of *Perry Mason*, Mr Baird. It seemed to me that the question of genuine refugee versus non-genuine refugee was really at the heart of this whole debate, that a lot of people make claims that need to be tested and so a period of detention is a reasonable thing for a nation to do. Is that a view held in DIMA?

Ms Bedlington—Perhaps if I go back one step. The decision to detain is one that is obligated by the actual provisions of the Migration Act. It is an act of parliament, not a DIMA policy in relation to detention.

Mr HARDGRAVE—One would hope that the act of parliament becomes DIMA policy.

Ms Bedlington—Absolutely. Certainly, detention presents some considerable benefits, particularly for people who have arrived without any documents so that there is no knowledge of who it is that we are dealing with. It also enables us to have them available for processing, it certainly facilitates speedy processing and, should they be determined not to be refugees, it makes it possible for us to remove them quickly.

Mr HARDGRAVE—How many out of the 1,000 or more people who have hit the beach in the last six months have claimed refugee status and have been found, upon testing, not to have qualified? How many have you sent back?

Ms Bedlington—Perhaps while my colleague is finding the exact figures, I can answer it in general terms. It varies very considerably, of course, on the nationality of the arrivals. There are very few who have arrived by boat in recent years—I think five out of the Chinese case load, for example—who are still here.

Mr HARDGRAVE—I saw a press release from the minister late last year or earlier this year that said that 73 illegal immigrants had been sent back to China, for instance.

Ms Bedlington—That is right. The Chinese boat people generally present very few asylum claims.

Mr HARDGRAVE—If 78 arrive, 73 go back and five stay—or whatever the figures might be—on what basis do the 73 go back? How do you decide the 73 are not refugees if they have all come on the same boat? Are they not as in danger as the other five, or what?

Ms Bedlington—The decision to grant refugee status is an individual determination. We do not, in these sorts of circumstances, operate a group determination process. In a particular boat you might have a very wide range, even of claims presented. When we do the initial entry interview, many of them may just be saying, 'The trafficker told us that we were going to be able to get jobs for the Olympics.' But one or two may actually present asylum claims, claims of persecution.

Mr HARDGRAVE—So at the end of the day a lot of these people are essentially queue jumpers. It does not matter what queue they are in or whether they are waiting for migration for whatever reason—business migration, family reunion or whatever. They have paid money to somebody to put them on a boat, to float them over; they claim refugee status and take their chance; and some win, a lot lose. Is that really what is happening at the moment?

Ms Bedlington—It is hard to know which question to answer first.

Mr HARDGRAVE—It is not a trick question.

Ms Bedlington—Within your statement there are a few propositions which are quite different from each other. The first point I would make is this: I got as far as talking about the Chinese case load, but, for example, the case load of Iraqis and Afghanis that make up the great proportion of the recent boat arrivals are presenting asylum claims and a very large proportion of those are actually getting approved. These are people who could not possibly be sent back to their country of origin under current circumstances or in current ways. In any particular boatload with a mixture of nationalities you will get different outcomes, depending on the nationality. Some of them may have fled directly, in the terms that we were talking about before, or merely have passed in a transit sense, spent short periods of time in countries that either may not be signatories to the refugees convention or do not have developed asylum seekers provisions under which they could have sought and obtained protection. They are one sort of category.

Another category is those who have spent varying periods of time in countries of first asylum where they have been enjoying effective protection. You could argue that those people are forum shopping, they are seeking a preferred country of protection. But there are some who would argue that, in the countries where they have been living, the standards of protection have been eroding in recent years. For example, the announcement by Iran that all legal workers will be expelled by March 2000 may very well have led refugees in that country to have felt that they no longer were safe and that they had to flee again, as it were. And there are others who just are not refugees. In any group of people you may very well get representatives of those categories.

Mr HARDGRAVE—Do you have those numbers?

Mr Illingworth—Yes, I have those numbers now. This is not a cohort; it is just a picture of finalisations and approvals for the financial year to end January. In our immigration reception processing centres, which is the unauthorised arrival by boat, 525 cases were finalised and 360 of those were approved.

Mr HARDGRAVE—Approved to stay?

Mr Illingworth—That is right. There were a further 39 at review that were granted.

CHAIR—You had better use some ordinary language. How many people arrived, how many people are allowed to stay and how many people got sent back? Three columns of figures, please. You have got to use ordinary language at this committee.

Mr BAIRD—Per year they are not the same group of people, because it takes, on average, how long to process them? Is it a couple of years?

Ms Bedlington—No, about four months.

Mr BAIRD—It is the same figure, then. I think that is appropriate, then.

CHAIR—What Gary is trying to get at is: how many arrived, how many stayed and how many went back? There is no other status you could be if you arrived other than dead.

Ms Bedlington—You could still be being processed. The great majority of the arrivals from this recent surge in boat arrivals are actually in that—

Mr BAIRD—In limbo?

Ms Bedlington—Yes. So giving you the figures actually does not tell you a great deal because, as Mr Baird pointed out, it is not the same cohort. We have only got a very small number of the ones who have arrived in this financial year who have actually gone through, to know what the outcome is.

CHAIR—What is a cohort?

Ms Bedlington—The group that arrived in a particular period and seeing what happened to them, as opposed to the ones that you did in a particular time period who may have arrived in a previous period.

CHAIR—I still do not understand what they are talking about.

Mr HARDGRAVE—Can I suggest that what you are exposing through those figures and this question of cohort is the fact that each person who arrives is treated as an individual entity, that you are discovering their genuineness or otherwise. Is that correct?

Ms Bedlington—That's correct.

