



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

ESTIMATES

**(Supplementary Budget Estimates)**

TUESDAY, 19 OCTOBER 2010

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE LEGAL AND CONSTITUTIONAL AFFAIRS****LEGISLATION COMMITTEE****Tuesday, 19 October 2010**

**Members:** Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*) and Senators Furner, Ludlam, Parry and Pratt

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

**Senators in attendance:** Senators Abetz, Back, Barnett, Bilyk, Boswell, Cash, Crossin, Furner, Hanson-Young, Humphries, McGauran, Marshall, Parry, Pratt and Trood

**Committee met at 9.03 am**

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

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

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

Mr Andrew Metcalfe, Secretary

Mr Bob Correll PSM, Deputy Secretary

Mr Peter Hughes PSM, Deputy Secretary

Ms Felicity Hand, Deputy Secretary

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

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

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

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

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

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

Mr Damian Carmichael, Acting First Assistant Secretary, Client Strategy and Performance Division

Mr Stephen Allen, Acting First Assistant Secretary, Refugee, Borders and Onshore Services Division

Mr Andrew J Parsons, Acting National Communications Manager

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

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

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

**Program 1.1—Visa and Migration**

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

Mr Peter Speldewinde, Assistant Secretary, Labour Market 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

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

**Program 3.1—Border Management**

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

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

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

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

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

**Program 4.2—Onshore Detention Network**

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

Ms Fiona Lynch-Magor, Assistant Secretary, Services Management Branch

Ms Fatime Shyqyr, Assistant Secretary, Community and Detention Branch

**Program 4.3—Offshore Asylum Seeker Management**

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

Mr Daniel Boyer, Assistant Secretary, Irregular Maritime Arrivals Branch

**Program 4.4—Illegal Foreign Fishers**

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

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

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

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

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**Outcome 6—A cohesive, multicultural Australian society through promotion of cultural diversity and a unifying citizenship, decisions on citizenship status, and multicultural and citizenship policy advice and program design.**

**Program 6.1—Multicultural and Citizenship Services**

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

**Migration Review Tribunal and Refugee Review Tribunal**

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

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

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

**Office of the Migration Agents Registration Authority**

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

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

**CHAIR (Senator Crossin)**—I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2010-11 and related documents for the Attorney-General's and Immigration and Citizenship portfolios. The hearing today is supplementary to the budget estimates hearings that were held in May. The committee has before it a list of agencies and outcomes relating to matters of which senators have given notice. We have set 3 December 2010 as the date by which answers to questions on notice are to be returned.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings; we have copies here, though, if they are needed. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009, specifying the process by which a claim of public interest immunity should be raised. That will be incorporated in *Hansard*.

*The extract read as follows—*

**Order of the Senate—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).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(Agreed to 13 May 2009.)

(Extract, Journals of the Senate, 13 May 2009, p.1941)

**CHAIR**—We are going to examine the Immigration and Citizenship portfolio outcomes today, beginning with the Migration Review Tribunal and the Refugee Review Tribunal. We will then move on to the Department of Immigration and Citizenship, commencing with the Office of MARA. Following that will be the outcomes set out in the program—we do not have any variation to that at this point in time.

I welcome Senator Carr, representing the Minister for Immigration and Citizenship, to our estimates hearings this morning and I welcome officers of the department. I am going to make an opening statement this morning: Mr Metcalfe, formally on behalf of this committee I congratulate you very warmly and proudly on your recent award being named the Federal



Government Leader of the Year. I think it is something that you should be immensely proud of. You have been associated, I know, with foreign affairs and immigration for many years, and we are very proud that we are associated with the work that you do through this committee. I want to place that on the *Hansard* record and congratulate you on behalf of everybody here.

**Senator BARNETT**—Mr Metcalfe, on behalf of the coalition, and as I indicated privately a few moments ago, congratulations and well done. It is a great credit to you. You have demonstrated leadership in many ways and it is a great credit to you. We hope that you will enjoy the sabbatical and the extra study that you will undertake in due course, and come back full of vim and vigour.

**Mr Metcalfe**—Thank you, Chair, Senator Barnett and committee members. Yes, it is a great honour and privilege. As with all these things, it only comes because there are some terrific people who I work with. Later on I will have the opportunity to talk a little bit about that, but thank you for your very generous comments. They are very much appreciated.

[9.07 am]

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

**CHAIR**—Mr O'Brien, I welcome you to our Senate hearings this morning. Did you need to make an opening statement?

**Mr O'Brien**—I have a very brief one, yes.

The Migration Review Tribunal and the Refugee Review Tribunal last appeared before the committee in May. By way of opening, I would just like to highlight some of the more significant developments since that appearance. First of all is our workload and its highlight statistics for the year 2009-10. On the MRT, we have received 8,332 lodgements, which was an increase of 12 per cent over the previous year. We made 7,580 decisions, which was—if I may say so—an impressive increase of 31 per cent over the previous year. We had 7,048 cases on hand at the end of the year, which was an increase of 12 per cent over the previous year.

Turning to the RRT caseload we had 2,271 lodgements, which was a decrease of 11 per cent over the previous year. Perhaps commensurate with that we made 2,157 decisions, which was a decrease of 12 per cent over the previous year. We had 738 cases on hand at the end of the year, which was an increase of 18 per cent over the previous year. For the RRT in financial year 2009-10, 69 per cent of our cases were decided within 90 days. Could I just mention there, parenthetically, that we are doing better than that for this quarter; we are running at 77 per cent compliance with the 90-day requirement.

I will just briefly mention the current position as far as our workload is concerned. For the first quarter of this year, the feature of that workload has been the very significant increase in RRT lodgements. They are up 47 per cent—so almost 50 per cent—on the figure for the first quarter of 2009-10. The increase here, combined with the priority which we must give to RRT cases, is having an adverse effect on the MRT caseload, which is both growing and getting older. As at 30 September, the tribunal had 8,969 cases on hand, breaking up into 8,103 on the MRT and 866 RRT cases.

Could I just move away from workload and case load matters a little to mention judicial review trends, because senators have been interested in those. A very pleasing development during 2009-10 was the large decline in the number and percentage of tribunal decisions taken to judicial review. Judicial review applications were lodged in relation to 730 tribunal decisions, which represent 7.7 per cent of decisions made. That was in 2009-10. In the previous year, 13.2 per cent of decisions were the subject of judicial review applications.

A further very positive feature of judicial review outcomes for 2009-10 was the marked drop in the proportion of tribunal decisions set aside by the courts. Focusing just on the RRT, which is perhaps the most significant one here, in only 10.4 per cent of judicial review applications resolved was the tribunal decision set aside, and that figure of 10.4 per cent is down from figures of 14.1 per cent and 15.5 per cent respectively in the two previous years.

Can I just mention new members. Forty-three new members of the tribunals were appointed for five years from 1 July. Of these, 25 were reappointments and 18 were new appointments. We subsequently lost one member, in the sense that that member resigned.

Finally, could I just mention our annual report. We are expecting our annual report to be tabled in the parliament early next month.

My colleagues and I are happy to elaborate on any of these matters or to answer any other questions the committee may have.

**CHAIR**—Thank you very much. We will go to questions.

**Senator CASH**—Mr O'Brien, thank you very much for the opening statement. You have actually addressed a number of the questions that I have for you, but what I would now ask is that you please table the statement so that I can quickly review it to ensure I am not missing any statistical information. Is that possible?

**Mr O'Brien**—I am not sure if we have a spare one here.

**Senator CASH**—Perhaps I could just clarify my questions: 'How many members are making decisions across both tribunals?' You have answered that there are 43.

**Mr O'Brien**—No, we have 90 members in total. We had members reappointed, but the appointments are staggered so that about half the membership comes up for—

**Senator CASH**—At any one time?

**Mr O'Brien**—At any one time.

**Senator CASH**—So there are 90 members in total across both tribunals.

**Mr O'Brien**—That is right. They are cross-appointed to both.

**Senator CASH**—And in terms of the expiration of their appointments—

**Mr O'Brien**—Those who were appointed this year have five years from 1 July and those who were appointed last year also have five years from 1 July. I think that takes the next appointment round to about 2014.

**Senator CASH**—Another of my questions was: 'How many decisions were made in 2009-10 by the refugee tribunal?'

**Mr O'Brien**—We made 2,157 decisions.

**Senator CASH**—And to date 866?

**Mr Jones**—To 30 September 2010 we have made 621 decisions on the RRT.

**Senator CASH**—Can I now have the figures for the MRT for the 2009-10 period and then the to-date period.

**Mr O'Brien**—In the 2009-10 period we made 7,580 decisions. It was that figure that I mentioned was an increase of 31 per cent over the previous year.

**Mr Jones**—And to 30 September we have made 1,412 decisions on the MRT.

**Senator CASH**—Can you take me through again what is the current backlog in each tribunal to date.

**Mr O'Brien**—We had 8,103 MRT decisions on hand at 30 September and 866 RRT decisions.

**Senator CASH**—Can you also take me through the set-aside rates. What has been the set-aside rate for the MRT for the 2009-10 period? My understanding was that at the previous estimates you were able to provide figures to 31 May, so can we just have an update for the financial year.

**Mr O'Brien**—For the financial year for the MRT, our set-aside rate, over all the visa categories, was 43 per cent. I might come back to that figure, because the rates vary between the different visa classes. For example, on partner cases, there is often a period of time before we get to them and it often becomes quite clear by the time the matter gets to us that indeed there is a genuine spousal relationship which makes it easier for us to make a positive decision for the applicant. In those cases we set aside 65 per cent of the department's decisions. The average is 43 per cent.

**Senator CASH**—Are you able provide, on notice, a breakdown of the set-aside rates in terms of all the visa categories?

**Mr O'Brien**—I can read them out to you now. Going more or less from the highest to the lowest, skill linked refusal is 68 per cent, partner refusal 65 per cent, visitor refusal 53 per cent, student refusal 25 per cent, student cancellation 22 per cent, family refusal 30 per cent, temporary business refusal 31 per cent, permanent business refusal 41 per cent, bridging visa refusal 14 per cent, sponsor approval refusal 23 per cent and then miscellaneous/other is 41 per cent. As I say, that gives an average overall of 43 per cent.

**Senator CASH**—And that is for the MRT?

**Mr O'Brien**—Yes.

**Senator CASH**—Do you have any figures to 30 September?

**Mr Jones**—Those figures were to 30 September 2010, so they are this year's figures. I can give you last years figures as well.

**Senator CASH**—That would be greatly appreciated, so we have a comparison.

**Mr Jones**—Bridging visas was 15 per cent, visitor visas 58 per cent, student visas 42 per cent, temporary business 30 per cent, permanent business 46 per cent, skilled 42 per cent, partner 66 per cent, family 42 per cent, student cancellations 41 per cent, sponsor approval

refusals 21 per cent and 'other' 38 per cent. Overall for 2009-10 there was a 45 per cent set-aside rate for the Migration Review Tribunal.

**Senator CASH**—Is there any particular performance indicator for a satisfactory set-aside rate?

**Mr O'Brien**—Not really, because each of the different categories have different considerations that come into play. As I said, with the partner ones, the effluxion of time and the provision of further evidence to the tribunal are the main reasons why there might be a difference between the decision that we make and the decision that the department makes—because further evidence is provided to us which results in a different decision.

The only performance measure is that members are expected to make decisions that are broadly consistent with those of their colleagues, but it is only that general principle that is applied. Each individual case is different and we all understand that. There could be different evidence provided that makes a positive decision in one case as opposed to a negative decision in another case.

**Senator CASH**—Mr Metcalfe, if we look at a set-aside rate of approximately 45 per cent cent, almost half of the decisions are being set aside. To me that indicates that half of the decisions are actually incorrect. Is the department satisfied that that is an acceptable set-aside rate?

**Mr Metcalfe**—I hope to answer the question, but, Chair, could I get some clarification. We are in that old situation where we are examining the tribunal yet it is a question to the department. Could I suggest that we are very happy to answer the question, but perhaps when we come to general questions we might be able to talk about that issue.

**Senator CASH**—I will take guidance from the chair.

**CHAIR**—It does make it messy. If we could focus on questions to the work of the MRT and RRT and then we will get to the department.

**Senator CASH**—When we are with the department, we will raise that question again.

**CHAIR**—That would be easier.

**Senator CASH**—Not a problem. Thank you for that guidance. Mr O'Brien, on the 90-day turnaround period, 69 per cent of cases were being decided in 90 days and it is 77 per cent now. How many days are the balance being decided in? Are you able to take that on notice to show us how many days above the 90-day turnaround the balance of the cases are taking?

**Mr O'Brien**—We probably would have that figure.

**Mr Jones**—The average taken last year was 99 days. Some cases take much longer, but the average across the entire case load was 99 days.

**Mr O'Brien**—Why cases run over the 90 days is that often applicants asked for more time and in order to accord them procedural fairness we need to give them more time, or we request further information from them and they say that they need more time to respond. Again for procedural fairness reasons, we need to give them that time. Often those steps can run the case over 90 days. Or the applicant may be ill and cannot attend a hearing, so we have to wait until they are well enough to attend the hearing.

**Senator CASH**—Are there any procedures in place to ensure that decisions are, within reason, made within the 90 days?

**Mr O'Brien**—Yes. The senior management group, the executive of the tribunals, keeps a close watch on time taken to make decisions. Indeed every month there is a report to us about the age of the cases and if necessary senior members talk to members about cases that look like they are a problem and what the reasons for that might be. We do keep a very close eye on it. I have to report to the parliament regularly on the cases that exceed 90 days and those reports which you have no doubt seen have an explanation against each case as to why that case has gone over 90 days.

**Senator CASH**—On the 43 members who were appointed on 1 July this year, you said that you had 'lost one member due to a resignation'. Were there any reasons for that?

**Mr O'Brien**—That was one of the newly appointed members. I think he got a better offer.

**Senator CASH**—On the set-aside rates for the Refugee Review Tribunal and Migration Review Tribunal, are you also able to provide a breakdown of those figures by country of origin in addition to the visa category, which you have already done?

**Mr O'Brien**—On the RRT, yes, it is all by country of origin. Again, I was quoting the figures to 30 September, which my acting registrar, Mr Jones, has corrected. The figures to 30 September on set-aside rates I can give you. The set-aside rate for China, which still comprises the most significant part of our workload, was 24 per cent; Fiji, which has been a growing cohort of cases just in recent times, is 13 per cent; Iran, 80 per cent; Turkey, 88 per cent; Zimbabwe, 54 per cent; Sri Lanka, 42 per cent; Lebanon, 49 per cent; Egypt, 33 per cent; Iraq—we only had a few cases—100 per cent.

**Senator CASH**—Was that 100 per cent set-aside?

**Mr O'Brien**—Yes, as I said, there were only a small number of cases. Pakistan is 50 per cent, and Other—that is other countries I have not mentioned—is 13 per cent, giving a total set-aside rate of 22 per cent, which is relatively consistent with what we have had over the years.

**Mr Jones**—Can I just reinforce Mr O'Brien's comment that there is a small number of cases in some of those categories.

**Senator CASH**—Could you take me through the fact that there was 100 per cent in Iraq.

**Mr Jones**—There were only four cases that we have decided. Out of those countries that we have talked about, there are only two where we have decided more than 10 cases. They are very small numbers to draw any significance into the percentage at this point.

**Mr O'Brien**—But our total set-aside rate over the years on the RRT has varied between about 23 per cent up to about 27-28 per cent.

**Mr Jones**—I can also give you the figures for the 2009-10 year if you would like. These are different countries. We denominate our statistics on the basis of the top 10 for any particular period. China was 27 per cent, Fiji was 15 per cent, Malaysia was three per cent, India was six per cent, Indonesia was seven per cent, Lebanon was 26 per cent, Sri Lanka was 32 per cent, Pakistan was 42 per cent, Egypt was 52 per cent, Zimbabwe was 58 per cent and

all other countries were 30 per cent. The average rate across the entire RRT case load was 24 per cent.

**Senator CASH**—Madam Chair, at this stage I have no further questions.

**Senator BARNETT**—Firstly, based on your statement here, your annual report is to be lodged next month. What is the reason for the delay?

**Mr O'Brien**—As you know, Senator, last year we managed to table our report before the hearing of this committee. The process associated with the election was the main delay factor in getting our financial statements approved by the minister and so forth. That was the main contributor.

**Senator BARNETT**—We try and have these reports in advance of estimates so that we can then talk and ask questions about the reports. That is our objective; you are aware of that?

**Mr O'Brien**—Yes, I understand that.

**Senator BARNETT**—Going back to these tribunal members that have been reappointed and those new appointments, there is a large number of new appointments. I would like to know how many were not reappointed and if there were any particular reasons for that.

**Mr O'Brien**—There were 21 members who had appointments expiring on 30 June and who either did not seek reappointment or were not reappointed.

**Senator BARNETT**—Can you break that down for us?

**Mr O'Brien**—I have been reluctant to indicate those, but there were a handful of members who did not seek reappointment.

**Senator BARNETT**—Let us be up-front and frank. There has been some disquiet among some of the members about how things have been operating. Is it fair to say that some of those members have been dumped?

**Mr O'Brien**—No, I would not say that at all. Let me make a general comment about it. The new appointments we have got out of this process are an absolutely first-rate bunch, and they are now starting to make a great contribution to the tribunals. The appointment round was an outstanding success. As in any interview process where incumbents are involved, all aspects of a member's performance will be open to scrutiny. The committee will look at the quality and quantity of their decisions—

**Senator BARNETT**—And perhaps whether they have been, perception-wise, considered a little bit tougher than other tribunal members who have been softer. Is that a reason for removing them from the tribunal?

**Mr O'Brien**—We had also looked at the question of complaints: were there members who had had complaints made about them? Were those complaints upheld? Were there members who had a higher proportion of their decisions set aside on judicial review? What were the reasons for those decisions being set aside? Was it just a case of a member failing to take into account a relevant consideration and overlooking something when making the decision, or was the decision set aside because of an apprehended finding by us against the member? There are all these things that are taken into account.

**Senator BARNETT**—Of those 21 members who were not reappointed, against how many were adverse findings or complaints made so that, for whatever reasons, they were not reappointed?

**Mr O'Brien**—The interview process was run by the department as chair. I was a member of the committee. There was discussion about a range of these matters with the members concerned. Out of any interview process, at the end of the meeting or the interview with the member, there will be some conclusions reached by the committee as to whether this member, in comparison with those who have applied for appointment as members, on the merits is the best member to be either reappointed or appointed. There are a range of factors, as you know, Senator.

**Senator BARNETT**—Indeed there are, and some of them have got into the public arena, where there has been disquiet expressed about the process in terms of the appointment and the reasons for that. I am not going to take it further on this occasion, but that is something that, frankly, needs to be reviewed and objectively assessed so that we know that it is transparent, objective and fair and that people are not missing out just because they have a particular view of the world that may perhaps be different to the view of the government of the day.

**Mr O'Brien**—I can assure you that there was absolutely none of that in the assessments that were made.

**Senator Carr**—Senator, you do not have any suggestion of any evidence that the contrary is the case, do you?

**Senator BARNETT**—We have had previous estimates where these matters have been fully and frankly discussed and debated—certainly in May and in the previous one in February, from memory—and all that is on the *Hansard*.

**Senator Carr**—I would hate to have you confuse an assertion with evidence.

**Senator BARNETT**—The evidence is on the *Hansard*, and I leave the *Hansard* to speak for itself.

**Senator Carr**—But the Public Service Commission looks at these things, and I think that to make assertions as you have—

**Senator BARNETT**—I am not making assertions.

**Senator Carr**—I am pleased to hear that.

**Senator BARNETT**—I am making observations, and I refer to the *Hansard*. Thank you, Mr O'Brien. I move to the current position in your opening statement and the trends and reasons behind the figures—in particular, this figure of the 40 per cent increase quarter on quarter in the RRT lodgements.

**Mr O'Brien**—Yes. One of the contributors to the increase in lodgements this quarter has been that we have had a large number of review applications in relation to Fiji applicants. I think that is probably the most significant factor that has impacted upon the increase in our numbers. Whether that will continue remains to be seen. We have seen in the past that the RRT can be quite volatile; you can have lumps that come and go.

**Senator BARNETT**—All right. You then say that the priority that you must give to the RRT cases is having an adverse effect on MRT caseload.

**Mr O'Brien**—Yes.

**Senator BARNETT**—How adverse is that and how problematic is it for the tribunal?

**Mr O'Brien**—I am concerned about it. We have now got I think over 2000 cases that are more than 12 months old, and that is a concern to me because that means that applicants have had to put their lives on hold for 12 months and we just have not been able to get to these cases. We have been doing the best we can in terms of batching cases and adopting other strategies to get them out quicker to members, but the problem we have at the moment is that we have just had a big spike in RRT cases and we must give priority to those cases, which means we are devoting our resources there. I am hopeful that we will be able to get back on to batching exercises to get more MRT cases out to our members. Ultimately, in discussion with the minister it may be that we need a few more members, I do not know.

**Senator BARNETT**—Well you must have a plan. We are sitting here in mid-October and you would want to have a plan through to at least 30 June to decrease that workload. What is the plan? Is it to increase tribunal numbers or members?

**Mr O'Brien**—It is both I think. A submission is going up to the minister shortly where we have suggested just a modest increase in our members, but we are also internally looking at batching cases and taking a task force approach to certain cohorts of cases and those sorts of things internally.

**Senator BARNETT**—It is fair to say that, if you keep going the way you are, the case load will continue to grow and perhaps even lengthen.

**Mr O'Brien**—That is right, so we do need to address those things.

**Senator BARNETT**—Thank you for that.

**CHAIR**—There being no further questions for the MRT and RRT, Mr O'Brien and your team, thank you very much for your attendance this morning.

**Mr O'Brien**—Thank you.

[9.37 am]

**CHAIR**—Ms Sykes and Mr Wood, good morning. I welcome the Office of the Migration Agents Registration Authority to estimates. I understand you have an opening statement that you would like to make.

**Ms Sykes**—The Office of the Migration Agents Registration Authority, MARA, has been operating for over 15 months now and I would like to update you on our progress. At the end of June 2010 there were 4,482 registered migration agents compared to 4,097 on 1 July 2009. This is an increase of over nine per cent. In the three months since 1 July there has been a very small decrease in the number of agents so the total number of agents on 15 October was 4,451. There were 857 agents who were in their first year of registration, that is about 20 per cent, and 3,625 who were reregistered migration agents. Just over one-quarter, or 1,185, of registered migration agents are Australian legal practitioners and 246 are non-commercial migration agents.



A total of 499 complaints against registered migration agents were received in 2009-10. When we look at comparable data, this compares to 490 in 2008-09. Disciplinary action was taken against eight agents, two were cautioned, two were suspended—one for one year and one for three years—and one agent was suspended until they met certain conditions. Three former agents were barred from reregistering for the maximum period of five years.

At the end of June there were 626 continuing professional development activities through 47 providers, the majority, or 368, of activities were seminars, conferences, workshops and lectures. Just to remind you, for re-registration agents have to complete 10 points of CPD, which in most cases is the equivalent of 15 hours of tuition. We do have some consideration for people with Australian practising certificates, whereby they only have to complete six CPD points, and we are just about to bring in a provision whereby we recognise all of the compulsory legal education that accredited specialists in immigration law undertake. They do not have to do any additional CPD.

During our first year of operation to address any concerns about the department's role in administering the MARA function, an independent probity adviser, Professional Service Integrity Asia Pty Ltd, or PSI, undertook a comprehensive review of potential and perceived conflicts of interest. Independent probity audits were then carried out quarterly by PSI. The final quarterly audit completed in June 2010 found that all mitigation strategies had been successfully implemented. This was subsequently reviewed by Sir Laurence Street AC, who found that all relevant probity requirements had been addressed.

The Office of the MARA has worked closely with its advisory board to implement recommendations from the 2007-08 review of statutory self-regulation of the migration advice profession. When I spoke to you in May, I talked about the increase in the English-language requirements for people seeking to register for the first time as migration agents. This implementation so far has gone smoothly. Today, I would like to mention the development of our communication strategy. The strategy has a focus on consumer protection and we will actively engage with stakeholders, including the not-for-profit sector to convey our key messages effectively. To support this we are developing a suite of user-friendly material for our culturally and linguistically diverse consumers. One recent product is a consumer guide which will form the basis for translated brochures of key information for different ethnic groups. In addition, I was very pleased to be in the video titled *Don't get caught out*, which is part of the 'Protect yourself from migration fraud' immigration kit, announced by the Minister for Immigration and Citizenship on 6 October 2010.

While much has been achieved in the first 15 months of operation, we have a significant forward program of work. I think we are well-placed to take the work program forward in partnership with our advisory board. I am happy to answer any questions from the committee. Thank you.

**CHAIR**—Senator Cash?

**Senator CASH**—Are you table your opening statement?

**Ms Sykes**—I do not think we have a spare copy of it.

**Senator CASH**—The secretariat can provide us with copies of it.

**Ms Sykes**—Yes, that is fine.

**Senator CASH**—Thank you. Are registered agents required to pay for the subscription to your procedures advice manual?

**Ms Sykes**—The Office of the MARA has a policy and procedures manual, which is about our procedures. That is available free on our website. Registered migration agents have to pay for the department's policies and procedures. They have to show us that they have access to policies and procedures of visa applications for immigration. That does not have to be the department's one there is an alternative product.

**Senator CASH**—What is that?

**Ms Sykes**—LexisNexis, and there is the department's product which is called Legend.

**Senator CASH**—What is the cost of the department's product?

**Ms Sykes**—We can find that out for you.

**Senator CASH**—Could you also compare that with the cost of access to the procedures advice manuals issued by the Australian Taxation Office. I want to do a cross comparison.

**Ms Sykes**—Okay.

**Senator CASH**—What steps has MARA taken to continue to expand the e-visa system?

**Ms Sykes**—The Office of the MARA has no responsibility for the e-visa system. That is the department.

**Senator CASH**—Addressing visa fraud?

**Ms Sykes**—Again, that is the department's responsibility.

**Senator CASH**—Overseas agents?

**Ms Sykes**—That is a policy issue. At present, under the regulations and the legislative framework, we cannot register anyone who is not a permanent resident of Australia or a citizen of Australia. For that to be changed it would require legislation change, so it is a policy issue that the department is looking at.

**Senator CASH**—Are procedures that are in place to ensure that overseas migration agents are aware of and comply with our regulatory regime something that I address to you or the department?

**Ms Sykes**—In terms of those agents who are registered migration agents—that is, they are either citizens of Australia or permanent residents operating overseas, and there are a number of those—the Office of the MARA is responsible for those. In terms of agents who are not registered, they are the department's responsibility.

**Senator CASH**—Is OMARA giving any consideration to whether only registered migration agents can legally give advice about migration to Australia?

**Ms Sykes**—Again, that is a policy matter for the department.

**Senator CASH**—How many professional standards officers are currently employed by the Office of the MARA, and could I have a breakdown of that figure on a monthly basis since 1 July 2009?

**Ms Sykes**—I might have to take the second part on notice. In terms of the first question: we currently have 10 positions in what we call the Professional Standards and Integrity Unit. Three of those people are focusing primarily on monitoring and integrity, although they can also assist with dealing with complaints. One position is currently vacant.

**Senator CASH**—And are you looking to fill that position?

**Ms Sykes**—We are, yes.

**Senator CASH**—How long has that position been vacant for?

**Ms Sykes**—That position has been vacant for about two months, I think.

**Senator CASH**—Is the fact that the position is vacant impacting in any way on your professional standards officers being able to carry out their work?

**Ms Sykes**—I do not think the vacancy of that particular position is. It is an administrative support position which we are filling very soon. I would have to say, though, that because of the complexity of some complaints and the amount of work required in complaints, it does take a while for complaints officers to really become fully productive. There has been some turnover in the complaints area, the professional standards area, and we have provided a lot of training for staff. I believe that they are now fully productive, but that has taken a while.

**Senator CASH**—When you say that there has been some turnover, are you able to provide the committee with statistics showing how many professional standards officers have been employed since the commencement of your office and how many are employed to date, basically showing what has actually occurred with those staff over the time?

**Ms Sykes**—Yes.

**Senator CASH**—When you say they are ‘productive’, what do you mean by that?

**Ms Sykes**—I mean in terms of managing a full case load.

**Senator CASH**—What is a full case load?

**Ms Sykes**—A full case load varies depending on the experience of the officers. Some officers would have a case load of around 30 cases, which is what we believe is the best case load, but some officers have a much larger case load. They might have 50 or 60 cases.

**Senator CASH**—And what would be under the 30? Would some officers have fewer than 30?

**Ms Sykes**—Some of the officers working in, for example, the integrity unit, because they are doing other functions, would have a smaller case load.

**Senator CASH**—You said that you have 10 positions for professional standards officers. Do you consider that to be an adequate number?

**Ms Sykes**—We are looking at that at the moment. I believe that, now they are fully operational and we are looking at some of our procedures, it will be sufficient, but should it not be we can look at whether we can provide some flexibility in that. For example, we have engaged some expertise to assist us with some of the more complex and sensitive cases. We have brought in an external adviser to assist with those to make sure that those decisions are

made fully and take into account all of the aspects that need to be taken into account in such serious decisions.

**Senator CASH**—I have one final question and then a number that I will put on notice. How many audits are currently being conducted by professional standards officers on registered migration agents?

**Ms Sykes**—What we have commenced—which I think I have briefed the committee about previously—is the undertaking of integrity site visits. We have so far visited 58 registered migration agents.

**Senator CASH**—Thank you. I have no further questions.

**Senator BARNETT**—Thanks, Ms Sykes and your colleagues, for being here. Firstly, in regard to the outstanding matter regarding the settlement with the former CEO, I am just wondering if that has been sorted. At the last estimates Mr Vardos advised the committee that there was \$290,000 outstanding. I wonder if that matter has been settled.

**Ms Sykes**—I will have to refer that to the department.

**Senator BARNETT**—I wonder if Mr Metcalfe can assist—or Mr Vardos or whoever is the appropriate person.

**Mr Metcalfe**—Again, in responding, perhaps I could ask that the department respond to that when we come to program 1, because that is where these issues fit within the department structure.

**CHAIR**—Yes.

**Senator BARNETT**—All right. Let us continue. Ms Sykes, is the fidelity fund in operation?

**Ms Sykes**—I think that, as previously advised, the 2007-08 report recommended against setting up a fidelity fund. We have not moved to do that, and nor has the department.

**Senator BARNETT**—What we do know is that there was some \$4.2-odd million which was in the office of MARA. It has gone over to the department and into consolidated revenue, and nobody has seen it since. It is obviously invested back into the Commonwealth.

**Ms Sykes**—That is a matter for the department.

**Senator BARNETT**—I will just confirm that the website is up and operational and acting as you would like it to. I think it cost some \$165,000 to establish.

**Ms Sykes**—That is correct. It is.

**Senator BARNETT**—Is it operating as you would like it to?

**Ms Sykes**—The website is operating very well, we believe, and is certainly delivering on all of the things that we had hoped it would. We are very pleased that we have also been able to roll out online partial registration, which has made it much easier for agents re-registering. We are now looking at some things we can do to improve the website. For example, we are hoping to implement full online registration in the foreseeable future.

**Senator BARNETT**—Good. That is encouraging, because it did take some time to get up and running and you had a few hiccups with it along the way.

**Ms Sykes**—Yes. Certainly the security concerns were an issue that took some time, and we are now very satisfied that those have all been addressed.

**Senator BARNETT**—That is good news. In your opening statement you referred to disciplinary measures, but you have not identified the number of complaints—unless I missed it. Can you identify the number? You normally advise us of the number of complaints you have received.

**Ms Sykes**—We received, in total, 499 complaints in 2009-10. Fourteen of those complaints led to disciplinary action.

**Senator BARNETT**—That is a big increase on previous years. What was it the previous year? It was about 300-odd, wasn't it?

**Ms Sykes**—As reported by the former MARA, it was. I think I mentioned the last time I was here that we were looking at some data cleansing and data improvements. What we have identified is that the former MARA counted issues separately, so there were two different reporting systems for complaints-type matters. When we look at those matters together, the comparison is much closer. So, when we look at both of those together, for 2009-10 we look at 499 and for 2008-09 490.

**Senator BARNETT**—So it is just a matter of how you calculate the figures.

**Ms Sykes**—That is right.

**Senator BARNETT**—The last figure I had was about 330, I think.

**Ms Sykes**—Senator Barnett, I just draw your attention to the fact that I have provided the committee secretary with an update on the figures that I gave at the last budget estimates to clarify that issue.

**Senator BARNETT**—Very good. Finally, when is your annual report to be concluded?

**Ms Sykes**—We are looking to conclude it as soon as possible—I am hoping by the end of the month.

**Senator BARNETT**—Are you aware of our hope that it is tabled in advance of estimates?

**Ms Sykes**—Yes I am.

**Senator BARNETT**—Is there any reason for the delay?

**Ms Sykes**—Again, it takes time for the financial reports to be finalised and also for the appropriate clearance processes.

**Senator BARNETT**—Are you blaming the federal election for the delay, or other things?

**Ms Sykes**—I think these things just take time to pull together, to clarify and to make sure that we have got all the data available. As I said, the clearance processes also take time.

**Senator BARNETT**—Ms Sykes, I advise you there is a Senate request for annual reports to be made available if possible in advance of Senate estimates. I alert you to that fact.

**Ms Sykes**—What we are doing this year is we are providing the annual report information that is required under the act through the department's own report. We have also decided to

produce a separate report for the Office of the MARA under our own regulations and that will provide more operational detail.

**Senator BARNETT**—So you are going to have two reports—one that will be a part of the department report and then you will have your own report that will presumably be on your website and other places?

**Ms Sykes**—Yes, it will.

[9.56 am]

### **Department of Immigration and Citizenship**

**CHAIR**—Mr Metcalfe, welcome again this morning. We will turn to questions of the department and we welcome you to provide an opening statement.

**Mr Metcalfe**—Good morning. Welcome to you and the Senators and thank you for the opportunity to deliver an opening statement. I also welcome Senator Carr, who is representing our minister for the first time in Senate estimates.