Mr HARDGRAVE—Right. So a cohort for this current financial year may not relate to the cohort for the previous financial year because matters change in the regions they come from. Is that correct?

Ms Bedlington—That's correct.

Mr BAIRD—But on that point, could we not say, on average, how many people claiming refugee status arrived last year, 1999, and then complete the other columns? Even though they exactly do not relate to each other, we should be able to still get those three columns.

Ms Bedlington—Something that might help the committee is actually to give you the approval rates for the key case loads.

Mr HARDGRAVE—That was the point I was just about to go to, that to compare eggs to eggs and apples to apples you have to go to regions, you have to go to areas, and work out where they are coming from.

Mr ADAMS—Yes, whether you are dealing with boat people or people who come in on aeroplanes. More people come in on aeroplanes.

Mr HARDGRAVE—That's true, I agree. That is where most of the illegal stayers—

Mr BAIRD—In trying to get a handle on this we come back to the Thomson model, which in the absence of anything else is probably appropriate, even they do not strictly relate to—

Mr ADAMS—Methodologies.

Mr BAIRD—But you can still say how many people came in who claim refugee status, how many got approved and how many went home. It still gives you an idea.

CHAIR—After how long, that is what they are on about. Fair enough. Say it takes a few months. You have got to set a time when you can fill in these columns. Let us move on.

Mr HARDGRAVE—I have two very quick points. So at the end of the day your task is not just about the integrity of Australia's national borders and our sovereignty, your task is also about the integrity of genuine refugees. You are ensuring that people who come here as genuine refugees are afforded the dignity that they should be afforded after all the trauma they have left behind, but that not just anybody can become a refugee. Is that correct?

Ms Bedlington—That's correct. We have a double task in refugee determination. We must ensure that we provide protection to people who are refugees, who meet the definition in the convention, but we must also ensure that we do not extend protection to those who do not need it.

Mr HARDGRAVE—Okay. Just on that point, is DIMA satisfied that the United Nations High Commission for Refugees is a reliable entity that is free of corrupt influences in all the nations that it operates in? Are you satisfied that UNHCR is always determining that those who they send to us as refugees are bona fide refugees, or are they people who have happily been able to influence themselves ahead of bona fide refugees? Are you satisfied that UNHCR is a reliable entity?

Ms Bedlington—That is a question you probably need to direct to Madam Ogata, the High Commissioner herself.

Mr HARDGRAVE—No, I want DIMA's view. It may be hard, but I would have thought that you would have had plenty of examples through your books to show that it is in fact not a reliable organisation. Have you got a view on it?

Ms Bedlington—I think that it is a large organisation committed to refugee protection that deals with very substantial difficulties in the field with the resources that it has. By and large it does a good job, but I do not believe that any of us would be in a position to say that an organisation like that always got it right.

Mr ADAMS—How many people in the world today are displaced persons?

Ms Bedlington—The UNHCR's numbers of refugees and persons of concern are currently, I think, about 21½ million.

Mr BARTLETT—Can I return to the issue of comparing what happens in Australia with other countries who are signatories. Let me see whether I have this right. You are saying that none of the other major signatories that you mentioned—US, Canada, UK and France—immediately return illegal arrivals?

Ms Bedlington—None of them returned, to my knowledge—

Mr BARTLETT—To countries where they are at risk.

Ms Bedlington—Refugees to their country of persecution.

Mr BARTLETT—If it is a country at risk—okay. You said that most of them practice a system of detention while the application for refugee status is being processed?

Ms Bedlington—They do have administrative detention on arrival for varying reasons and for varying lengths of time. Some of them release before the refugee determination is made, but after security checks and identity has been established. Some of them do it all the way through, like we do, and others do it for short time periods that are not related to stages in the process.

Mr BARTLETT—Which countries, for instance, do it the same way that we do—where the administrative detention applies until the application is processed?

Ms Bedlington—I am sorry, I would have to take that on notice.

Mr BARTLETT—Presumably you will have to take this on notice as well: with those countries that apply the same system as us, how does the length of detention compare with the length of detention in Australia?

Ms Bedlington—We will see what information we can get for you.

Mr BARTLETT—I would think that that is fairly important information. I would have expected that you would have some of this information at your fingertips. Going back to the issue of the numbers being returned—and I know it is a bit hard to measure—and taking a particular cohort, how does the percentage that are returned from Australia compare to the percentages returned from the US, Canada, the UK, et cetera?

Ms Bedlington—In general terms, Australia is probably among the most successful of countries in terms of returning people who have no right to remain, noting, however, that in relation to our recent case loads of Iraqis, in particular, no country is returning directly to Iraq.

Mr BARTLETT—They are returning to third countries, I presume?

Ms Bedlington—That is right.

Mr BARTLETT—Do other countries that take illegal immigrants as we do operate in the same way as we do, in that the number who arrive illegally and who are ultimately granted refugee status comes off the quota of refugee intake for the year? I think we have a quota of 12,000 a year, don't we? Those who arrive illegally are given asylum, and that comes off the annual quota, I understand?

Ms Bedlington—I think it is a little hard to answer, because most countries do not have such a transparent intake as we do. The numbers are, as you know, very public in Australia. The actual performance against the program is right up-front. To answer the question in another way, in the European countries, for example, there is considerable evidence that the number of places they make available for resettlement have very substantially diminished in recent times because of the large numbers of, first of all, Bosnians and then Kosovars that are in their asylum queues. For example, Switzerland, other than a very few emergency cases, has completely stopped its resettlement program. So the same phenomenon is evident, but it is perhaps not as openly acknowledged.

Mr BARTLETT—What are the changes in Australia over, say, the last two or three years? How does the length of detention compare now with what it is was two or three years ago? Also, coming back to this difficult question of measuring return rates and cohorts, is there any measurable difference there to what it was, say, two or three years ago in Australia?

Ms Godwin—I would have to take the comparison over time details on notice. I was just checking with my colleague to see whether we had them with us. We could certainly provide that to you. In general terms, though, it is true that in the last few months there has been a significant lengthening of the period in detention. That is largely a result of just the sheer numbers of arrivals and the fact that we have had to put a lot of our effort into doing the up-front sort of screening, induction into detention centres, establishing detention centres and those sorts of things. Nonetheless, we are now putting a lot of effort and resource into trying to bring that back down to what is more like recent experience in terms of length of time in detention.

The other point to make about length of period in detention is that the only component of period in detention over which we have, in a sense, complete control is the period to the primary decision. After that, people can appeal to the Refugee Review Tribunal, they can go to the court—they can often go to the courts more than once—and the period in detention then is largely a factor of how long those other processes take. So, generally speaking, we would look at the period in detention to the point of primary decision as being, in a sense, the best indicator of how effective our own processes have been. But we can certainly provide you with that and look at that other—

Mr BARTLETT—A reasonably long-term trend—say, three or four years or whatever—if you could.

Ms Godwin—Yes, we will see what we can do.

Senator COONEY—This is a treaty that is almost 50 years old and, if you look at the general provisions, it arose out of the situation in Europe. A weariness now seems to have set down upon the world and there is a reluctance to take refugees with the same enthusiasm that was taken then. Would that be a fair assessment?

Mr Potts—I think I would put it this way: given the sheer numbers and the diversity of, if you like, sources of outflow, it has become much more complex than that immediate post-war situation in Europe. So I think, in terms of global responses, there is probably a sense of a certain intractability in the problem not dissimilar from the sort of comment you were making then, Senator.

Senator COONEY—Has there been any move around the world by any countries to denounce the treaty or to denounce any part of it?

Mr Potts—Not to our knowledge, although, just to be sure that I do not mislead, let me take it on notice.

Senator COONEY—Just check that and see whether or not there has been any move.

Mr Potts—I think, if anything, the trend is on the other foot. Countries like Indonesia and Thailand, for example, are looking at possible accession.

Senator COONEY—And to leave the treaty in the same terms as it is at present? Is that the situation? In other words, are the countries that are signing up to the treaty signing up to the 1951 terms?

Mr Potts—If they accede to the convention, they sign up to the 1951 document. They also have the opportunity of signing up to the optional protocol.

Senator COONEY—Can I ask the Attorney-General's Department about article 16 of the Geneva Convention which refers to access to the courts. It states:

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatments as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.

Does that still operate?

Ms Frost—Yes, it does.

Senator COONEY—What does that mean?

Ms Frost—It means, essentially, that refugees will have exactly the same degree of access to the courts in the same way that Australian nationals will have access to the courts and on the same sorts of terms.

Senator COONEY—What does article 23, which refers to public relief, mean?

Ms Frost—Again, the provision in article 23 means that refugees should have the same access to things like public welfare and assistance as an Australian national would have. However, I would also note that article 24, which refers to labour legislation and social security, has a slightly different provision regarding access to things like social security.

Senator COONEY—What does that provide for?

Ms Frost—If you look at article 24, in particular paragraph 1, subparagraph (b), in that it provides that there will be limitations in terms of access to social security so that there could be special arrangements pertaining to refugees. It is not exactly a national treatment provision as such.

Senator COONEY—What does article 31 mean?

Ms Frost—Article 31, as we have previously heard, applies to people who arrive unlawfully in Australia and it says that you shall only impose penalties simply by reason of their unlawful arrival.

Mrs ELSON—What would be the cost in the last financial year for the upkeep of our illegal immigrants and also the court costs included?

Ms Godwin—I will have to take the details on notice. In the current financial year it is probably close to \$100 million.

Mrs ELSON—Does that include the court costs

Ms Godwin—I do not know if that does include the court costs.

Mrs ELSON—I would like to see that defined. Could you also provide how much it costs for the use of our legal system? Should an illegal immigrant have valuable possessions on them when they arrive here, is there any provision that these be taken into account to reimburse for any costs that they might incur while in Australia?

Ms Godwin—Their possessions are certainly kept in safety while they are in detention. If they do include valuables, those are kept in the same way. If they are subsequently found not to be a refugee and are removed, the cost of their period in detention is a debt to the Commonwealth. If they were found to be refugees and go into the community, the fact that they have access to means of some sort would be taken into account in assessing any applications for social security or other assistance that they would make.

Mrs ELSON—So they do not have to reimburse the court cost or anything like that if they have those valuables in their possession?

Ms Godwin—No, they do not.

Senator LUDWIG—Just to conclude that debate, how does the convention relate to that question about costs that might be imposed on a refugee by a contracting state?

Ms Godwin—I am not aware that the convention specifically addresses the question of costs in that way.

Ms Frost—No, it does not address costs in that way.

Senator LUDWIG—More generally then, you have heard a number of questions raised on unlawful arrivals and the breadth of who those people are. Some of the questions have gone to both airlines and arrivals through other means. Perhaps you could take this on notice—if you have not already been asked to do so. It would be easier to detail the information in chart form. Could you provide the number of unlawful entries and the people who have overstayed visas, who have arrived on a boat or airline and who then have been returned? This is so we can gain an appreciation of the numbers that we are talking about, who then come through on a boat and who are then detained, those who might come through on an aeroplane and who are then returned, very promptly, I suspect, from other hearings I have had with you. And could you also provide the number of people who overstay visas and remain in the community at large? Are those figures generally available and can they be collated?