I suspect that some of today's questions from the committee will no doubt focus on the major issue of irregular maritime arrivals and immigration detention. These matters are a large part of our work and represent a complex and sometimes difficult area of public policy. The department has focused on managing these challenges in a strategic, lawful, proper, decent, humane and accountable manner. I will expand on some of our approaches in detail shortly. However, it is important to recognise that this work is just one of the many diverse programs, policies and services the department manages on a daily basis.

While these are supplementary budget hearings, I would like to say just a couple of words about the 2009-10 program year, which was another big year for the department. We again delivered the migration and humanitarian programs on time and very close to targets. I expect that announcements on precise figures will be made soon.

We were also busy across a range of other programs including the conferral of citizenship on almost 120,000 people over the course of the year, the location of 14,000 unlawful non-citizens, the granting of in excess of four million permanent and temporary visas, and the facilitation of a record 28.8 million people across the Australian border.

We continue to be strongly engaged on matters relating to social cohesion. In 2009-10 community engagement projects received strong interest with 104 grants provided to organisations through the Diverse Australia program and a national action plan to build on social cohesion, harmony and security community grants. The department's policy work and engagement with the community on multicultural affairs issues will also feed into the government's response to the Australian Multicultural Advisory Council's recent statement: *The People of Australia*.

At the last hearing I promised to keep you updated on the progress of the department's transformation to stronger migration, visa and citizenship services. I am pleased to report that our concept of global managers is now a mature structure and working well. Appointing managers responsible for specific products, services and service channels globally has led to significant improved consistency, quality and efficiency in those services. I am pleased our clients and stakeholders are already experiencing the benefits of this approach.

A key part of the transformation of our service delivery model is improving the management of our four main service channels—that is, service centres, service delivery partners, online services and face-to-face services. Significant progress has been made by addressing key operational issues and implementing longer-term strategies to improve our service in these areas.

The department has now moved further towards our final in state organisational structure with three groups focused respectively on: policy and program management, led by Peter Hughes; business services, led by Bob Correll; and client services, led by Felicity Hand. I have also recently announced that I will be establishing a fourth deputy secretary led group in the department responsible for management of our immigration detention facilities and services.

While the department continues to manage its diverse range of responsibilities and progress this ambitious transformation agenda, the areas that receive most public attention are of course boat arrivals and immigration detention. The committee will of course be aware of the minister's and Prime Minister's announcement yesterday about additional detention accommodation and residence determination community detention options, and we can cover this in more detail when we come to outcome 4.

As I have noted, the department is very focused on properly managing this often difficult and invariably complex area of public policy on behalf of the Australian government and the wider Australian community. Our approach is part of an overall policy setting which seeks not to encourage people to risk their lives to come to Australia and which seeks to find appropriate ways to deal with the issue while meeting our international obligations under the refugee and other conventions. As part of this global context the department contributes to a whole of government strategy to stabilise displaced populations overseas and disrupt people-smuggling operations as well as building the capability of our international partners to do the same.

The increase in boat arrivals has naturally placed an increased workload on immigration detention facilities, on our service providers and indeed on the department. A large number of our staff are involved in various aspects of this work. I am pleased that the feedback I get from external scrutiny bodies and indeed from our own internal processes and other checks is an overwhelmingly strong attitude of staff who are deeply engaged about performing their jobs in a professional and ethical manner.

We are increasing the pool of staff available to undertake processing and case management through secondment from other agencies as well as through external recruitment. We have a dedicated task force in place to manage our recruitment needs, including backfilling positions in other parts of the department's business. This process is allowing us to quickly engage staff with the appropriate skills who can be trained in these specialised areas.

At the same time we are very focused on ensuring that all of our other responsibilities are effectively discharged and indeed we aim to constantly improve our performance. In fact, since the department's last appearance before the committee there has been an increased number of boat arrivals and we have maintained the improved performance we reported in many other areas of operations.

The department takes very seriously its duty of care and responsibility for people in detention and to provide them with proper amenity within the detention facilities made available to us. While these individuals are detained pursuant to legislation enacted by this parliament, the policy of detention is for administrative purposes. Detention is not designed to be punitive and it certainly should not be equated to correctional custody.

Due to a range of factors, many people are spending longer periods of time in detention. With large numbers of people in detention for longer periods, experience shows us that there will be some who demonstrate their concern at decisions about their immigration status through attempts at self-harm, voluntary starvation, absconding or protesting. The department is making strong efforts to support our clients through these challenging circumstances and as well support our own staff, who work so hard to provide appropriate facilities to people in detention.

Sadly and very rarely we experience situations such as the tragic death from natural causes of an Afghan man on 22 August following his medical evacuation to the Sir Charles Gairdner Hospital in Perth and the death of the Fijian man at Villawood immigration detention centre on 20 September. It is of course not appropriate for me to comment in detail on the circumstances of either death because they are subject to ongoing investigations and possibly coronial inquests. The department and its staff, however, are greatly saddened at these two tragic deaths of people in detention. On behalf of the department, I extend my sympathy to their families and affected communities. This has also been a difficult time for our staff, for Serco's staff, our service provider, and the staff of other service providers at the centres.

In closing, I would like to draw the attention of the committee to the fact that one of my deputy secretaries Peter Hughes has announced his intention to retire at the commencement of 2011. Mr Hughes joined the Public Service on 22 January 1973 as an administrative trainee. He spent a number of years working with the Department of the Prime Minister and Cabinet before joining the Department of Immigration in 1979. His first role in the department was to assist the development and implementation of refugee policy, and indeed that has been his last role, but he has done many things in between. Since then he has undertaken a variety of work, including a brief secondment to the Department of Foreign Affairs and Trade in 1981, a number of overseas postings and a range of senior positions in the department.

Peter Hughes has represented Australia's interests at home and abroad with utmost dedication, professionalism and to a high standard during his 37 years of public service. His contribution was recognised in 2005 when he was awarded a Public Service Medal in the Australia Day honours list for outstanding public service through the development of policies and programs to increase citizenship, multicultural harmony and the settlement of refugees. Mr Hughes has appeared before and assisted this committee on many occasions over many years, and so before this committee I would like to note his service to the Australian government, to the department, to our clients and to the wider Australian community. I would like to thank him for his long and dedicated service and wish him and his family all the very best for the future. In closing, I also put on the record my sincere appreciation to all our officers in the department for their dedication, hard work and ongoing commitment to our positive values. Thank you.



**CHAIR**—Thank you, Mr Metcalfe, that is most appreciated. The details contained in and the thoroughness of that statement are certainly appreciated. Mr Hughes, so what goes around comes around—refugee policy formation.

**Mr Hughes**—That is correct. I joined the department because there was this interesting new phenomenon of boat people arriving on Australia's shores from Vietnam; 31 years later the sources are different but it is the same phenomenon.

**CHAIR**—Is this your last estimates hearing, then?

**Mr Hughes**—It looks that way.

**CHAIR**—I wondered why you were so happy when you walked in the door this morning. I had figured that it was probably your birthday, but now we know why. I hope people treat you kindly during your last estimates performance—unless we want you to leave with a memory and a half. We will go to questions on outcome 1.

**Senator CASH**—Mr Metcalfe, I take you back to the statement that Mr O'Brien made this morning when he gave evidence in relation to the set aside rate for, I believe, the Refugee Review Tribunal as being 45 per cent. My comment to you is that for all intents and purposes we are looking at half of those decisions being set aside. My personal thought would be that that is an unacceptable set aside rate. Is this a problem for the department?

**Mr Metcalfe**—I assume we are in general questions at the moment and will come to program 1, which is visas and migration shortly? Set aside rates form an issue that invariably occurs with tribunals, and it is not just the RRT of course. All federal tribunals and indeed all tribunals everywhere have set aside rates. There are a number of factors that impact on set aside rates and Mr O'Brien went to some of those. As a logical consequence, at the review stage the tribunal is examining the matter when time has passed—the 'effluxion of time' were, I think, his words—and sometimes that crystallises some of the issues in relation to it. That may be particularly in relation to relationship matters; on refugee matters, perhaps less so. Certainly, what we do see with set aside rates in relation to refugee matters is that the primary decision quite often identifies issues of concern or areas where the officer does not accept that the applicant does in fact have a well-founded fear of persecution—for convention grounds, the primary test—or may form a judgment in relation to the person's credibility as to whether they are being entirely truthful or making up a story. Of course, in providing that primary decision, the reasons for that are notified to the applicant. We therefore see invariably at the review level better applications. Quite often the points of concern that have been raised at the primary level are addressed by the applicant. Sometimes that is obviously explored in detail by the tribunal and makes no difference. Sometimes in fact there will be a different view formed by the tribunal in its consideration.

So we accept that set aside rates will occur and that in the refugee field they can be virtually zero in some caseloads to very high in other caseloads. That is an international phenomenon. We obviously as a department closely monitor the decisions being undertaken by the tribunal not only in relation to refugee matters but migration matters as well. We obviously look to see where the lessons need to be learnt in terms of our own primary decision making, the training provided to our officers, the information they have available to them in reaching their conclusions or whether in fact policy issues are emerging as well. It is

of course open to the minister to seek to appeal a tribunal decision. That occurs rarely but it has occurred. Much more often of course the appeal comes from a disappointed applicant. In matters which are defended by the Commonwealth the win rate for the department, for the minister, is very high. It is over 90 per cent sort of thing. It is an area that we keep a close eye on but invariably across the different caseloads, across the different tribunals, there will be differing set aside rates. Some of that is perfectly understandable. A fresh pair of eyes looking at an issue after time has passed, a better application which provides more information or fills in some gaps—or sometimes there is the different viewpoint from a different person.

**Senator CASH**—Thank you, Mr Metcalfe. I may have more questions on that but I will now turn to staffing levels. How many staff from DIAC are presently involved in processing irregular maritime arrivals at the various locations? Is it possible to have a breakdown by location?

**Mr Metcalfe**—We will answer what we can. We may need to take some on notice.

**Mr Correll**—In terms of the overall IMA workforce, the statistics I have are with effect as at 30 September. At that time there was a total of 458 full-time equivalent staff directly undertaking IMA-related work. Of those, 184 full-time equivalents were located in immigration detention facilities. The remaining 274 were located in metropolitan areas and working on direct processing support or policy development, program management or other forms of administrative support. In terms of the 184 full-time equivalents deployed in immigration detention facilities, 76 full-time equivalents were located at Christmas Island, 35 at Northern, 29 at Curtin, 10 at Leonora, seven at Port Augusta residential housing, six at the Brisbane immigration transit accommodation, 13 at Villawood, and eight at the Maribyrnong centre.

**Mr Metcalfe**—We will be careful with our pronunciation and draw the distinction between Northern and Northam. There is no-one at Northam at the moment. Northern is in Darwin.

**Senator CASH**—Thank you. A whole series of questions suddenly appeared! What are the current staffing levels for each departmental outcome for one, two, three, five and six?

**Mr Metcalfe**—For the department as a whole?

**Senator CASH**—Yes please—in those particular outcomes—broken down into outcomes?

**Mr Correll**—I will just check to make sure I have the right column here. Again, as at the end of September, the number of full-time equivalents were: 3,590.2 for outcome 1; 463.1 for outcome 2; 795.6 for outcome 3; 1,666.9 for outcome 4; 430.3 for outcome 5; and 535.5 for outcome 6, making an overall total of 7,481.5 full-time equivalents.

**Senator CASH**—Thank you very much. I now turn to sensitive overseas posts. Can I get an understanding from the department of what a ‘sensitive’ post actually is?

**Mr Metcalfe**—You are obviously referring to that in inverted commas.

**Senator CASH**—Correct.

**Mr Metcalfe**—Is that a term that we have used in providing a response, or is it a term that someone else has used?

**Senator CASH**—It is a term that I know the press have certainly used. I do not know how else I would actually say it. You do not have any sensitive overseas posts?

**Mr Metcalfe**—Some posts are more sensitive than others, but it is not a term that we generally use.

**Senator CASH**—What would the department generally determine to be a sensitive overseas post?

**Mr Metcalfe**—We usually talk more in terms of risk than sensitivity. Risk is largely the extent of potential fraud that we may experience in visa applications. Attempted fraud against the department is where our risk framework tends to operate. I will ask Ms Hand to elaborate, but our response may be somewhat counterintuitive in that some posts are, as you would expect, high risk from an immigration fraud perspective and would therefore be seen in your terms as sensitive because of the historical experience with applications. Some may be what I describe as ‘mixed risk’, whereby some components of the workload are relatively straightforward but others are in fact quite risky because of the particular differentiation. For example, applicants for PhD student visas may be seen as very low risk but vocational education visas may be seen as high risks in the New Delhi post. I say it can be counterintuitive because some of the more complex caseloads that we deal with overseas are in posts like Washington, Auckland and Singapore, where the indigenous populations are a very low risk group, but there are many third-country nationals living in those countries. Kuala Lumpur is another example of where there are many different people from parts of the world temporarily staying in that country and where the visa profile for those people is risky. In fact, for us, Washington, Auckland and Singapore are quite difficult posts not because the local population are an immigration risk but because other parts of the client workload are risky. I have not answered your question on the staffing profile.

**Senator CASH**—That is okay. Perhaps I can now narrow the question slightly. In which posts is the biometric trial being conducted?

**Mr Metcalfe**—That has not been announced as yet. That matter is still being considered by the government, so we are still in the process of finalising which posts that will be deployed at. I hasten to say that they are not necessarily sensitive posts. That trial is very much about gaining experience as to how we would commence collecting biometric information across a range of different circumstances.

**Senator CASH**—What is the public policy that the department looks to in determining at which post it will undertake the biometrics trial?

**Mr Metcalfe**—The key part of the proposed trial is that we are partnering with the UK border agency, which has a global biometric collection capability. We have done some really first-rate work with the UK and the US in particular in this area in recent years. We saw it as the most simple and cost-effective way to leverage off the facilities already in place with the UK border agency and we thank them for that. In looking at the range of posts, we are not the only government agency with an interest; the Department of Foreign Affairs and Trade and ASIO have an interest. This is essentially about gaining experience across a range of environments. We are pursuing the trial so that, in due course, it can be evaluated and the government of the day can consider whether Australia should follow the path of the US, the

UK and some other countries of having a universal biometric collection requirement or whether we stop short of that and deploy it in some other way. We also want to gain experience through trialling the collection technology and partnering with service delivery partners, because the UK collection point is usually not a British embassy but a third-party service delivery partner. This trial is very much about gaining experience across a variety of circumstances to build some greater levels of understanding so that we can then come before the government with a clear view as to the future.

One of the complex issues to work through is that, in a complete biometric visa environment, not only is there the need to collect the biometric data at the beginning of the visa stage, but there is also the need to check the biometric data at the point of entry to the country—and this applies to Australians wanting to go to the United States, for example, so many of us now have our fingerprints on the US system. As you travel into Los Angeles, they take your photo and match your prints that they collected before you travelled. That has significant implications for border management, particularly for airports and the Australian Customs Service, which undertakes that work on our behalf. Again, we wanted to gain some confidence and understanding as to how these processes might work and the extent to which they add value for Australia.

**Senator CASH**—Has the department made a recommendation to the government yet as to at which posts the department believes the biometrics should be undertaken?

**Mr Metcalfe**—Yes.

**Senator CASH**—Minister, when can we expect an announcement as to at which posts biometrics will be undertaken?

**Senator Carr**—I will have to find out what the nature of the advice is and take the matter up with the minister.

**Senator CASH**—Thank you very much. Mr Metcalfe, I will now move onto the letter that you wrote on 12 August 2010, seeking staff from other departments and agencies to assist the department to cope with the influx of IMAs. Would you be kind enough to advise exactly to which agencies and departments this request was made?

**Mr Metcalfe**—Can we get back to you later this morning with that? We do have that information and I am happy to provide it. From recollection, I wrote to most but not all of my counterparts. I do not think I wrote to heads of central agencies, for example, but to those departments where there are large numbers of staff involved in client service delivery or decision-making aspects. The letter that has found its way into the public domain was the letter I wrote to my counterpart at the Department of Agriculture, Fisheries and Forestry, which was circulated through parts of his department. I can say that we have had a very pleasing response.

**Senator CASH**—Good, and I will take you through that shortly. Can I just clarify that you will provide the Senate with the information as to exactly which departments or agencies the letter was sent to? In addition to your written request, were any verbal requests made to other agencies or departments that you did not write to?

**Mr Metcalfe**—Not to my recollection, but I will see if others made the request on my behalf. I think that the approach we did take was to write to the agencies in question. I may have mentioned it on a personal basis to one or two colleagues, but it would not have been colleagues other than those who I had written to, in any event. I think that particularly with the human services portfolio there may have been contact not only with the Secretary but also with the heads of Centrelink, the Child Support Agency and Medicare. Either Ms Prothero can assist on that or we will take that point on notice.

**Senator CASH**—Are you able to assist, Ms Prothero?

**Ms Prothero**—We did not speak personally to any agencies other than those that Andrew had sent the letter to.

**Senator ABETZ**—Did you target those departments that you thought had a surplus of staff?

**Mr Metcalfe**—We did not, because we did not claim to have that level of understanding. But I must say that one or two—

**Senator ABETZ**—Very diplomatic of you!

**Mr Metcalfe**—I must say that one or two of my colleagues did say that they actually were in the situation of having to reduce their staffing size because of their budget environment, and so it was quite a timely opportunity for them to do that in a positive manner.