Ms Godwin—You will certainly find some of those statistics in the booklet that the department published towards the end of last year called *Protecting the border: immigration compliance*. I could certainly undertake to give you an up-to-date set of statistics.

Senator LUDWIG—Yes, I am familiar with that last publication. I was just wondering if you could bring it up to date. The committee might appreciate that. Not all of the committee have been on the other inquires that we have had with your department.

In addition, are you familiar with the criticism, if we could call it that, by Justice McHugh of the High Court and also some of his colleagues? Forgive me if I get this wrong, but in recent times they have tended to criticise the way the Migration Act inevitably leads the appellant system to the High Court itself, and then the High Court has to deal with it. They were really seeking the ability to be able to then put it to the Federal Court to competently deal with it. Are you familiar with that sort of argument that has been going on and whether or not the department has taken any research into that and looked at how they would deal with that criticism by the High Court? Is it a matter that they say is for the Attorney-General and should be left there? I will be interested in your view about that.

Mr Walker—We are aware of the comments made by Justice McHugh—and also, I think, Chief Justice Gleeson in another case—about the impact on the High Court of the discrepancy between the jurisdictions of the High Court under section 75(v) of the Constitution and part 8 of the Migration Act in relation to the Federal Court. Roughly, about 50 cases have gone to the High Court in its original jurisdiction since part 8 was enacted and came into force on 1 September 1994. There have been an increasing number in the last couple of years. The government's position has been, of course, to introduce into the parliament the Migration Legislation Amendment (Judicial Review) Bill that is currently in the Senate. Under that bill both the jurisdiction of the High Court and the Federal Court are aligned so there is no advantage in the individual going to the High Court in its original jurisdiction. They would be dealt with in the same way as the Federal Court. That is the way the government has addressed the issue of judicial review.

Senator LUDWIG—Of those 50, has there been any analysis by the department about the length of stay that those people have had to, I guess, go through?

Mr Walker—Not that I am aware of. I am not aware of the precise details.

Senator LUDWIG—I wonder if you could take that on notice. I would like you to tabularise the consequence of the 50 cases exercising the original jurisdiction and going to the High Court, and the period that those people are then being subjected to detention in Australia. That is just to give us an idea.

CHAIR—What is the background? This means people are going through the system and ending up appealing to the High Court, but it is just causing them to be detained longer and longer. What is the conflict?

Senator LUDWIG—There is a range of questions that are around it. One of the matters obviously relates to the current way the system is structured. If you took one view, perhaps to put it more evenly, you could effectively, having gone through the system, not be found a refugee and continue to appeal and then exercise and exhaust all your legal avenues. You would then find that they might be in the system quite a long time. Obviously you cannot return them until they have exhausted all their legal avenues. It is interesting to have a look at how many of those people there are, as against the earlier figures that are in the system as well, and then have a look at the reasons behind it. Then you could have a look at a remedy that might obviously ensure that people have access to their legitimate rights to appeal a decision but not to use it in a way that simply extends the period of detention.

One of the things we concern ourselves with is the long period of detention. I think that was part of the earlier questions asked about the average length of stay of a person who is detained. You take it up to the original decision makers point but then it goes to the tribunal. There can be different reasons for it to be extended that are worth examining as well. The aim for everybody is to ensure that people's rights are not dabbled with and that they have a speedy right to justice, that justice is done and seen to be done and they are returned or declared a refugee and stay. One of those things should happen relatively quickly. From my experience, the system seems to be drawn out in some respects. It is not a case of apportioning blame; it is a case of looking at reasons and addressing them. I am interested in how the department proceeded down that track.

Mr Walker—I should say one thing in clarification. The approximately 50 cases also include people who are not held in detention.

Senator LUDWIG—I did not want to get into the complicating factor of the humanitarian area as well. That may need to be explained at some point so the committee can understand that.

Mr Walker—In putting together the details that you have asked for, we will identify those being held in detention, those who have come via unauthorised arrival routes, and those who have made application while they have been within the community on visas.

Senator LUDWIG—If you could. They obviously then stay at large.

Mr Walker—Yes, that is right.

Senator LUDWIG—It might be worth while to provide a short explanation about those sorts of matters I have just touched on that deal with section 417. It has a discretion that is non-compellable and non-reviewable for those who are humanitarian and come through from the visa and overstay and are humanitarian or refugee because they then are not within the detention area. They are still a significant component and cause resources to be expended.

Ms Bedlington—They are the same as the ones in litigation. Some of them are in detention and some of them are not. We can encompass that aspect in the answer.

CHAIR—I would like to welcome a new member of the committee, the new member for Holt.

Mr BYRNE—I would like to ask a quick question. What is the percentage of unauthorised people coming into the country in comparison with the Australian population? How do we compare with illegal immigrants compared with other countries in percentage terms?

Ms Godwin—You probably asked the \$64,000 question. It is very hard to grapple with those very direct comparisons because of the way in which other countries count what they would consider to be people illegally or unauthorised within their territory. A number of countries have visa-free arrangements, so people can enter without there necessarily being a record of their entry. The fact that they have then overstayed the period in which they are entitled to remain without a visa is often not easy to gauge. We will certainly see if we can get something that would give you a feel for that. It is something we have ourselves grappled with and it is quite difficult because of the different ways in which countries account for this concept of illegals.

Mr BYRNE—Just in general experience, do we have a problem with illegal refugees in comparison with the United States, notwithstanding the fact that they are landlocked and we have people either arriving by air or boat? There is a perception that we are being flooded by illegal immigrants at present. How does the perception match the reality? Are we being flooded? In comparative terms, there obviously has been a large number of people coming through, but how are we comparing with other countries that have more sustained groups of people coming over periods of time?