**Senator CASH**—Thank you, Senator Abetz, you have actually picked up on the question that I was going to ask: when you did not formally write to or make a formal request to departments or agencies, what were the reasons for that?

**Mr Metcalfe**—It was largely because they were central agencies. I do not think, from memory, that I wrote to my counterparts in the Department of Prime Minister and Cabinet, Treasury or Finance and Deregulation because firstly—and this is being very delicate in how I say this—perhaps the skills available in those departments may not have been those required by us; and secondly—

**Senator ABETZ**—The Department of Prime Minister and Cabinet have passed—

**Mr Metcalfe**—Yes, they pay people far better than we do—but, frankly, small policy departments or departments with a straight economic focus or whatever. We were essentially looking to attract interest from officers who are used to making administrative decisions and who would be able to be trained relatively quickly as well as appropriately, not only in the subject matter of the decision making but also in the values and methods and the context and operating environment of refugee decision making; or, potentially, staff who may be there in other support roles, such as case management, detention contract administration or, indeed, backfilling other jobs. We were very much looking for decision-making type staff.

**Senator CASH**—My understanding is there have been reports in the media that it was up to at least 17 different agencies and departments. Do you believe that would be an approximate figure?

**Mr Metcalfe**—Yes, there are about 20 departmental secretaries and I think there are about three I did not write to.

**Senator CASH**—You state in the first line of the letter, ‘I am writing to request your assistance in meeting the urgent and increasing demand for staff that my department is experiencing.’ Would you be able to advise this committee when the last time was that an urgent request of this nature was made to other departments or agencies by your department?

**Mr Metcalfe**—I would have to take that on notice. I do not recall having done that personally in the period that I have been secretary. We have, of course, had situations where we have had discussions, but I do not think it has been at that level or that those words have been used.

**Senator CASH**—You will take that on notice and then come back to the committee?

**Mr Metcalfe**—I will take it on notice. If I can answer it, I will.

**Senator CASH**—That actually leads me to my next question: How long have you served in your current position?

**Mr Metcalfe**—Almost 5½ years.

**Senator CASH**—And during this 5½ years, on how many occasions have you received a similar request from other department and agency heads, and for what purpose?

**Mr Metcalfe**—I will have to definitely take that on notice. I certainly recall having received requests—perhaps not a generalised request for decision making staff but there have been a number of incidents, such as assistance with emergencies like bushfire relief where the department provided some staff to Centrelink to assist after the Victorian bushfires. There may well have been some other situations as well.

**Senator CASH**—Do you recall when was the last time you received such a request?

**Mr Metcalfe**—I would have to take that on notice. I am not being evasive, and I do want a cup of tea, but I receive lots of letters from lots of people about lots of things, and I would rather be accurate in what I say.

**Senator CASH**—I do appreciate that. One further question then: in your evidence you said that you had received requests of a potentially general nature. Do you recall receiving any requests that were similar to yours of an absolutely urgent nature?

**Mr Metcalfe**—I will take that on notice, Senator.

**Senator CASH**—Thankyou.

**Proceedings suspended from 10.31 am to 10.50 am**

**CHAIR**—The committee will resume.

**Senator ABETZ**—Tell us about the ‘The Smuggler’—not the budgie one. I understand that the department has a fast paced and dramatic video called, ‘The Smuggler’. Is that correct?

**Mr Metcalfe**—We do, Senator. We could assist you to see it, if you wish to.

**Senator ABETZ**—How much did that cost to produce and who was asked? Did you go out to tender? Was it in-house?

**Mr Metcalfe**—It has been done very much in-house.

**Senator ABETZ**—Does it star the minister?

**Mr Metcalfe**—There are no ministers anywhere near it.

**Senator ABETZ**—Now, in that case it might be worth viewing.

**Mr Metcalfe**—It is part of an in-house production effort where we have made a small number of video clips that are able to be viewed on Youtube. So we are using that sort of technology and not mainstream media, and very much trying to send messages about the various dimensions of the people-smuggling phenomena.

**Senator ABETZ**—You had a release on 16 September. Was that when it was announced?

**Mr Metcalfe**—I have not got the media release with me.

**Senator ABETZ**—But it is relatively recent anyway.

**Mr Metcalfe**—It is the last month or so.

**Senator ABETZ**—Do we have cost?

**Mr Correll**—Not specifically for ‘The Smuggler’ production. It was relatively low cost. It has been produced very much using in-house resources in its development.

**Senator ABETZ**—Was Actors Equity involved in this?

**Mr Correll**—I am not aware of that. It was a very low-cost production.

**Senator ABETZ**—You can take the actual cost on notice. Depending on the cost can you let us know how you are going to judge its success or otherwise, unless of course the cost is very low—\$1000 maximum or whatever. In those circumstances the cost-benefit analysis would cost more than the actual production. So do not bother. But if it is a more substantial figure, please advise how you will measure its success.

**Mr Metcalfe**—We have taken the cost on notice. It is some thousands of dollars but it is not tens of thousands of dollars.

**Senator ABETZ**—In that case do not bother about the cost-benefit assessment. Just let us know the cost. If I make a judgment that the cost is high I might be back next time around.

**Mr Metcalfe**—Essentially, the ‘talent’—I think that is the word in the industry—were departmental officers.

**Senator ABETZ**—Starring Mr Metcalfe in the leading role?

**Mr Metcalfe**—I am afraid not. There might be one coming soon—that would scare anyone off. There was a small cost associated with appropriate costuming—police uniforms which were non-specific as to the police force, car hire—

**Senator ABETZ**—Not as in Minister Carr hire?

**Mr Metcalfe**—No, Minister Carr was not involved either. It is actually a low-cost in-house production trying to send a message about the illegal nature of people smuggling. It is one of a series. There is another one called, ‘Left Behind’, which is basically a fairly graphic depiction of a person drowning. Of course, it is aimed at spreading the message that travelling to Australia by boat is inherently risky and dangerous, and for people who engage in breaches of the Commonwealth legislation, an illegal activity.

**Senator ABETZ**—Thank you. I turn to the issue of asylum compensation payouts. Is that appropriate to be dealt with under general questioning?

**Mr Metcalfe**—Yes.

**Senator ABETZ**—Can you tell us about the amounts that have been paid out and the reasons why?

**Mr Metcalfe**—I will ask the chief lawyer to join us. She can provide a briefing on compensation that has been paid by the Commonwealth for various matters relating to detention.

**Ms Davis**—In relation to compensation paid to asylum seekers who arrived unlawfully by boat and were subsequently detained, since 2000 to 30 September 2010 the compensation paid is \$1.06 million.

**Senator ABETZ**—To how many?

**Ms Davis**—To five.

**Senator ABETZ**—Have any of those gone to hearing?

**Ms Davis**—No.

**Senator ABETZ**—We just settle them, do we?

**Ms Davis**—Yes, under the legal services directions, where there is a risk of legal liability the Commonwealth should settle compensation claims.

**Senator ABETZ**—Would it be true to say that the number of compensation payments has increased over the last two years?

**Ms Davis**—The number of compensation payments has increased over the last two years and that is due to the department resolving a significant number of the 247 Ombudsman referred claims. Those claims relate to events which all happened prior to March 2006.

**Mr Metcalfe**—The incidents occurred some years ago and then the various disputes compensation claims being settled more recently.

**Senator ABETZ**—Comcover is handling the compensation payments on behalf of the department, or the determination as to how much ought be paid.

**Ms Davis**—That is correct.

**Senator ABETZ**—For what sort of reasons are these payments being made?

**Ms Davis**—Largely associated with the risk of unlawful detention and also personal injury related to detention.

**Senator ABETZ**—These people entered Australia unlawfully.

**Ms Davis**—The five I spoke of before entered unlawfully by boat.

**Senator ABETZ**—Is it possible for the Commonwealth to counterclaim against them for their unlawful activity and the costs that they have incurred on the Australian citizenry by their illegal activity?

**Ms Davis**—No.



**Senator ABETZ**—People break into our country, are detained, and compensation only gets paid one way.

**Mr Metcalfe**—There are probably two or three separate issues here. One is the circumstances of someone's arrival and the resolution of their status—whether that status is that in fact Australia does have a protection obligation to them and they should stay here or whether they should go home. Separately, even though they may have come to the country without a visa and then been detained under Australian law, is the issue of whether the Commonwealth in detaining them breached a duty of care.

**Senator ABETZ**—I accept that. But if they did enter illegally then they undoubtedly incurred costs on the Australian taxpayer that I thought might be offset in relation to the compensation claims.

**Ms Davis**—To clarify, in relation to the five claims where compensation has been paid to people arriving unlawfully by boat, they all relate to the former government's offshore processing in Papua New Guinea and Nauru.

**Senator ABETZ**—In relation to any of those to whom compensation has been paid, have any been—

**Ms Davis**—I am sorry; it was before the former government implemented that strategy. So they arrived in Australia before—

**Mr Metcalfe**—Before 2001, yes.

**Senator ABETZ**—Have any of those people who have been paid compensation been removed from Australia?

**Ms Davis**—I would have to take that on notice.

**Senator ABETZ**—If you could, I would be obliged. Talking about offshore detention—this is tongue in cheek—how are the discussions going with King Island? Does anybody know about King Island?

**Mr Metcalfe**—I am happy to talk about it, but I think that is probably a question that would go to program 4 or outcome 4.

**Senator ABETZ**—I am happy to do it under outcome 4, but we are discussing people who have been granted their residential status. Would that be outcome 4 or another outcome?

**Mr Metcalfe**—Can you give me a little bit more information on who the people are?

**Senator ABETZ**—I refer to the front page of a widely read newspaper known as the *King Island Courier* of 6 October 2010, in which the local mayor says that he has had high-level talks with the immigration department:

“The group of people we discussed will have been granted their residential status.

“The study will enable the Immigration Department and the migrant resource centre, to make sure King Island is adequate to accept people with residential status,” he said.

So just tell us the outcome.

**Mr Metcalfe**—I think that, from what you have described, it may in fact be efforts by King Island to attract people to settle on the island. We would be happy to talk about that, probably

under outcome 1, which is around visas generally. There have been some suggestions about different parts of Australia seeking to have us consider them for location of detention facilities. I thought you might have been talking about that, which is outcome 4.

**Senator ABETZ**—That is fine. Finally, what is the difference between a residence determination and community detention?

**Mr Metcalfe**—It is essentially the same thing. The act, in section 197AB, provides for a residence determination, which is essentially a non-delegable, non-compellable power of the minister. The section was enacted by the parliament in 2005 following the policy change announced by former Prime Minister Howard. That was the device whereby certain persons in immigration detention were able to be accommodated in the community. However, their status remains that they are legally detained but they are not in a detention centre or a detention facility. The reason their status is that they are detained is that they are not being granted a visa which in fact makes them lawfully in Australia. The common language is ‘community detention’. The legal term of art is ‘residence determination’.

**Senator ABETZ**—Thank you very much.

**Senator PRATT**—Referring to the compensation questions, in the instances of injury or wrongful detention, what is the period of time in which people were injured or wrongfully detained?

**Ms Davis**—Are you referring to the table that was provided in relation to a previous question on notice?

**Senator PRATT**—I am sorry. I do not have a copy of that table.

**Ms Davis**—All payouts related to persons in immigration detention relate to events that occurred before August 2007.

**Senator PRATT**—What is the size of payments? What is the largest and what is the smallest?

**Ms Davis**—The largest would be the Rau compensation claim, I believe. I have to take the smallest on notice. It would be a few thousand, potentially.

**Senator PRATT**—In relation to cases that are outstanding—that are still being determined—how many cases remain to be determined? Are these for more recent events or are we still dealing with historical wrongful detention?

**Ms Davis**—Of the 247 Ombudsman referred cases there are 30 to be determined, and they all relate to events prior to March 2006. There are also seven 247 family members; we are considering claims in relation to them. A further 30 persons have filed formal claims for compensation in the courts.

**Senator PRATT**—We do not have any sense yet what the liability to government will be because they are still to be determined?

**Ms Davis**—That is correct.

**Senator CASH**—I would like to pick up on my previous line of questioning in relation to your letter requesting staffing assistance. I have a number of questions so I will move through

this section as quickly as possible. How many expressions of interest have been received from staff of other agencies or departments as a result of your request?

**Mr Metcalfe**—I have been thinking further over the break about my earlier answer, and we will check on notice whether we have received other approaches. But one area I do recall is the time of the commencement of the Northern Territory intervention. There was certainly a major effort by the Department of Families, Community Services and Indigenous Affairs for whole range of staff. In fact, I recall at least one or two of our former staff who now work in that organisation who were deployed as a result of that particular issue. Ms Prothero should be able to help with the encouraging response we have had.

**Senator CASH**—Ms Prothero, just so you know, the statistics I am looking for are expressions of interest and then how many have actually been recruited as a result of the expression of interest.

**Ms Prothero**—At 8 October 2010 we had received a total of 803 individual nominations, including their CVs, which were provided to us for consideration. We are still in the process of finalising the selection from those people. We had 18 staff start last week, another 15 staff are starting this week, and we are working though the other expressions of interest to select and train those staff.

**Senator CASH**—How many do you anticipate actually further selecting?

**Ms Prothero**—It is a little difficult to say at this stage because it involves the balancing of a number of activities that we are looking at. We have also got an external recruitment exercise that is ongoing.

**Senator CASH**—Is the external recruitment exercise in relation to the same matter—the fact that you need additional staff?

**Ms Prothero**—That is exactly right.

**Senator CASH**—To clarify: Mr Metcalfe's letter was but part of the department's request for additional staff. You have also briefed an external recruitment agency.

**Ms Prothero**—That was a couple of weeks before. We sent the letter to the departmental agencies, and that is for more long-term recruitment—looking for staff on a longer term basis. That occurred before; it was advertised around the country some weeks before this other letter.

**Senator CASH**—How many staff have you put on via the external recruitment agency?

**Ms Prothero**—I just received yesterday the recommended order of merit for selection, so no staff have commenced from the external process. We are looking to place—

**Senator CASH**—How many?

**Ms Prothero**—Again, that will depend on the number of arrivals. We are looking at a pool of staff that we can draw on over a period of time.

**Senator CASH**—In terms of the pool—an approximate number?

**Ms Prothero**—Probably in the order of 300, approximately.

**Senator CASH**—So, 300 additional staff.

**Ms Prothero**—That is correct.

**Senator CASH**—And that is from the external recruitment agency?

**Ms Prothero**—That is from the two exercises combined.

**Senator CASH**—To clarify, to date you have received 803 expressions of interest as a result of Mr Metcalfe's letter, you had 18 staff commence last week, 15 will commence this week—that is a total of 33 to date—and, between the external recruitment process and Mr Metcalfe's letter, you are looking to attract at least 300 additional staff members to the department?

**Ms Prothero**—I would not say 'at least'; I would say 'in the order of'. We are currently looking at our process in relation to how efficiently we can process, so the number of staff we require will depend on that.

**Senator CASH**—Would you agree that that is an exceptionally large number of additional staff for the department to be recruiting?

**Ms Prothero**—No, I would not. Not in the scheme of things.

**Senator CASH**—If we did not have the current scheme of things, there would be no need to recruit the additional staff.

**Mr Metcalfe**—It goes without saying that the phenomena of the arrivals means that there is more work to be done. Our commitment is to do it quickly and professionally and get the right results. One of the keys to managing the situation is for people who are not refugees to be identified as such and to be returned home. Therefore, our approach is to ensure that we do not get into the situation that many of our overseas counterparts have gotten into of having massive backlogs of asylum seekers. The UK, Canada and other countries have years worth of work. The Australian approach has been to try to resolve the matters as quickly as possible, bearing in mind that there are processes that people are entitled to follow—litigation et cetera. We are very keen to get quality staff located, trained and in place so that we can get on with the job. For me, that is not exceptional. An additional 300 staff in a department of almost 8,000 staff—and I am not too good at mathematics—is not too much of a percentage point.

The other point—and I tried to outline this in our opening statement—is that, while this is a significant and important area of work, there are many other things that we do. We are very keen to ensure that visa and citizenship work and the issue of illegal immigrants in the community and so on and so forth are properly dealt with as well.

**Senator CASH**—With regard to the current work flow and your need for approximately 300 additional staff, if the boat arrivals continue at the current rate, has the department forecast forward how many staff over and above the additional 300 you will be required to recruit?

**Mr Correll**—We are constantly monitoring the overall irregular maritime arrival numbers. That feeds directly into our recruitment strategy. We realise the lead times involved with the recruitment so we try to keep the horizon out at about a three-month time frame, based on that level of arrival numbers. That feeds directly into our staff requirements, both for detention centres and also in refugee status assessment processing. Changing positions, such as the government's decision in relation to suspension arrangements, also impacts on our staffing

numbers. That is all fed into the calculations that are made on staffing. It is essentially looking to that horizon. As you know, it is very difficult to predict with certainty what the forward outlook will be for boat arrivals.

**Senator CASH**—What about current trends though? Are you able to base projected staffing on current trends?

**Mr Correll**—In the last couple of months, there has been a return up to arrival numbers after a drop of several months. It is not as if you have a clear and consistent pattern at the present stage; we have seen it be quite variable over the past five or six months. It is difficult to be precise. We are trying to ensure that we have a good pool of resources and that we have gone through appropriate clearance and assessment processes so that we can be in good shape to handle processing depending on what circumstances we face.