Ms Godwin—We could certainly compare numbers of asylum applications between countries. That would give you a feel. In that context, the Australian problem, if you look at it as a per capita problem, is certainly not an insignificant one compared with those other countries. It may not be exactly identical but it is certainly not a fraction. It may be more helpful if we compare the numbers of asylum applications and, to the extent that we can, obtain from those countries indications of the number of those asylum applications that they believe have come from people who arrived in an unauthorised manner.

Mr BYRNE—The question then, with the number of people that are coming through illegally, is: do other countries detain? What is the detention rate for unauthorised arrivals in Australia, compared with those in other countries?

Ms Godwin—We know the unauthorised arrival detention rate in Australia. It is 100 per cent, because we are required by the Migration Act to detain anyone who arrives in an unauthorised manner. As to the proportions of unauthorised arrivals who are detained in other countries, I certainly do not have that information. We could attempt to get something.

Mr BYRNE—My question is: in other countries, like America, et cetera, is it the protocol that all unauthorised arrivals are immediately detained?

Ms Godwin—As I say, I would certainly have to take that element on notice. What we can tell you refers to something Ms Bedlington said earlier in the course of the hearing, that some countries do so. For example, Canada, which I guess in many respects is the country whose system is considered to be the most similar to our own, is certainly moving to detain all people who arrive in an unauthorised manner by boat, and my understanding is that it is also considering the question of detaining all people who arrive in an unauthorised manner by air.

Mr BYRNE—In respect of unauthorised arrivals, how many bridging visas have been issued, say in the past 12 months? Do we have a rough idea? Are they issued?

Ms Godwin—There are only very limited circumstances within which someone who arrives in an unauthorised manner can qualify for a bridging visa. We would have those figures—I do not have them with me—but it would be a very small number.

Mr BYRNE—With respect to detention, are the protocols that involve the people being detained similar across countries? Is there a cross-country discussion that is occurring to have some sort of uniform detention protocols with respect to illegal arrivals?

Ms Godwin—Do you mean standards of detention?

Mr BYRNE—Yes.

Ms Godwin—I am certainly not aware of any protocol that goes across countries in that way. We, of course, have our own detention standards.

Mr BYRNE—So it is up to individual countries?

Ms Godwin—Yes. Ms Bedlington can elaborate.

Ms Bedlington—There has been some discussion about detention standards in the intergovernmental consultations that take place between many of the European Union countries, Canada, the US and ourselves, and it is one of the issues. It is an informal process of sharing experiences and so on and, certainly, approach both in a legislative sense and also in a practice sense, for example, around standards. It takes place from time to time, and our material is shared.

Mr BYRNE—So, given that it seems to be an international problem, there is no real international protocol as such? There is an informal discussion, but there is not a detention protocol as such that has come out of the United Nations, other than the general protocol that we are discussing, with respect to detention of illegal immigrants?

Ms Bedlington—There are two answers to that question. One is that UNHCR has issued guidelines in relation to detention of asylum seekers. We can provide a copy of those to the committee, if that would be helpful. My colleague at Attorney-General's might be able to give some further information, because the conditions of detention are governed generally by human rights standards and so on.

Ms Frost—That is correct. Australia is a party, as you would know, to a number of human rights instruments, and a number of those deal with conditions of detention. They apply both to people who are under, if you like, judicial detention—that is, people who have been subjected to criminal penalties—and to those who are subject to administrative detention; that is people who are held in things like immigration detention. So, for example, a number of provisions in the International Covenant on Civil and Political Rights deal with conditions of detention. For example, article 9 provides that people should not be subjected to arbitrary detention. Article 10 deals with the conditions of detention, in that people that are subject to detention will be given humane treatment. In addition, there are a number of non-binding instruments, such as standard minimum rules for the treatment of prisoners, which, while they are not binding on states, set an internationally agreed standard of treatment of people who are held in detention.

Mr BYRNE—So if a detainee thought they were not being appropriately treated, who would they appeal to?

Ms Frost—Again, my colleagues in immigration might provide more detail on that, but they certainly have the right to bring those matters to the attention of the authorities.

Ms Godwin—In the first instance, they would draw their concern to the immigration manager of the detention centre.

Mr BYRNE—What independent body would assess whether or not these people were being appropriately treated?

Ms Godwin—They are certainly able to draw their concerns, if they wished, to the attention of the Human Rights and Equal Opportunity Commission. In some instances, people have also drawn concerns to the attention of the Ombudsman.

Mr BYRNE—What mechanism do they use to do that? How does a person who is detained actually make a representation to HREOC? Are legal services provided? I guess the question is: when people arrive, are they advised of their right in a legal sense?

Ms Godwin—They are made aware of it, and there are envelopes available which would enable them to write to HREOC.

Mr BYRNE—Are they made aware of it by an interpreter or by a community member? What sort of mechanism is there?

Ms Godwin—There are posters advertising its availability and there are interpreters generally available in the detention centres.

Mr BYRNE—The interpreters are provided by whom?

Ms Godwin—There are two ways in which an interpreter may be available. If the person is making an application of some description, during the application process an interpreter would certainly be available. But, more generally, the detention centre management has people on its staff who can interpret. It would not be one-to-one, but there are interpreters.

Mr BYRNE—So the answer to the question is that there is no independent person who would actually speak to these people just to see if they have any concerns. If a person did have a concern and was reluctant to actually bring it up, considering that this is the management of the centre, that the interpreters are being provided by the same body, who then would they go to? Do they make a phone call? What actually happens?

Ms Godwin—Detainees do have access to phones once they are through initial processing. They also have access to a detainees' committee where they can raise these sorts of concerns and get advice. If they wish, they can also ask to see a representative of the UNHCR.

Mr BYRNE—And I take it that they are advised of this?

Ms Godwin—And there are detention advisory committees at each of the centres.

Mr BYRNE—And are they advised of each of these issues; are they actually provided with this advice?

Ms Godwin—They are entitled to ask for information about these sorts of things, yes.

Mr BYRNE—What if they do not know? I guess I would have thought, considering that someone is coming in to detention, that they would actually be fully advised of their rights.

Ms Godwin—As part of the induction to the detention centre, they are also advised of bodies like HREOC.

Mr BYRNE—How many children—

Ms Godwin—May I interrupt? I beg your pardon, but if it would assist the committee, Mr Chairman, we can table a copy of the UNHCR guidelines on detention and also our detention standards.

CHAIR—Thank you. We would like that material.

Mr BYRNE—How many children are actually being detained at the present time?

Ms Godwin—Four hundred and twelve under the age of 18, out of a total population of about 3,700.

Mr BYRNE—Are they provided with any specific or additional services with respect to education or anything like that? What general services are provided to these children?

Ms Godwin—It might assist the committee if I ask my colleague Ms Daw, who is responsible for day-to-day involvement in detention centres, to take the more detailed questions on detention.

Ms Daw—The detention standards that we have drafted to apply and govern the operation of detention in Australia make it a requirement that educational services be provided to children under the age of 18. At all of our facilities, educational services with parallels to the state curricula are provided and we leave it to our service provider, Australasian Correctional Management, to determine whether they do that on site or whether it is done off site by liaison with the state education authorities. But there is in each facility a specific educational program which acknowledges ESL and cultural differences for their particular clients and populations that we have got in detention.

Mr BYRNE—How many of these children have actually been released? I know there is a mechanism to release children, as I understand it, in the UN conventions. I think there is a wish or desire not to detain them given that there is a belief that detention causes more harm to these children than good. Are there a reasonable number of children that have come out of detention or are they still detained with their families?

Ms Daw—The language of the bridging visa mechanism that applies to unauthorised arrivals talks about it being in the best interests of the child. I cannot recall a case in respect of the recent influx of boat arrivals

where we have determined that it is in the best interests of a child to be released into the Australian community and separated from the family that they have arrived with.

Mr BYRNE—Although there is a mechanism for their release before the parents—

CHAIR—We had better move on a bit.

Mr BYRNE—Okay, I will just leave it at that.

Senator MASON—Mr Byrne touched on what is perhaps the nub of this or at least one of the principal legal concerns. Reading from the human rights commission's report, *Those who have come across the seas: Detention of unauthorised arrivals*, we find this:

Australia's policy of detention of asylum seekers is automatic and mandatory and applies to almost all unauthorised arrivals until their claim for protection is determined finally.

The evidence is that that is contrary to the refugee convention and the International Covenant on Civil and Political Rights. If that is the case the arguments put forward by the human rights commission are that there could be some alternatives to detention, and those alternatives to detention are, on page 56 of their report, 'the release subject to residency and reporting obligations or guarantor requirements'.

They have suggested—and this is one of the commission's principal criticisms of Australia's refugee program, because it is mandatory imprisonment in effect, or mandatory detention—that there are some alternatives and they are 'release subject to residency and reporting requirements or guarantor requirements'. How practical are those alternatives? For example, guarantor requirements: who can go guarantor for a refugee?

Ms Godwin—Perhaps before I come to that element of your question I could make the point that we do not accept that detention is contrary to our obligations under the refugees convention or any other human rights instrument. Secondly, it is an important point to make, which we always make, and that is that the policy applies to people who arrive in an unauthorised manner. It is not detention of asylum seekers per se, and there are many asylum seekers who are not in detention, and the fact that they have made an application for asylum does not lead in any way to detention if they arrive in an authorised manner. People who arrive in an unauthorised manner who do not subsequently make an application for asylum are detained regardless.

The question of alternatives to asylum is essentially a matter for the government. There was a Joint Standing Committee on Migration report on alternatives to detention, which considered a whole range of possible alternatives and I think it came to the conclusion that those alternatives were unworkable.

Senator MASON—That ties in with the question Mr Hardgrave asked an hour or so ago, concerning the percentage of people applying for refugee status that are eventually given permission to remain in Australia. Can you provide on notice figures based on the country of origin? Obviously, the question as to whether people are ultimately allowed to stay in Australia will determine whether, as a matter of policy, we should detain or not detain, mandatorily, people seeking asylum. For example, if very few people are allowed to stay from a certain area, not to detain them would be perhaps an invitation not to turn up?

Ms Bedlington—It is perhaps useful to consider the range of reasons for the detention provisions. It is not simply to enable us to quickly remove those people who do not get approved. There are some substantial reasons along the way, irrespective of the outcome—about establishing identity and nationality, about having them available for expedited processing, ensuring that there are no risks to national security, for example. Those things apply irrespective of the outcome of any determination of any claim for refugee status.

Senator MASON—I understand. I think we are actually in agreement; it was the human rights commission's report that concerned me. I understand they believe there is a right to liberty. If you are in a situation where, for example, 80 per cent of people from a certain country of origin are being returned, any alternative to mandatory detention is inviting problems.

Ms Bedlington—That is correct. There has been considerable discussion over recent years about alternatives. The minister has made it clear in his discussions with NGOs, for example, that he is very open to considering alternatives and has invited anybody, including the advocacy NGOs, to comment about whether they would be prepared to commit themselves to making sure that somebody, should they become liable for removal, actually is presented for removal. That has been the sticking point.