**Senator CASH**—Ms Prothero, with regard to the 33 staff that you have recruited from other departments, are you able to provide the committee with a breakdown of the agencies and departments that they have been recruited from, whether they on a short-term secondment or a permanent transfer and how many of each?

**Ms Prothero**—I do not have the information on which agencies available to me at the moment. We can get that quite quickly.

**Senator CASH**—Thank you.

**Ms Prothero**—With regard to the second part of your question, they are all on a secondment.

**Senator CASH**—How long are the individual secondments?

**Ms Prothero**—The offer was in the order of three to six months and continues to be reviewed. It is part of balancing the overall staffing model.

**Senator CASH**—So, at the present point in time, you have approximately 33 people on three- to six-month contracts. That can be reviewed at the end of those periods and may be further renewed?

**Ms Prothero**—That is right, depending on the balance of the staffing model.

**Senator BARNETT**—To clarify on the record, Mr Correll, you indicated 458 full-time equivalents to process irregular maritime arrivals, is that correct?

**Mr Correll**—That was at 30 September, yes.

**Senator BARNETT**—So we now have a pool of staff in the order of 300 that you are seeking, which Ms Prothero has just confirmed on the record. I figure that to be an increase of approximately 65 per cent on the 458. Did you get that, Mr Correll?

**Mr Correll**—I think that Ms Prothero was quite careful in her response to indicate that it would be in the order of the 300 figure. For the reasons I have outlined—

**Senator BARNETT**—No, that is not the question. My question is based on the observation that you have a 65 per cent increase, it is for three to six months—and you will no doubt review that—and there is no indication or evidence to this committee that these numbers are going to decrease in the next three to six months. In fact, all the evidence

suggests that it will increase substantially. So, when you say that it is for three to six months and a review, an objective observer would say that will have to extend even further. The question from Senator Cash: is how long will this take? The supplementary question is: what is the cost to the budget? That is what I would like to know now. What does your budget paper say about the cost to the budget?

**Mr Metcalfe**—I will let Ms Prothero come back to the issue of cost, but I do not think we would agree with your proposition. You made several statements there. We had a long discussion at the last estimates about forecasting future arrivals. The department is simply not prepared to make forecasts because there are so many dynamic aspects related to this. I should say that, since the last estimates—and we will no doubt discuss this later under outcome 2—we have seen a changed dynamic in the decision making and we have seen many more refusal decisions being taken than had previously been the case. If it is a refusal decision, we have to spend a considerable amount of time in ensuring that it is fully documented and decided. The consequences are very significant. That is not to say that approval decisions are taken lightly, but they tend to be more straightforward. I am sure we can talk more about the reason for that under outcome 2.

**Senator BARNETT**—Okay.

**Mr Metcalfe**—That has the effect of staff being less productive because, rather than just saying yes rather easily, they are saying no and it takes longer. It also means that more people are in detention—and I am sure we will talk more about this later—because, having been refused, they are seeking a review and some are held up in court processes. Thus, the number of detention places and the number of detention management staff—case workers and various others—are all required. It is not a zero sum game here. The changing dynamic of the caseload means that our staffing profile has to adjust as a result.

**Senator BARNETT**—Thank you. What is the cost of the staff?

**Ms Prothero**—If I could go back just one step to make clear that the 400 or so FTEs that are currently located—

**Senator BARNETT**—It is 458.

**Ms Prothero**—The 458 FTEs that are currently located at immigration sites are not permanently dedicated to that work. Some of those people are returning to their normal roles within the department, so the recruitment is also focused on backfilling some of those positions.

In relation to the actual cost—

**Senator BARNETT**—You are not suggesting that there has been a decrease over the time of the 458 FTEs?

**Ms Prothero**—Certainly not.

**Senator BARNETT**—In fact, all the advice and evidence to this committee would be that there has been an increase in that number over time.

**Ms Prothero**—There has been an increase in the number over time. I am saying that the 300 and the 400 do not add together to make 758 in our planning in this area.

**Senator BARNETT**—We would like to know what number it does add together to.

**Ms Prothero**—I will have to have a look back at my records for that.

**Senator BARNETT**—Put it this way: you are not suggesting that it would be less than that number, are you?

**Ms Prothero**—I am suggesting that it would be less than 758, yes.

**Senator BARNETT**—Well, we would like to know the reason for that.

**Ms Prothero**—Because some of the 300 that we are looking to recruit are to replace people who are leaving the detention centres and moving back into their normal roles. The way in which we have staffed our workforce to date in relation to immigration detention in a number of roles is to use what we call a ready reserve approach. This is to borrow staff from other parts of the network to train and use.

**Senator BARNETT**—Yes, we know that. What was that number for the 458 on 30 September last year—FTEs for irregular maritime arrivals? What has the increase been over the 12 months?

**Ms Prothero**—I cannot give it to you as at—

**Senator BARNETT**—30 June would be fine.

**Ms Prothero**—I am sorry, I do not have that information with me.

**Senator BARNETT**—All right—take it on notice. But you are not suggesting that number is decreasing?

**Ms Prothero**—No.

**Senator BARNETT**—You are suggesting that it will increase?

**Ms Prothero**—It will increase, but the increase will not be of the full size of the 300.

**Senator BARNETT**—You will have to take it on notice and provide me with your reasons to suggest that it would be less than the 458 plus the 300.

**Ms Prothero**—If I may, as at 31—

**Senator BARNETT**—Let us continue on—we have a lot of things to get through. You will have to take it on notice. We would like that response today, if you possibly could. I would like to know for 12 months ago, or thereabouts, the FTEs for irregular maritime arrivals. It is 458 as of 30 September, and I would like to know what the difference was.

**Ms Prothero**—Yes.

**Senator BARNETT**—And I would like it going back for the last two years.

**Ms Prothero**—We can get that.

**Senator BARNETT**—Secondly, with regard to this 300, we want to know what the cost of the 300 is. And you suggested that instead of it being 758 it will be a figure less than that—we would like to know the reasons why that would be less. We would like to know your estimation of the numbers, as to what that number will be if it is not 758 or of that order. And do you have figures for 30 June next year? What is in your budget for staff allocation for irregular maritime arrivals for 30 June 2011? Does anybody have that figure?

**Mr Correll**—The portfolio budget statements for 2010-2011 incorporate \$399.13 million under program 4.3 relating to irregular maritime arrivals. I would just emphasise that that will not be purely the staff component; there will be other administrative costs involved in that. We would need to take on notice the specific staffing component.

**Senator BARNETT**—Thank you. Let me go back: what is the number in your budget papers for staff as at 30 June next year—full-time equivalents for irregular maritime arrivals? How many? What is the number?

**Mr Correll**—I am not sure we have that to hand.

**Ms Prothero**—The portfolio budget statements do not disclose the number for just irregular maritime arrivals only. So there is outcome 4 in total, which is the outcome in which those arrivals are included. The full-time equivalent average is provided for the full year, so the average number that is reported is a different point at the start of the year and the end of the year. For the year, it would be 690 staff in total allocated to quarantined activities, which includes the irregular maritime arrivals plus others.

**Senator BARNETT**—We can get all of that out of the PBS. That is fine, and I thank you for that. I am asking you for the number for irregular maritime arrivals full-time equivalents as at 30 June next year. If you have to take that on notice and come back to us today, that would be fine.

**Mr Correll**—It is best that we take that on notice because there is a real problem here about comparing apples and oranges, I think.

**Senator BARNETT**—We want to compare apples with apples. That is what we are trying to do. If you go back a few years you are going to look at 30 September and then 30 June.

**Mr Metcalf**—If we can provide you with that today, we will.

**Senator BARNETT**—You are sitting here telling us that you have in the order of 300 extra. We want to know the cost that you have allocated to those 300 extra. What is the cost to the budget?

**Mr Correll**—The way the budget is set for irregular maritime arrivals is based on an initial estimate component which is incorporated in the portfolio budget statement. That is the figure of 399.13 I referred to. There is then a reconciliation process that runs through the course of the year that will then look at the actual numbers and costs being experienced. It is an extensive process of negotiation that occurs with the department of finance in the additional estimates time frame. That occurs between the November to February time frame. That is when we will settle the precise amount. At the moment the best answer we can give you to that question is that an overall figure of 399.13 has been provided for in the PBS document. Following those negotiations, that will be updated in the additional estimates stages.

**Senator BARNETT**—What you are saying is that right now you do not know the figure.

**Mr Correll**—No, that it is provided in the budget figures.

**Senator BARNETT**—That is fine. That is all we want to know. If you do not know you simply tell us.



**CHAIR**—I am sorry, Mr Correll, but you did say it is provided in the budget figures. Is that correct?

**Mr Correll**—Yes. The current provision is based on an estimate of the anticipated costs for the year and that is the figure of 399.13.

**Senator BARNETT**—But that does not answer the question. The question was the actual cost, and Mr Correll's answer was that he did not know.

**Senator CASH**—Is the department inflating salaries for vacant positions to attract staff to the department?

**Ms Prothero**—No, it is not. The department's average salary rate is around the median of the Public Service.

**Senator CASH**—Have the 33 new recruits—the 18 who started last week and the 15 who started this week—been given any additional benefits over and above what other staff in the same position would be provided in the department?

**Ms Prothero**—Absolutely not, other than if in their home agency they were paid at a higher rate, then we would match the higher rate, which is normal when you transfer staff across.

**Senator CASH**—Could you take on notice to provide the committee with a comparison of the full-time salary and benefits of workers involved in processing during the 2007-08 period, the 2009-10 period and the 33 people you have now recruited to the department? What additional staff training is being conducted to bring people into processing and detention roles?

**Ms Prothero**—We run the staff who are being recruited through the same training that we provide for our own staff when they move into these roles. The training depends very much on the role they are moving into and is generally followed by ongoing mentoring and support by experienced staff.

**Senator CASH**—What is the cost per person of this training?

**Ms Prothero**—I would have to take that on notice.

**Senator CASH**—How many staff are involved in the training of the additional recruits?

**Ms Prothero**—Again I would need to take that on notice.

**Senator CASH**—Could you also take on notice to provide to the committee a full list of staff diverted from the department to manage irregular maritime arrivals—so staff from other areas of the department who have been diverted to this particular section.

**Ms Prothero**—We can give you that as at a particular date, so perhaps 30 September would be the appropriate date.

**Senator CASH**—That would be greatly appreciated. I am going to briefly turn to the issue of contractors. How many contractors did DIAC engage in 2009-10?

**Ms Prothero**—Sorry. Do you mean non-ongoing staff?

**Senator CASH**—No, contractors. As in you contracted someone in. I do not know what term your department would use, but I mean where you have issued a contract with someone to come in and do some work.

**Mr Metcalfe**—In the annual report, we will obviously publish details of contracts entered into by the department. Some of those contracts are for goods, some are for services and some are for personnel.

**Senator CASH**—I will read out my entire question and perhaps it can be taken on notice.

**Mr Metcalfe**—I think you will find the answer in the annual report in a couple of weeks time.

**Senator CASH**—How many contractors did DIAC engage in 2009-10? What were those contracts for? Who received the contracts? At what cost? What procurement method was used in each case? What were the reasons for the selected method? If there were capital works contracts, where were those works performed and what was the nature of the work performed? I am happy for you to take that on notice.

**Mr Metcalfe**—That is a very big question, so we will take that on notice.

**Senator CASH**—Thank you very much. What I specifically want to address in relation to the contracts is: of all the contracts issued by the department for capital works in the 2009-10 period and to the current date, how many included confidentiality provisions?

**Mr Metcalfe**—We will take that on notice.

**Senator CASH**—Okay. Did any of them include confidentiality provisions?

**Mr Metcalfe**—My understanding is yes, but I will take that on notice and correct myself if I am wrong.

**Senator CASH**—Okay. Are you able to provide that information to us in the near future?

**Mr Metcalfe**—Not today, but we will endeavour to get it to you within the reporting period.

**Senator CASH**—Okay. Mr Metcalfe, do you have an understanding of what the confidentiality provisions in those contracts related to?

**Mr Metcalfe**—Because there could be a number of provisions in a number of contracts, we will have to take on notice whether there is a standard clause or whether there are specific clauses. I am not too sure.

**Senator CASH**—If there were specific confidentiality clauses, what is the procedure that the department would undertake in ensuring that that particular confidentiality clause was consistent with the procurement guidelines?

**Mr Metcalfe**—That would be our starting point. We would use a standard Commonwealth clause in accordance with the procurement guidelines, so that would be our normal approach.

**Senator CASH**—I will be placing a lot of these questions on notice, but is it standard practice to ask contractors to sign confidentiality agreements or other kinds of agreements that they not divulge the nature of the work that they are engaged in on behalf of the department?

**Mr Metcalfe**—I will take that on notice.

**Senator CASH**—Okay. Are you aware of any circumstances in which this has been done?

**Mr Metcalfe**—My memory is unreliable on these issues. I just think it would be safer if I did not speculate and took the question on notice.

**Senator CASH**—I personally think you may be avoiding the question, because I think that you would remember if a confidentiality agreement had been signed and the particular contractor had been asked not to divulge the nature of the work.

**Mr Metcalfe**—I resent that insinuation. I am sure you gave it with respect, but I would not avoid answering a question. I have taken it on notice.

**Senator CASH**—In the event that your answer is yes, would you also please take on notice whether this is standard practice for all contracts or just for certain types of contracts—for example, construction contracts. If so, how long has this been the common practice of the department?

**Mr Metcalfe**—I am happy to take it on notice.

**Senator CASH**—Is the department aware of confidentiality clauses being imposed by one of their head contractors on any subcontractors for works being undertaken for the department where such confidentiality was not a requirement for the department?

**Mr Metcalfe**—I have to take that on notice as well. I do not want to appear evasive because I am not. We are a big department with a budget of close to \$2 billion. Therefore, I clearly want to be accurate in any answer I give.

**Senator CASH**—That is fine. Could you take me through what the department's standard practice is in relation to confidentiality provisions in departmental capital works projects?

**Mr Metcalfe**—I do not have personal knowledge of that. It is not an issue I deal with.

**Mr Sheehan**—Generally in the tender procurement processes there are confidentiality arrangements put in place and they are in accordance with the Commonwealth procurement guidelines. Then, when the procurement is finalised, those confidentiality arrangements are put in place. From memory, it is a small number, but I do not have that information with me.

**Senator CASH**—This is what I want to get an understanding of: in relation to contracts the department enters into, but in particular in relation to contracts for capital works, what is the standard practice to include confidentiality and for what purpose?

**Mr Metcalfe**—I know where you are going with this. I assume it is in relation to the capital works for immigration detention facilities.

**Senator CASH**—Correct.

**Mr Metcalfe**—We will come to that issue again at outcome 4 and we will have the staff here who are more versed in the particular nature of those issues. We can flag with them that you may be asking some questions about that particular issue.

**Senator CASH**—That would be greatly appreciated. Mr Sheehan, what is the standard practice utilised by the department when entering into a contract and considering whether or not the contract will contain a confidentiality clause? I am assuming there is a standard practice.

**Mr Sheehan**—The standard practice is that there are minimal confidentiality arrangements in place unless they are subject to price. There can be conditions where there are confidentiality arrangements put in place. It depends on the particular contract.

**Senator CASH**—Let us talk about capital works contracts specifically. What is the practice of the department when entering into a capital works contract in relation to confidentiality agreements? What would the standard practice be?

**Mr Sheehan**—I do not have that information with me. It is probably best not to guess. I will take that on notice.

**Senator CASH**—Is there anybody here who is able to provide comment in relation to what the department does when it enters into a capital works contract?

**Mr Metcalfe**—Most of the capital works we undertake are in the area I just mentioned.

**Senator CASH**—Okay. So the officer in charge of any capital works contracts will be here in outcome 4?

**Mr Metcalfe**—Essentially what you are asking is a general question. We do not have large numbers of capital works; we have fairly limited numbers of capital works. With the forewarning that you have given us we will be able to assist you to the extent we can.

**Senator CASH**—I appreciate that.

**Mr Metcalfe**—However, because there are a number of contracts, there may be different clauses. We will obviously make a judgment as to whether we can answer on the spot or take issues on notice.

**Senator CASH**—I suppose one of my concerns is that there does not seem to be an understanding at the table currently of what the department's practice is in relation to capital works contracts, when entering into confidentiality agreements or contracts generally. I do not want to go away with the impression that the department does not have a standard practice or the people at the table do not understand the standard practice. So, please, for the record—

**Mr Sheehan**—The standard practice is in accordance with the Commonwealth Procurement Guidelines.

**Senator CASH**—These ones right here?

**Mr Sheehan**—That is right.

**Senator CASH**—As referred to in the ANAO report, the test to determine if a confidentiality provision should be utilised in a departmental contract?

**Mr Sheehan**—That is right.

**Senator CASH**—That is the standard practice. So I understand, because I do not want to misrepresent you, you are telling me that the standard practice of the department is the procurement guidelines, 'Guidance on confidentiality in procurement', as referred to in the ANAO report at appendix 4: *The Confidentiality Test*. That is the standard practice utilised by the department.