Mr ADAMS—With respect to the difficulty of returning people to their country of origin, I refer, for example, to establishing the status of people who have come from Afghanistan and working through that; and I take it you said that people are not being returned to Iraq. How difficult is it to establish with those countries the status of these people? Do we get much information from those governments on the people who are claiming refugee status?

Ms Bedlington—For obvious reasons, I think, we have no communication with the country of origin for an asylum seeker or a refugee. They may very well have associates or families left behind. The knowledge that

they have claimed asylum may be sufficient to place them in grave danger. So we make a very clear commitment to an applicant that there will be no such communication. However, if they go through the process and their asylum claims are rejected, then there is a normal arrangement with a country of origin to seek travel documents so that that will facilitate the return. But I would note that we do not recognise the Taliban regime in Afghanistan, so that adds another layer of complexity.

Mr ADAMS—Let me put this on the record: you said earlier there are 21½ million people in the world without status; is that the figure?

Ms Bedlington—They are people that UNHCR defines as either refugees or persons of concern to them.

Mr ADAMS—And we take 12,000 of those a year as a humanitarian gesture to the world, or because of our obligation?

Ms Bedlington—We take 12,000 which are made up of those to whom we have protection obligations because they have sought and been granted asylum within our borders, and the residual, what is left of the 12,000, as part of our contribution to international burden sharing through resettlement places.

Mr ADAMS—The treaty has 52 signatories; is that correct?

Ms Bedlington—I thought it was—

Mr ADAMS—Could you send us a list of signatories?

Ms Frost—Yes.

Mr ADAMS—I would be interested to know whether Japan is a signatory? Japan has been making some statements about immigration. Is there anybody competent to speak on that?

Ms Bedlington—We will just do a check. I am pretty sure Japan is a signatory. Yes, it is a signatory to both the convention and the protocol.

Mr ADAMS—Thank you. There was just one issue about money that has been touched on by one of my colleagues. There has been a myth—whether it is myth or not—established in the community about some asylum seekers arriving with enormous amounts of money. Has anybody turned up—I am talking about the arrival of boat people—with large amounts of money? I am talking about \$50,000-plus or gold?

Ms Godwin—I am certainly not aware of any amounts of that order. Certainly, some people do arrive with resources, some reasonably substantial, some thousands of dollars; but, of course, many arrive without any resources at all. A couple of things to note about that, of course, is that the existence or otherwise of resources is not indicative of a person's need for protection. They may well have been able to escape with resources or, indeed, have been somewhere where they have been able to accumulate resources.

The other point is that we do know that there are sometimes reports of large amounts of money when what has happened is that one person in the group has become a group leader and is holding the resources on behalf of a number of people in the group.

Mr ADAMS—I would like to clarify an earlier answer. If somebody arrives with \$2,000, it would be returned to them if they became a refugee and we give them refugee status and a visa. But if someone was not given refugee status and was being returned, do we put a debt against them so that, if they apply from their own country to become an immigrant to Australia, there would be a debt for them to meet?

Ms Godwin—They are required to either discharge the debt or to make what are considered to be suitable arrangements for doing so.

Mr ADAMS—Thank you very much.

Mrs DE-ANNE KELLY—I would have to say that, certainly from my electorate, I hear nothing but praise for the good work that the department of immigration does under difficult circumstances. Well done—certainly from the people who live in Northern Queensland, where many of the illegal boat arrivals come in, naturally. But I will get to the question for today, which is: is Australia in breach of the treaty? Within Australia, criticism has come from the Human Rights and Equal Opportunity Commissioner that the mandatory detention of unauthorised arrivals is in breach of these international obligations. Is that so?

Ms Godwin—We do not believe so and certainly our legal advice is that detention per se is not a breach of our obligations.

Mrs DE-ANNE KELLY—Internationally, what criticism is there of Australia's detention of unlawful arrivals, and from what source is that criticism?

Ms Godwin—I am not aware of any criticism of our detention policy from other governments. On the contrary, many of them examined the way we manage detention and so forth to try to, I guess, establish what they would consider to be best practice. We have just had a delegation from Canada here looking at detention. So, as I say, I am certainly not aware of any criticism. The UNHCR properly from time to time examines the question of detention and looks at issues to do, for example, with the standards that apply in detention and, I

guess, urges countries to ensure that standards match what would be considered to be appropriate human right standards and so forth. But I would not characterise that as criticism of the policy.

Mrs DE-ANNE KELLY—Do I understand you correctly in that the criticism is mainly internal, from within Australia, but that neighbours like Canada are coming to Australia because we are in some way providing a model? Certainly, from the evidence you have given this morning, that is the conclusion I have drawn. Is that fair and reasonable?

Ms Godwin—There are certainly a number of countries that would look to us to tease out their own assumptions about the role of detention in managing the difficult problem of unauthorised arrivals.

Mrs DE-ANNE KELLY—You may have to take these next questions on notice. One of my colleagues—and, again, we get back to the question of quantifying this—asked for information on the number of illegal arrivals. I would like that information by country, if possible—certainly for the major countries that are signatories to the treaty. I would like to know the number of refugees they are willing to take and what percentage of their population that represents, and we will see where Australia stands with regard to that. There is a lot of talk about the rights of those unlawful arrivals. At the moment they have appeal to the Supreme Court and to the High Court. Am I correct in saying that?

Ms Bedlington—The Federal Court.

Mrs DE-ANNE KELLY—Yes, the Federal Court. I beg your pardon. Is it not so, though, that in other countries there is no appeal to the courts? I understand that in Sweden there is an appeal to a tribunal but no further. So, in fact, isn't Australia not only meeting its rights but also being overly generous and incurring costs to our taxpayers that are unwarranted?