**Mr Metcalfe**—Yes. But, as I said earlier, the department would have literally hundreds if not thousands of contracts for the supply of all sorts of things. Your questions appear to be narrowing into capital works.

**Senator CASH**—They will be certainly when we get to outcome 4.

**Mr Metcalfe**—While the general proposition is that of course we comply with the procurement guidelines, there is provision for confidentiality agreements. There is a test to be applied there and if we do impose that then it would be in accordance with the guidelines.

**Senator CASH**—Just to be clear so that when we get to outcome 4 I am not reminded that I should have asked my questions to the department in this outcome—

**Mr Metcalfe**—We would never do that to you.

**Senator CASH**—I appreciate that. The standard practice that the department utilises is as outlined by Mr Sheehan. In relation to the capital works contracts that I am referring to, will you have a departmental officer here in outcome 4 to further elaborate on those practices in capital works contracts?

**Mr Metcalfe**—We will assist you as best we can at that stage.

**Senator CASH**—On that basis, I will put further general questions on notice. Can I quickly turn to redundancies within the department. Are you able to provide a statistic to date of the number of voluntary and involuntary redundancies in the department since 1 July 2010?

**Mr Metcalfe**—In the last three months or so?

**Senator CASH**—That is correct.

**Ms Prothero**—Since 1 July 2010 there have been four voluntary redundancies.

**Senator CASH**—Were there any involuntary redundancies?

**Ms Prothero**—There were no involuntary redundancies.

**Senator CASH**—Is that for the entire department?

**Ms Prothero**—That is in the entire department.

**Mr Metcalfe**—People love working for us!

**Senator CASH**—The four people who were voluntarily made redundant, can you tell me what parts of the department they came from?

**Ms Prothero**—I would have to take that on notice.

**Senator CASH**—Are you also able to provide the committee with a figure as to what their redundancy package was? You can take that on notice.

**Ms Prothero**—I am concerned about privacy in particular.

**Senator CASH**—Take it on notice.

**Mr Metcalfe**—We will endeavour to answer but in a way that does not disclose information about a particular person.

**Senator CASH**—Absolutely. Have you been able to attract any of the four people back to the department to assist with the current staffing crisis?

**Ms Prothero**—I could not answer specifically. That would certainly be against general practice. There are exclusions in employing people who have taken voluntary redundancies.

**Senator CASH**—Hence, why I am asking the question. Could you take it on notice to provide a specific answer in relation to those four people. Do you have the figures for voluntary and involuntary redundancies in the department on a financial year basis such as for 2009-10?

**Ms Prothero**—For 2009-10, there were 149 voluntary redundancies. Again, there were no involuntary redundancies.

**Senator CASH**—Of those 149, has the department been able to attract back any of those workers?

**Ms Prothero**—Again, I would have to take that specifically on notice.

**Senator CASH**—I would appreciate that. In terms of staffing overtime payments, what information does the department keep of the number of hours outside normal working hours that are actually worked by employees of the department?

**Ms Prothero**—It would be recorded both as flex time or, when specifically overtime, as overtime. Again, I do not have the analysis of that in front of me.

**Senator CASH**—If you would be able to take that on notice, it would be greatly appreciated. How do you verify that overtime has actually been worked?

**Ms Prothero**—Overtime is certified by their immediate supervisor before it goes through for payment.

**Senator CASH**—If you could take this on notice: in the financial year of 2009-10, how many hours of overtime did the department actually pay out on? And then, from 1 July 2010, to date, how many hours of overtime has the department paid out on? Would you also be kind enough to provide on notice a breakdown by area, in the department, of where the overtime hours are actually worked and allocated, against that, the amount of overtime paid? I will certainly be providing all of these in writing for you.

**Ms Prothero**—Thank you.

**Senator CASH**—Absolutely.

**CHAIR**—Perhaps you should provide us with how much it is going to cost to actually do that work!

**Senator CASH**—Just very briefly, in relation to procedural change, has the department made any changes to its operations since 1 July 2010 and, if so, what are they?

**Mr Metcalfe**—I wonder if you could clarify a little bit for me, Senator. We have lots of procedures and they change quite often.

**Senator CASH**—Any major procedural changes.

**Mr Metcalfe**—In the way that we do our work; in the regulations that we administer?

**Senator CASH**—Yes. In the way that you do your work.

**Mr Metcalfe**—None spring to mind, but my colleagues will assist me. I mentioned in my opening statement that the department is going through what we are calling a major transformation. One of the significant changes that has occurred has been the establishment of senior executive officers being appointed as what we call global managers. For example, our state director in Western Australia is responsible not only for our overall activities in the state but also has a global worldwide responsibility for temporary visas. Our state director in Queensland has global responsibility for skilled visas, for example. That has been progressively introduced from the beginning of this year until quite recently, and it certainly is a major procedural change. As I said, we believe it is bringing some real benefits in the way that we are progressing things. Other aspects of the transformation that I referred to, such as the organisational structural changes, the identification of four key areas in the department, a policy group, a client services group, a business services group and an immigration detention services group, are progressively being implemented as well. Within that general comment there is, of course, a huge amount of detail; so if there is anything specific, I am very happy to go to that, Senator.

**Senator CASH**—I appreciate that. Just one final question, for the time being: has the department commenced any legal actions against any party from July 2009 to date? If so, are you able to provide relevant particulars?

**Mr Metcalfe**—I will ask the chief lawyer to join us, now.

**Senator CASH**—Thank you very much.

**Mr Metcalfe**—I assume you are talking about civil or administrative legal action, not prosecutions?

**Senator CASH**—Yes, I am.

**Mr Metcalfe**—Prosecutions, of course, are commenced by the Australian Federal Police. There may have been a small number of appeals lodged by the minister in relation to tribunal decisions, where a particular point of law was to be established, but beyond that I will see if the chief lawyer can assist. She is just coming to the table.

**Senator CASH**—Thank you very much.

**Ms Davis**—Could I have the question repeated?

**Senator CASH**—Has the department commenced any legal actions? I am talking about, as Mr Metcalfe rightly pointed, civil and administrative action against any party since July 2009, to date. If it has, would you be kind enough to please provide details. I am happy for you to take this on notice if the details are quite extensive.

**Ms Davis**—Yes, we will have to take that on notice. So it is any party?

**Senator CASH**—Any party. Are you aware, for the purposes of now, as to whether or not the answer is yes?

**Ms Davis**—The department, from time to time, does initiate legal proceedings in the federal courts relating to the decisions of tribunals, in particular the MRT, RRT or AAT, particularly where there is a policy issue and we believe that tribunal has committed a legal error. It would be minimal—just over one per cent in a given year.

**Senator CASH**—You will be providing me with particulars of any actions the department has commenced in the relevant time period?

**Mr Metcalfe**—We are taking that on notice. I am aware of at least one action involving an appeal from the AAT in relation to a criminal deportation decision taken by the tribunal. We will provide you with information on that.

**Senator CASH**—Madam Chair, that concludes my questions for the department.

**Senator BARNETT**—I would like to follow up with the Office of the MARA. You were going to advise the status of the outcome with the former CEO.

**Mr Metcalfe**—That probably takes us into outcome 1, which is where that issue was handled. We are happy to answer that in outcome 1 if we are moving to that.

**Senator BARNETT**—Are we on outcome 1 yet?

**CHAIR**—We will be now. Let us move on to that.

**Mr Metcalfe**—I will just let the committee know that for a few years Mr Vardos has been division head. Mr Vardos is now providing direct support to me on some issues, and Mr Kukoc is now the head of the migration division and will be happy to assist, together with Mr Hughes, the deputy secretary.

[11.51 am]

**CHAIR**—Let us go to outcome 1.

**Senator BARNETT**—Did you hear the question, Mr Kukoc?

**Mr Kukoc**—No. Could I ask you to repeat it.

**Senator BARNETT**—We had some discussions with the Office of the MARA earlier. I was asking about the settlement with the former CEO and for a status report on that settlement.

**Mr Kukoc**—We made some progress in terms of exchanges of correspondence and information with MIA and their CEO in the lead-up to the election. However, those negotiations have been put on hold since the election was called and during the caretaker period. I intend to recommence the negotiations as soon as possible. We have, as I said, had some exchange of information between us in terms of our claim and we are now taking this into consideration. We will be recommencing negotiations very soon.

The issues are still around the cost of the community perception survey, the cost of the fidelity fund survey and the cost of the bonus paid to the CEO. I can say that the amount is not large; however, there are important issues of principle for us in pursuing this case on behalf of the Commonwealth and the Australian taxpayer. There are important issues of principle as being a model litigant and also applying due care to taxpayers' money.

Of course, my intention is to negotiate and try to settle this out of court. I would describe the relationship with the MIA as on the rise. We have had some very good, constructive contacts, especially during our last liaison meeting with the MIA. I hope to settle this matter outside court, but litigation is always an option for us.



**Senator BARNETT**—Thanks for that feedback. This is what was happening in May. You were undertaking negotiation/mediation at the time. We are now in October and it seems to be dragging on.

**Mr Kukoc**—It was a very lengthy caretaker period, as you would appreciate, Senator. We put things on hold during the caretaker period.

**Senator ABETZ**—Blame Oakeshott!

**Senator BARNETT**—Blame Oakeshott? Ah, yes. It is like Mr Oakeshott's speech, which took a very long time! We will monitor that. Obviously, it is under active consideration but it seems to be taking an awfully long time. The matters are important, and you have not come to a settlement as yet, so we will monitor that. Thank you.

**Mr Metcalfe**—If I could just give an update to Senator Abetz. Earlier, you asked me about King Island. We are tracking down some correspondence. We think that it actually related to an approach about the settlement of refugees on King Island, so people who would come under the refugee program to assist with local outcome needs—

**Senator ABETZ**—Is that outcome 4?

**Mr Metcalfe**—Outcome 5: settlement of refugees. We are trying to locate the correspondence. To summarise, we basically said: 'Look, happy to help. You might like to talk with the local migrant resource centre that has some information,' which would have been in Launceston, I would imagine. But we will be happy to talk further at outcome 5.

**Senator ABETZ**—Thank you very much. If I may ask some questions about sporting visas—and when I talk about sporting visas I do not mean all sporting visas, I mean the sport of boxing. What checks are made by the department to satisfy itself that people coming out on sporting visas for boxing are only going to be engaged in registered fights and legal tournaments for which permits have been legally granted? Do you do any checking in that regard at all?

**Mr Kukoc**—Senator, I will probably need to take this question on notice because I am not across the detail of the process we go through. But this visa is part of our 400 series visas that are subject to the sponsorship requirements and, as you know, we have introduced the new legislation—the workers protection act—and a range of regulatory changes to this series of visas, the 400 series, which has strengthened the sponsorship obligations in this category. This is where a sponsor undertakes a range of obligations. As far as I understand, one of the obligations is that the visa applicant, the visa holder, is engaged in the activity at the time of sponsorship nomination and a visa application was claimed to be the activity for which a visa was asked. I would like to take this question on notice and provide you with exactly the process we go through and what matters we take into account. But, as I said, there is now a much better integrity framework for all 400 series visas through the sponsorship changes that were done in 2009.

**Senator ABETZ**—Is the department aware of significant industry concerns that, in fact, the integrity of the importing of boxers, especially from the Philippines, is not as it might be? Have you received any complaints or concerns?

**Mr Kukoc**—It certainly has not come to me.

**Senator ABETZ**—It has not?

**Mr Kukoc**—If I could, again, provide an answer on notice, in terms of what complaints or issues have been raised with us by relevant people in the industry and by stakeholders in respect of that visa. But it has not come to me.

**Senator ABETZ**—For these visas, are references required?

**Mr Kukoc**—As I said, there is a sponsorship requirement. It is up to the sponsor to provide all available evidence to them that that person will be engaging in activities, in Australia, that they claim to be the activities for which they are sponsoring them. But for more than that I would need to take this on notice.

**Senator ABETZ**—Is there a Mr Borg, B-o-r-g, in your department? Is that a name that rings a bell?

**Mr Metcalfe**—An officer's name?

**Senator ABETZ**—Yes, an officer's name.

**Mr Metcalfe**—It does not ring a bell, but we have a thousand people.

**Senator ABETZ**—I hasten to add, because I do not like putting people's names on the record gratuitously, there is nothing untoward in relation to Mr Borg's activities in any way, shape or form in relation to the questions I am about to ask. I understand that the Department of Immigration and Citizenship may have received a letter, for the attention of Mr Borg, in recent times from the manager, regulation and executive sport, New South Wales Sport and Recreation, one Stefan Couani. I am not sure of the date of this correspondence. The one which I have in front of me does not have a date on it, but it asserts that a Mr Bohol 'enjoys a good reputation among members of the boxing industry in Australia and internationally'. That is a state department or somebody vouching for somebody's integrity clothed with the authority of a state department, but there are many allegations against—I have just learned this in recent times, that where boxers are kept together it is called a stable, as in like horses—the Bohol stable. It has had a number of complaints made against it for not paying Filipino boxers properly, inappropriate housing, engaging them in illegal fights. I hasten to add and I stress yet again these are only allegations, but from what I have read and been provided with, they are very, very serious allegations. And while I accept that the licensing and regulation of fights et cetera falls with the New South Wales government—I think the New South Wales Minister for Sport, Mr Green, might have some questions to answer—for the purpose of today's inquiry, I am just trying to check up as to how much the department vets these applications and, once the visa has been granted, whether any follow-up work is undertaken.

**Mr Metcalfe**—Those are obviously very serious issues that you raise. It does not appear to be an issue that has come to the attention very senior staff in Canberra but, given the way we are organised, matters of an operational nature like that would usually be handled in a state or territory office of the department. We are certainly able to assist about the general policy settings but, in relation to the detail of the complaint and/or the processing, we will have to check with our people in relation to that. We will follow that up.

**Senator ABETZ**—To assist you, I understand a complaint was received by the department on 13 October, so very recently, by a Mr Ryan in the New South Wales department. He simply

confirmed receipt of a letter of complaint which set out 16 or more separate allegations against the Bohol stable: people being kept in Australia against their will, being used for fights that they should not be involved in et cetera. I stress again: only allegations, cannot prove it at this stage, but very concerning, especially when there are articles in *Inside Sports* which is an online sporting medium which has a heading 'Australian boxing authorities allow callous exploitation of some Filipino boxers'. That was posted on 15 August 2010 and there are some quite concerning allegations made. That has then been followed up by, as I understand it, a local parish priest who looks after some of the Filipino community. He has expressed some real concern about their treatment, such as passports and tickets, even when requested, being prevented from being given back to the boxers. That is just one out of the 16 very serious allegations that have been committed to writing. But even if one of the 16 allegations is true then it is a matter, I would have thought, for immigration to possibly check up on.

**Mr Metcalfe**—Absolutely, those are very concerning allegations. We will check to see what we know of it and if we can say anything today, we will. Clearly we will take the matter on notice. It would appear, if correct, that there are issues not only for my department but possibly also others as well in terms of breaches of the law. Rather than go into any more detail, we will follow it up immediately. If we can confirm that we have received the information we are following up we will do that today and we will come back in a more detailed way. Certainly if the allegations are correct, breaches of sponsorship obligations or other aspects of both immigration law and other law would appear to be quite possible.

**Mr Kukoc**—Last year we strengthened the sponsorship obligations in respect of the 400 series so we now have the ability to share the information with other authorities and we have more powers. If the matter was reported to the department it may well be under investigation.

**Senator ABETZ**—If it is under investigation then I accept that not much can be told to this committee at this stage. If you could confirm to us whether the Mr Borg that I refer to did receive a letter from a Stefan Kuwani purporting to be on behalf of New South Wales Sport and Recreation then that would be very helpful. It would also be helpful to get the date on which it was received. Finally, just as a matter of protocol, does the Department of Immigration and Citizenship allow officers to use departmental titles to write letters of reference or support for people?

**Mr Metcalfe**—It would depend on the nature of the reference. Clearly it is allowed in relation to an employment reference for a person who had been an employee. Normally if a personal reference was being provided my expectation would be that it would not be done on departmental letterhead or that it would not be done claiming—

**Senator ABETZ**—It would not be done claiming the authority of the departmental position?

**Mr Metcalfe**—Yes.

**Senator ABETZ**—That is what concerns me about this alleged correspondence from the Boxing Authority of New South Wales. It was signed off by the Manager, Regulation and Executive Support, New South Wales Sport and Recreation. I would have thought that what you just outlined, Mr Metcalfe, is the standard protocol in public service departments.

**Mr Metcalfe**—I cannot speak for that particular agency or the circumstances of their connection with the boxing federation. Recently I was asked to provide a reference to someone I know well but for a reason outside my role. The actual request for the reference was addressed to me in my role and I made very sure that I responded on plain paper with no reference to my role. That is a standard protocol. But I cannot comment on the circumstances there. I am advised that we have no less than four Mr Borgs in the department.

**Senator ABETZ**—It is Mr D. Borg—if the initial ‘D’ assists.

**Mr Metcalfe**—I think one of them might be a D. Borg. We will check through the course of the day on the issues. What I would expect to hopefully be able to confirm today is whether we have received such a matter and whether it is being dealt with. We may take some more of the detail on notice and try and provide a more detailed response.

**Senator ABETZ**—Just to clarify, the letter from Stefan Kuwani was directed to Mr Borg but the complaint has been received by Mr Mark Ryan. If you could let the secretariat know before you provide us with a response because, if at all possible, I would like to be here when that is provided. Finally, in getting evidence together as to whether a visa ought be granted or not granted, one would assume that if a state department is willing to vouch for somebody’s good reputation in Australia and internationally that would have some weight attached to it, one would imagine?

**Mr Metcalfe**—Yes, Senator.

**Senator BARNETT**—I will be as brief as I can. I want to express some concerns about Steve Ciobo, the federal member for Moncrieff, in regard to the concerns he and his community have regarding the Southport office—I want to ask some questions about that. I have been advised that as at September 2009 the department’s Southport office employed 33 full-time staff. Seven were based at the Gold Coast international airport; 26 were at the Southport office. This is obviously a concern to the local community. Mr Ciobo is being vigorous in his advocacy for and on behalf of his local community and should be congratulated for that. In respect to the department’s office at Southport, what funds were appropriated to this office for the 2009-10 financial year? And have any funds been appropriated beyond the 2009-10 financial year?

**Mr Metcalfe**—Senator, I will get Ms Hand, the relevant deputy secretary to respond. I would just make a brief contextual comment. I am personally very familiar with the Southport office in that I was actually a fairly junior officer in Brisbane, in the early eighties, when it was decided to establish the Southport office, and I remember the representations of the then member for the area, Peter White, and, in particular, his electorate secretary whose name, I recall, is Mary Hartstein, who advocated. That was at a time, of course, almost 30 years ago, when the department’s business model was very different.

**Senator BARNETT**—Mr Metcalfe, do you mind me interrupting? We are really tight for time today and Senator Cash has a lot of questions, I know, on outcome 1.

**Mr Metcalfe**—I am sorry, Senator.

**Senator BARNETT**—I do appreciate the background and the context and I know there is an understanding and a principle that you are trying to follow through, but I just need to get through these as swiftly as possible.

**Mr Metcalfe**—Sure. I will conclude very quickly then by simply saying that the way things were done when the office was established 30 years ago were very different to the way we interact with our clients now—far more interaction across the internet and through other methods. But I will ask Ms Hand to provide some details.

**Senator BARNETT**—Thank you.

**Ms Hand**—As part of consolidating many of our visa and citizenship caseloads around Australia—in the interests of better client service through more efficient and lower cost channels, like the internet and service centres—the decision was made, and announced in March this year, that we are going to close.

**Senator BARNETT**—We are aware of that, Ms Hand. I appreciate that. I just want to go to the detail, and if you could assist me with the detail and answer the questions I have asked, that would be good. Do you need me to ask it again or do you have the questions there?

**Ms Hand**—I have the questions here. Just to correct, there are currently 19 staff at the Southport office. In 2009, Southport served an average of 87 clients daily—a very small number. With the decision to consolidate caseloads that number is reducing as we speak. Typically, those 87 clients daily consisted of students, visitors, backpackers and permanent residents seeking resident return visas or applying for Australian citizenship. The top five services in the Southport office, in the last financial year, were visa evidencing, reception and general inquiries, citizenship interview tests, student inquiries and resident return visas. In terms of visa evidencing, we currently have a strategy in place to, over time, where we can, eliminate the evidencing of physical visa labels, because people can access our VEVO service that allows you to verify a client's or your own visa status. So that number is reducing around the country as we speak. In terms of citizenship and visa processing that has been done in the Southport office, that is also reducing as a result of the consolidation of caseloads. Hence, it is no longer efficient—

**Senator BARNETT**—Ms Hand, I am going to ask the questions. I appreciate your comments, but I need to ask the questions and you need to answer the questions that I am asking. That is the role of Senate estimates. So let me have another shot at it.

**CHAIR**—Senator Barnett, I think Ms Hand is trying to do that by providing the answer in a context, basically. If you give her the opportunity, she will get to what you want, I think.

**Senator BARNETT**—Indeed. We are tight on time, so I am going to be specific. Let's give it a shot.

**Ms Hand**—What funds were appropriated to this office for the 2009-10 financial year?

**Ms Hand**—In terms of lease funds—and that is the only figure I have here at the moment—\$266,000 per annum to lease the office. Now, obviously, that does not include any of the operating costs.

**Senator BARNETT**—What about the staff costs?

**Ms Hand**—I do not have those here, but we can provide those.

**Senator BARNETT**—Take it on notice; thank you. Have funds been appropriate beyond the 2009-10 year?

**Ms Hand**—We have decided to close the office from July next year. There will be no funds to run that office because it will be closed. I want to stress, though, that all staff will remain with us. If they do not wish to remain with us, we will help them to get a job elsewhere. The vast majority are already in the process of finding jobs—in fact, more quickly than we had anticipated.

**Senator BARNETT**—You mentioned 19 staff. Are they the full-time equivalents, and can you give me a breakdown as to where they are—the airport or the Southport office?

**Ms Hand**—The 19 staff I referred to are at the Southport office. We are not closing any of our airport operations as part of this decision. I believe the majority are full-time equivalents, but I will have to take that on notice and confirm that.

**Senator BARNETT**—Can you take on notice how many from the airport, unless you know that now?

**Ms Hand**—Someone will be able to get that for us.

**Senator BARNETT**—That is fine. Between 1 July 2009 and 30 June 2010, how many clients were seen and counter inquiries made at this office? I think you have answered that in part.

**Ms Hand**—Eighty-seven daily.

**Senator BARNETT**—You mentioned the citizenship test. Can you advise how many were undertaken, how many visa applications were received and how many citizenship applications were received through the office for that financial year.

**Ms Hand**—I can give you the percentages and I will have to come back to you with the numbers. Of the top five services—citizenship tests and interviews were 15 per cent of those top five services; for visa evidencing, as I said, 52 per cent; and general reception and general inquiries, 27 per cent; 13 per cent for student inquiries; and 12 per cent for resident return visas.

**Senator BARNETT**—All right. That is all I have and I do thank you for your feedback.

**CHAIR**—Senator Cash, questions from you.

**Senator CASH**—I would like to turn to student visas. In terms of the number of students currently in Australia on student visas, what is the breakdown of those students on the following visa subclasses—570, 571, 572, 573, 574, 575 and 576?

**Mr Metcalfe**—I will be very disappointed if we do not have the answer straight away!

**Senator CASH**—I also ask: how many students are currently in Australia on skilled graduate subclass 485 visas?

**Mr Hughes**—As a starting point, Senator, as at 30 June 2010 there were 382,000 people on student visas in Australia. I am not sure whether my colleague has that breakdown or whether we would need to take that on notice.

**Mr Kukoc**—I should have that information somewhere in my statistics.

**Senator CASH**—Thank you. Mr Hughes, does that figure of 382,000 include students currently on subclass 485 visas or is that merely in relation to the student visa breakdowns?

**Mr Kukoc**—It is only in relation to student visas; it does not include 485s.

**Senator CASH**—Do we have a separate figure for the 485 visas?

**Mr Kukoc**—We should have.

**Senator CASH**—I will continue to read out my questions so you can understand the types of statistics that I am looking for. How many students are on bridging visas awaiting the determination of a visa under the General Skilled Migration program or Employer Nomination Scheme? How many applications for a 485 visa or a general skilled migration visa have been lodged but were undecided as at 8 February 2010?

**Mr Kukoc**—In relation to your first question on the stock of student visa holders in the country, broken down by visa, I should have that statistic but cannot find it immediately. We can take it on notice.

**Senator CASH**—That is fine. Take that one on notice or provide the information later on today.

**Mr Kukoc**—We do have student visa grants by student visa category available. For example, in 2009-10 there were: subclass 570 independent ELICOS, 35,261 grants; subclass 571 schools, 12,462 grants; subclass 572 vocational education, 71,942 grants; subclass 573 higher education, 118,541 grants; subclass 574 postgraduate research, 9,301 grants; subclass 571 non-award, 18,140 grants; and subclass 576 AusAID or Defence sponsored, 4,181 grants. There has been an overall decline in visa grants by around 15 per cent in 2009-10 compared to 2008-09.

**Senator CASH**—I will get you to table the information you have referred to so I can see it. Do you have information on students currently in Australia on skilled graduate subclass 485 visas?

**Mr Kukoc**—We have 25,230 subclass 485 visas in Australia as at 31 August 2010.

**Senator CASH**—How many are on bridging visas awaiting the determination of a visa under the GSM or ENS program?

**Mr Kukoc**—I do not have that information with me; I will take it on notice.

**Senator CASH**—How many applications for a subclass 485 visa or GSM visa had been lodged but were undecided as at 8 February 2010?

**Mr Kukoc**—I will take that on notice.

**Senator CASH**—Are you able to get that information?

**Mr Kukoc**—Yes, of course.

**Senator CASH**—Are you able to get that today?

**Mr Kukoc**—Yes.

**Senator CASH**—From that figure, how many of those people would have qualified under the old skills occupation list if the new regulations applied to all applications which were lodged after 8 February 2010 rather than applying them to all applications lodged but undecided prior to 8 February 2010. That is what I am looking for in that particular statistic. What I am trying to get a feel for is how the transitional arrangements are going to be working.

**Mr Kukoc**—I can give you an overview of how the transitional arrangements will work.

**Senator CASH**—I appreciate that. I will tell you what I might do; I will be more specific with my questions. That is the information I am looking for there. Of the international students currently on the subclass 485 visas, how many are awaiting resolution of their application for permanent residency, general skilled migration or ENS visa?

**Mr Kukoc**—I do have some statistics if you would not mind holding on for a second.

**Senator CASH**—I can see that there are people assisting you so I might run through a few other questions just to facilitate the process. What is the average processing time for the determination of each these visa applications? What countries are these students from and what is the proportion by nationality? How many applications for subclass 485 visas are currently pending? Did you not anticipate questions on this particular area?

**Mr Kukoc**—They are detailed questions going into the statistics. As I said, I am trying to find the relevant brief.

**CHAIR**—Would it be easier if you provide the questions and then over the lunch period Mr Kukoc could provide the answers?

**Mr Kukoc**—I can come back with the answers.

**Senator CASH**—I am happy to do that if that facilitates obtaining the answers.

**Mr Metcalfe**—That would certainly help, but some of the precision about the question, such as how many people, which post and which visa category, we will have to run reports on that, so we will not have that to hand.

**Senator CASH**—If I could have the general statistical information, that would be greatly appreciated. Would you like me to start from the top again and run through so we have an idea?

**Mr Metcalfe**—Yes, and if you have them written down, that would be very helpful.

**Senator CASH**—Are you happy for me to hand it over. Does that make it easy so we can facilitate obtaining the answers?

**CHAIR**—If it is in a form you are happy to hand over, that would be good. Then people can come back and give you the answers first thing after lunch.

**Senator CASH**—That would be greatly appreciated. I do have number of other questions on visas generally.

**CHAIR**—I am happy to break for lunch now.



**Senator CASH**—We will break for lunch. I will hand these over and if the information could be provided after the lunch break to facilitate us moving on to another outcome that would be greatly appreciated.

**Proceedings suspended from 12.25 pm to 1.36 pm**

**CHAIR**—Let us formally reconvene our public hearing of the Senate Legal and Constitutional Affairs Legislation Committee on supplementary estimates. Mr Metcalfe, I hear you have some answers to questions.

**Mr Metcalfe**—We can provide some answers to the questions that Senator Cash tabled before lunch. We have some advice in relation to the staff recruitment from other agencies and who I wrote letters of request to. We can answer something on that. Senator Abetz, we have some information in relation to the issue you raised about boxes as well. Chair, perhaps if we work through in that order, would that assist the committee?

**CHAIR**—That sounds good.

**Ms Prothero**—I will start in relation to the first question, which was which agencies were the letters of request sent to. Seventeen letters were sent: one to the Department of Resources, Energy and Tourism; the Department of Agriculture, Fisheries and Forestry; the Department of Broadband, Communications and the Digital Economy—

**Senator ABETZ**—Do we have a list that could be provided rather than reading out the long list?

**Mr Metcalfe**—We only have it on a BlackBerry, I think.

**Ms Prothero**—The Department of Defence; Department of Climate Change and Energy Efficiency; the Australian Customs and Border Protection Service; the Department of Education, Employment and Workplace Relations; the Department of Families, Housing, Community Services and Indigenous Affairs; the Department of Foreign Affairs and Trade; the Department of Health and Ageing; the Department of Human Services; Centrelink; Medicare Australia; the Child Support Agency; the Department of Infrastructure, Transport, Regional Development and Local Government; the Department of Innovation, Industry, Science and Research; and the Department of the Environment, Water, Heritage and the Arts.

In relation to the number of staff who have started with us from those agencies I did make an error in my response, I said 18 started last week and 15 this week. The correct answer is 18 started last week and 13 started this week. In summary that is 31 who started. Ten were from the Department of Defence; seven were from the Department of Education, Employment and Workplace Relations; four from Centrelink; four from the Department of Families, Housing, Community Services and Indigenous Affairs; one from the Department of Human Services; one from the Commonwealth Rehabilitation Service as part of DHS; one from the Department of Broadband, Communications and the Digital Economy; two from Australian Customs and Border Protection Service; and one from the Department of Sustainability, Environment, Water, Population and Communities.

**Mr Kukoc**—I am trying my best to collect all the information on the 22 questions that you tabled just before the break. I may still ask you to take some of the questions on notice if they were really detailed questions.

## Question 1:

What is the number of students currently on Australian student visas? What is the breakdown between those students between the following visa sub classes—570, 571, 572, 573, 574, 575, 576?

As at June 2010 we had 385,000 students in the country, but note that this number varies significantly. It is seasonally affected, depending on when they arrive and when some of them would go on holidays overseas. It varies between 385,000 and 400,000-odd. As of June 2010 we had 385,000.

In terms of the breakdown of those students between the visa sub classes I would like to take this question on notice. We could not get the information. I do not have it in my folder. Generally higher education is the highest number, vocational education is second and then ELICOS schools with small numbers. We will get that breakdown to you as it relates to the stock of students in the country.

## Question 2:

How many students are currently in Australia on Skilled-Graduate (subclass 485) visa?

At the moment we have 25,230 485 visa holders in Australia.

## Question 3:

How many are on bridging visas awaiting the determination of a visa under the GSM or ENS program?

Under the GSM we had 49,405 and under the employer sponsored we had 18,751.

## Question 4:

How many applications for a 485 visa or general skilled migration visa had been lodged but undecided by 8 February 2010?

We have 34,338 485s and GSM as at 8 February the pipeline was 148,711. Of that onshore were 41,000. Note that this pipeline has significantly reduced somewhat from 8 February. It is now around 135,000 or 136,000.

## Question 5:

How many of those would have qualified under the old SOL if the new regulations applied to all applications which were *lodged* after 8 February 2010, rather than applying it to all applications *lodged but undecided* prior to 8 February?

Note, Senator, that all of these cases are actually protected; they are part of the transitional rules. So all applicants or holders of 485 were all applicants on GSM so, on 8 February 2010, were subject to grandfathering, which means that they can use the old SOL and they can use MODL as well.

**Senator CASH**—And that is set out in the graduate provisions, is it?

**Mr Kukoc**—Yes. Question 6:

How many international students currently on Skilled-Graduate (subclass 485) visas are awaiting resolution of their application for permanent residency-General Skilled Migration (GSM) or ENS visa?

For general skilled migration, I mentioned that number—that was 49,405. For employer sponsorship, I do not have the exact number, but very few students tend to apply for employer

sponsorship, and that has been the case until recently. We hope that may change in future. For example, in 2009-10, only 775 former students applied for employer sponsorship.

**Senator CASH**—Sorry, what was that number?

**Mr Kukoc**—Only 775 former students applied for employer sponsorship in 2009-10—but that number may increase in the future as students find an alternative employer sponsorship pathway.

Question 7:

What is the average processing time for the determination of each of these visa applications?

Our standard processing times are on our website. I would need to take this question on notice in terms of the average processing time. I am not able to respond to that, unless someone from client services can, but I would rather take this question on notice and you will get average processing times for each of these visa applications.

Question 8:

From what countries are these students from and what is the proportion by nationality?

I have that as well. The top nationalities by applications on hand as at the end of August 2010 for GSM are India with 33,430, or 24 per cent of the total; the United Kingdom with 14,170, or 10 per cent of the total; and the People's Republic of China with 13,700, or 10 per cent of the total. There are then lower numbers such as South Africa with 7,110, or five per cent, and Sri Lanka with 6,600, or four to five per cent.

**Senator CASH**—Are you able to provide that information on notice or table the information?

**Mr Kukoc**—Yes.

**Senator CASH**—Thank you.

**Mr Kukoc**—You asked the same for the 485 subclass. Again, the top five countries are India, with 13,140; China, with 4,830; Nepal, with 1,950; the Republic of Korea, with 910; and then lower numbers for other countries.

**Senator CASH**—Thank you very much.

**Mr Kukoc**—Question 9:

How many applications are currently pending for sub class 485 visas?

There are 37,470, and they include both primary and secondary applicants. Question 10:

How many of those whose application are pending are now on bridging visas awaiting the outcomes of their application?

By a matter of law they are all on bridging visas. So all of those who have applied for this subclass are on bridging visas because their status has to be regulated.