Ms Bedlington—It is a bit like the answer to the other question about detention practices. There is a tremendous variation in the way in which different countries go about the process of refugee determination and the extent to which appeal is to an independent tribunal—administrative, within the determining body itself—and/or to various levels of court, just as there is variation in what those appeals can be about—either matters of law or on the merits. For example, our review to the tribunal is a *de novo* decision, so it is a merit decision, but the appeal to the court can be only on a matter of law. Those things do vary tremendously across the range of countries. It is hard to draw conclusions, because countries' administrative and judicial systems vary substantially in the broad, not just as they apply to refugee determinations.

Mrs DE-ANNE KELLY—That may be a fair answer, but the man in the street will be asking if we are any more generous in giving unlawful arrivals rights than perhaps other signatory countries. And that is not an unreasonable question. Perhaps you could give us some details on what other signatories to the treaty see as a fair way of dealing with the rights of unlawful arrivals?

Ms Bedlington—We can certainly take on notice some comparative data about their processes for determination and rights of review, if that will be helpful.

Mrs DE-ANNE KELLY—What percentage of appeals to the High Court and to the other courts are successful?

Mr Walker—We will need to take that on notice. The question becomes quite complex because within the range of people going to the Federal Court and High Court—and I will talk specifically about the Federal Court—there are a certain number where the applicant withdraws. There are also a proportion where the government withdraws, for a variety of reasons, one of them being the interpretation that the Federal Court has taken of particular provisions of the Migration Act. There are a number of cases in that area where the minister has sought to appeal to the High Court to have those matters determined. Then there are the remaining numbers where the matters proceed to hearing. The last figures that I saw—once again we will need to give you details of this later—were around 75 to 80 per cent where the government is successful. That is really an indicative figure at the moment. I do not have the precise figure, but we can put together details of those groups over the last couple of years.

Ms Bedlington—Recalling that I said that our appeal to the court is on matters of law, they may win on the technical legal point. The case is then remitted to the Refugee Review Tribunal for fresh consideration. There are very few of those who subsequently get a positive decision. So they may have won in the courts but they are still not a refugee.

Mrs DE-ANNE KELLY—The reason I am asking you to give me some percentage is because, not unreasonably, that is the thing that we get asked in our electorates. While I understand all the argument about it, people ask me, 'Is our money being well spent?' I think that is quite a reasonable thing for a taxpayer to ask. If it is only a very small percentage that eventually are able to overturn that initial decision, I think it would not be unreasonable for taxpayers to say that these rights to appeal to the higher courts are really just a delaying tactic and that there should be a change to that.

Ms Bedlington—We will provide you with the exact figures.

CHAIR—Are there any supplementary questions?

Mr HARDGRAVE—I wanted DIMA to take a couple of quick questions on notice. The question of locally hired staff in our high commissions and embassies around the world, in particular in the refugee hot spots: I would like to know how many locally hired staff there are; what posts these staff are at; what position these locally hired staff hold. In particular, I would like it to be drawn out where they lie in the decision making chain as far as the status of refugees coming to Australia is concerned. Ideally, I would like their names. Then I want to know if there have ever been questions of their integrity raised; what investigations have been instigated as a result; and if in any cases those integrity questions have in fact been upheld; and as a result, what disciplinary action has been taken against locally hired staff by the department or whatever. Could I find that out, please?

Ms Bedlington—Yes, we will take that on notice.

Mr ADAMS—My colleague Mrs Kelly raised some very good points—points that are raised with us quite often. You are going to give us a paper comparing the rights of appeal of somebody in our justice system with, say, the United States, Canada and some European countries. Have you taken that on notice?

Ms Bedlington—Yes, that is right; we have.

CHAIR—There have been a number of questions taken on notice of a statistical nature. Let me emphasise how important that is for us as serving members of parliament. It is crucial to our ability to be able to answer constituents' questions. They are coming in large numbers. What we would like to do is reconvene this hearing, at which time we would invite you back. If in the meantime you can provide them in written form we would be grateful. We are probably looking at the next two Mondays for the batch of treaties to be tabled tomorrow. It is likely to be after that, in early April, but we would like the written answers before that. At that time I think we probably should ask some of the NGOs who have an interest in refugee matters to come and put their side of it as well. There is one more supplementary question; Senator Tchen?

Senator TCHEN—Ms Bedlington, in answer to Senator Mason's question about the alternative arrangement that was suggested by the human rights commission, you said the minister has raised this possibility with NGO and refugee advocates but it was a sticking point.

Ms Bedlington—I actually meant to say that it was in the other direction. Refugee advocates have raised with the government the possibility of looking at alternatives to detention. The minister has stated publicly on many occasions that he is responsive to looking at alternatives. The bottom line has to be that somebody has to take responsibility for ensuring that anyone who is not successful in their claims is available for removal. He has not received any such offers or assurances from any of the bodies concerned. The sticking point I was referring to was that the considerable costs to the taxpayer involved in locating somebody who has gone underground in the community would need to be met from elsewhere if we were to consider the alternative to detention.

Senator TCHEN—Was there any response from the refugee advocates to the minister's challenge?

Ms Bedlington—Not any formal response that I am aware of. I think the absence of a response is noteworthy.

Senator TCHEN—Thank you. Following on from Mr Hardgrave's request to you, can you give us some description of the locally hired staff positions in the processing chain as well as the decision making chain?

Ms Bedlington—Yes, I understood the question to encompass that aspect.

CHAIR—Thank you to all the witnesses.

Resolved (on motion by **Mrs Elson**):

That, pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 11.37 a.m.