Question 11:

How many sub-class 485 visas are due to expire by the end of 2010, June 30 2011, December 31, 2012?

I would like to take that question on notice if you do not mind.

**Senator CASH**—Thank you.

**Mr Kukoc**—Question 12:

What is the English language requirement for attaining a sub-class 485 visa and how does it compare to the English language requirements for accessing a student visa?

For a student visa, depending on the education sector and depending on the country, it can vary but it is usually IELTS 5. For a 485 the requirement is IELTS 6.

**Senator CASH**—In terms of the English language requirement, is that affected by the transitional arrangements?

**Mr Kukoc**—No, it is not.

**Senator CASH**—Why is that? Why is it not affected? Are there any people who are here who would have actually undertaken an English language test where the barrier was not as high?

**Mr Kukoc**—The reforms that were implemented on 8 February did not affect the IELTS level, so there are no transitional arrangements. The IELTS level for a 485 in general skilled migration before that was increased from 5 to 6, I think, but the reforms announced on 8 February did not affect the—

**Senator CASH**—Affect the English?

**Mr Kukoc**—Yes. Question 13:

How many onshore applications for student visas were made in the 2009/10 financial year by sub-class? What was the refusal rate for applications made in that year for each sub class? How many visas were granted? In which sub-classes? How does this compare to 2007-08, 2008-09?

Our overall application numbers in 2009-10 for student visas were 292,874. Of this, onshore applications were at 116,832 and offshore 176,042. The rest of the questions I will need to take on notice. As I mentioned in my earlier statement, there has been a general reduction in applications of around 19 per cent compared to the last year but, at the same time, there has been an increase in onshore applications for student visas by 20 per cent, and a larger decline offshore, I think, of 35 or 36 per cent, compared to the last year, which indicates that many students onshore are actually changing courses or enrolling in other courses.

**Senator CASH**—Thank you.

**Mr Kukoc**—Question 14:

How many onshore applications for student visas have been made by failed applicants for 485 sub-class visas in 2009/10?

I would like to take this question on notice as well. I do not have this information in my folder.

Question 15:

What was the major reason for failing to be granted a sub-class 485 visa? How does this compare with 2007-08, 2008-09? What is the reason for this difference (if there is one)?

There is not much difference. The three major criteria that you have to meet if you are an applicant for a 485 are: you have to meet the English language requirement, you have to have the positive skills assessment and you need to have an Australian study requirement—you

need to have studied in Australia for at least two years. If you do not meet of these three criteria you will fail the 485 test.

**Senator CASH**—But you are then able to apply for a student visa?

**Mr Kukoc**—You can apply for a student visa under a different set of criteria, of course.

**Senator CASH**—And you will provide us with that information in terms of those who failed the 485 and then applied for a student visa?

**Mr Kukoc**—Yes. Question 16:

How many offshore applications for student visas were made in the 2009/10 financial year?

I have got information here in my folder. Offshore applications, I think I mentioned, were 176,042.

**Senator CASH**—Yes, thank you.

**Mr Kukoc**—Question 17:

What was the refusal rate for applications made in that year? How many visas were granted? In which sub-classes? How does this compare to 2007-08 and 2008-09?

I do not have all the information with me, but our grant rate is pretty high. It has dropped somewhat in 2009-10. Our grant rate was over 81 per cent, and in 2008-09 the grant rate was 85 per cent—yes, in 2009-10 our grant rate was 85.97 per cent and in 2008-09 it was over 85 per cent. It has dropped somewhat to slightly above 81 per cent, but I will provide a detailed answer to that question on notice.

**Senator CASH**—Thank you.

**Mr Kukoc**—Question 18:

How many students reported attacks against them to the police, by state and nationality? What was the nature of the attacks?

We do not have access to that information. That is a matter for the state police. There are legal impediments to them sharing that information with us.

Question 19:

How many international students have died whilst studying in Australia? What was the cause of the death by State of residence?

Again, we do not collect that information. Unless people bring this to our attention, we do not normally collect that information.

**Senator CASH**—What would happen if a person died whilst here on a student visa and, according to you, the student visa had lapsed or the person had overstayed their visa? Do you make any inquiries as to the whereabouts of that person?

**Mr Kukoc**—We do not normally follow up every student visa in terms of when the student visa expires and whether the person has departed Australia. We do have a general compliance risk management approach in terms of monitoring, visiting and investigation. We do not do that on a case-by-case basis.

**Senator CASH**—Can you be sure at any one time how many students are in Australia on expired student visas and are therefore unlawful? How do you do that?

**Mr Metcalfe**—Essentially the department undertakes a reconciliation process on a regular basis of people who have entered Australia and people who have left by the due date. That includes the various temporary categories—tourists, students and others. We come up with an estimate, as an aggregate but also for particular caseloads, as to the overstay rate. We would have a figure, for example, of student overstayers from particular countries. That is something that informs our risk assessment for future visa decisions from a particular area. It feeds into the so-called assessment level process for determining the types of requirements that we have around particular visa categories from particular countries.

**Senator CASH**—Thank you.

**Mr Kukoc**—Question 20:

Does the department collect information from the police about attacks against international students? If not, why not?

As I mentioned in my response to an earlier similar question, we do not collect that information and the state police do not share that information with us. I understand there are legal impediments in sharing the information.

Question 21:

Has the department received any information about the exploitation of vulnerable students, including those with financial problems or who may be subject to extortion, wage and sex slavery etc? What is the mechanism that students can utilise to report these difficulties?

This question involves a number of departments such as DEEWR, the Department of Employment, Education and Workplace Relations. It is also a matter for the police in relevant states and for the Workplace Ombudsman. The department has a dob-in line. Of course, if these allegations are brought to our attention we would pass that information to the relevant authorities—the state police or the Workplace Ombudsman.

**Senator CASH**—Are you happy to take on notice to provide me with how many calls you have had to the dob-in line on an annual basis since its commencement and the nature of those calls?

**Mr Kukoc**—We will take that on notice. I think we would be able to do that. The final question:

How many applications for tourist visas were made in 2009-10? How many were rejected and how many approved? How does this compare with 2007-08 and 2008-09? Are there particular posts where the decline is most noticeable (if there is a decline in applications)? Is there a reason the refusal rate is so high (if it is)?

I do have the information about the grant rate by countries in total and in comparison to 2008-09 and 2007-08. I do not have the information about the applications. I can take that on notice. Our grant rate is very high. If I give you the grant rates you can assume that it is pretty much close to the mark in terms of the applications.

**Senator CASH**—Thank you.

**Mr Kukoc**—We had an overall increase in visitor visa grants of 2.66 per cent in 2009-10 compared to 2008-09. In 2009-10 we had 3,416,576 visa grants. That compares to 3,328,112 in 2008-09. That is the increase of 2.66 per cent. The largest arrivals were of course from the United Kingdom followed by the United States of America, Japan, China, Malaysia, Republic of Korea, Germany, Singapore, France, Canada, and then all others. In terms of trends, we have seen a slight drop in visitors from Japan of 7.3 per cent and an increase in arrivals from the United States of America of six per cent. Also, there was an increase in arrivals from China of five per cent; Korea, 7.8 per cent; Germany, 6.6 per cent; and France, seven per cent.

**Senator CASH**—Can I just go back to the international students and the potential exploitation or complaints that they have. Does the department provide information to students about who they can talk to in the event that they do experience some form of trouble?

**Mr Kukoc**—I think this question is better directed to the Department of Employment, Education and Workplace Relations. They do have obligations under the ESOS Act, the Education Services for Overseas Students Act, to provide all students with a range of information about living in Australia and who to approach in case of any accidents or incidents here.

**Senator CASH**—Apart from that, does DIAC have any responsibility to the students once the visa is actually granted to them, other than compliance to ensure that they are not overstaying?

**Mr Kukoc**—We do work with DEEWR very closely on that, but essentially that is part of their portfolio responsibility. But, to the extent possible, we do provide information to students wherever we can but, as I said, it is predominantly their responsibility.

**Senator CASH**—Thank you very much for providing us with that information over the lunch break. I have a few questions on retirement visas, subclass 410, and then I am actually finished with this program outcome. How many persons are currently in Australia on a 410 retirement visa? If possible, are you able to break those figures down between those onshore and those currently offshore?

**Mr Kukoc**—As at 31 August 2010, there were 7,055 retirement visa holders, 410 visa holders. Of those, 4,489 were onshore and 2,566 were offshore.

**Senator CASH**—How many of those are on visas that are valid for 10 years?

**Mr Kukoc**—I do not have that information with me. I would like to take that on notice. This was a recent change that was introduced, I think, last year. As the existing 410 visas expire, in terms of the old four-year valid visas, people apply for a new 10-year visa.

**Senator CASH**—Are they guaranteed to be granted a further 10-year 410 visa?

**Mr Kukoc**—It is very difficult to formulate this as guaranteed but it is—

**Senator CASH**—Have you had any cases to date of those that have expired and have not been granted a further visa?

**Mr Kukoc**—I would need to take that on notice. Even if that happened, it would be an enormously small percentage, because it is normally a revolving visa. So people can just extend that visa normally, unless their situation has substantially changed.

**Senator CASH**—This is obviously a cause of a lot of concern to people on this particular visa. Has the government considered providing a pathway to permanent residence for these visa holders?

**Mr Kukoc**—That is clearly a matter for the government. As our previous minister, Senator Evans, mentioned, he was sympathetic to the desire of some 410 visa holders to become permanent residents. The matter is clearly before the government and subject to a government decision.

**Senator CASH**—Has the department provided a recommendation to the government in relation to that?

**Mr Kukoc**—We have asked for Australian Government Actuary analysis in terms of the cost and benefit aspects of this particular policy option. That full analysis has still not been provided to us, but we are talking about a huge cost to the country in the order of billions of dollars.

**Senator CASH**—That leads on to my next question. Has there been a costing provided by the department or any other government department on what the cost to the budget would be of providing permanent residence and citizenship to this particular group of people?

**Mr Kukoc**—The valuation has been commissioned. As I said, the Australian Government Actuary is doing the analysis at the moment.

**Senator CASH**—When was it actually commissioned?

**Mr Kukoc**—I do not have the date, but I think it was early 2009. I will get back to you with the proper information.

**Senator CASH**—Thank you. How long is it anticipated to be before this valuation will actually be provided to you?

**Mr Kukoc**—I would need to take this question on notice. The evaluation has been going on for some time, so I would expect to finalise this in due course—in the not-too-distant future.

**Senator CASH**—When you say the not-too-distant future—by the end of 2010?

**Mr Kukoc**—I cannot say that. I cannot effectively commit to any date. We would need to take this question on notice. I need to check again and get the update from the Australian Government Actuary on how they are going with the study.

**Senator CASH**—Thank you. Minister, are you able to provide any further information in relation to the government's policy behind providing a permanent residency pathway to the people affected by this visa?

**Senator Carr**—No, I cannot provide you with further advice than you have already received. So I will take the matter up with the minister.

**Senator CASH**—Thank you very much. Those are all the questions I have on this outcome.

**Senator ABETZ**—Are we still going through the answers?

**CHAIR**—Yes, but you were just asking questions on 410 visas, weren't you?



**Senator CASH**—About 410 visas, yes.

**CHAIR**—I have a few questions on that, so I might just jump in.

**Senator ABETZ**—Weren't we dealing with answers?

**Senator CASH**—We were, and then I jumped to questions on 410 visas.

**Senator ABETZ**—Right. I am just wondering when I might get my answer.

**CHAIR**—You want your answer?

**Senator ABETZ**—Any time. Just let me know when, that is all. I am relaxed.

**CHAIR**—We will give you your answer, Senator Abetz.

**Senator ABETZ**—Thank you.

**CHAIR**—Then I will ask some questions.

**Mr Metcalf**—Thanks, Chair. I will ask Mr Frew to provide some further advice on the issue that you raised this morning.

**Mr Frew**—Senator, we have established that an allegation was received about this particular matter that you raised this morning on Thursday the 14th. That was last week. It has been referred to our sponsor monitoring unit in Sydney and I am afraid I cannot give you any further advice as to what our next steps—

**Senator ABETZ**—And I would not want to know, quite frankly. That should be with you people. But you can confirm that a complaint has been made, and that complaint has been deemed worthy of further investigation.

**Mr Frew**—And it will be actively followed up.

**Senator ABETZ**—Thank you for that. In relation to a letter to Mr D Borg, were we able to verify that that had occurred or not?

**Mr Frew**—I rang Mr Borg earlier today, which was quite a surprise to him. He works in the Parramatta office. He has on previous occasions some years ago been involved in Filipino boxers but he is no longer working in that area. If the letter was addressed to him, it has now landed in the right place, but he is not the action officer.

**Senator ABETZ**—No, but we do not have confirmation as to whether that letter was the genuine article?

**Mr Frew**—I have not seen the letter. I was just given the advice that I have provided to you.

**Senator ABETZ**—Thank you very much. But you will further investigate to see whether that letter can be located. Unfortunately, the copy I was provided does not have a date on it.

**Mr Frew**—I think you did mention one letter. I do not have it with me now—

**Mr Metcalf**—Yes, we certainly seem to have something that we got on 14 October. So the timing sounds like it was last week.

**Senator ABETZ**—Close, anyway.

**Mr Metcalf**—It is clearly being followed up now.

**Senator ABETZ**—That is good news and thank you very much for that.

**Mr Metcalf**—That is all the comebacks that we have for the time being.

**CHAIR**—Can I just ask you for the total number of 410 visa holders currently?

**Mr Kukoc**—7,055.

**CHAIR**—Okay. Of those, how many are actually in Australia?

**Mr Kukoc**—4,489.

**CHAIR**—So the costing that you are talking about that Treasury is doing—

**Mr Kukoc**—Australian Government Actuary.

**CHAIR**—Okay. What is the time line for the completion of that? People have been asking for this for a long time, and I think I have been asking questions about this at estimates for a number of successive estimates as well. Is it due to be finished by next estimates?

**Mr Kukoc**—I do not have a particular deadline for this study, but a lot of work has already been done and I do not expect that it will take too much longer. So it will not be done in the very distant future; it will be more in the near future. But I cannot commit to a date because it is not in my hands; it actually is in the hands of the Australian Government Actuary. I am happy to take this on notice and check with the AGA and come back with the exact timetable.

**CHAIR**—Can you also check for me whether they are working with representatives of British ex-pat retirees in Australia as well, because my understanding is that they have also done some costings. I am wondering if you can find out for us whether or not they are either talking to or working with them in their calculations.

**Mr Kukoc**—I think the AGA is taking into account all available information that has been put either through us or through the government or Treasury or is publicly available. I am sure that the association has made their case quite clear and has put this information in the public domain, but I will make sure that this is the case and take this question on notice.

**CHAIR**—So what is the time line from here? You are expecting this work to be done and the report to be done. It will then be provided to whom—to the Treasurer or to the immigration minister or both?

**Mr Kukoc**—To the immigration minister. Given that the amount will be large in terms of the net cost, I think that would need to go through a proper budget process. Our advice is that the report will be provided to the minister for immigration, but I would assume that, as part of the normal budget process, the minister will take this to the cabinet through the budget if the minister is of the view that this is the proposal that he would like to pursue.

**CHAIR**—I see. We will wait for the answers, then.

**Senator PRATT**—I had some questions about the permanent and temporary skilled migration program. I know that the government has recently reformed a great deal of that program, but I just wanted on the record the purpose and intent behind those changes in the context of—if you need more information—demand driven programs versus the new definitions within the skilled occupation lists so that it is better targeted.

**Mr Kukoc**—The underlying rationale for the reforms, as far as it has been communicated to the public through the ministers, Senator Evans and other ministers in the government, is that the reforms to 457 skilled migration, temporary skilled migration and permanent skilled migration were all aimed at making sure that our skilled migration program, both temporary and permanent, is responsive to the genuine economic needs and the real genuine skills shortages, and that in no way do future skilled migrants undermine the terms and conditions of employment of Australians or effectively compete for jobs with skilled Australians. So it was better targeting both the temporary and permanent, and that was the underlying rationale, given there was always this notion that skilled migration should be driven by the genuine economic needs of the labour market.

**Senator PRATT**—Could I ask in that context what the ratio of employer sponsored versus non employer sponsored migration now looks like and the extent to which that has changed?

**Mr Kukoc**—I can try to get the ratio for you, but the government has increased the proportion of so-called demand driven employer sponsored components in the overall skilled migration program quite substantially. Employer sponsored used to be between 15,000 and 20,000 a year a couple of years ago, and now it is well above 40,000 and the proportion is really—

**Senator PRATT**—Just a general overview.

**Mr Kukoc**—Mr Hughes just provided me with some statistics. The 2010-11 planning levels are for employer sponsored to be 44,150 and general skilled migration to be 61,700. That compares to 2006-07, when we had only 15,000 employer sponsored. So now we have 44,000 compared to 15,000. Even in the general skilled migration program—that is, so-called independent skilled migrants—there would be a large proportion of these migrants who will be sponsored by states based on the latest available labour market research and evidence based in these states in terms of which skills and occupations are needed in those states. So effectively we are talking about a much larger percentage of demand driven by the genuine economic needs than is reflected only by true employer sponsorship numbers.

**Senator PRATT**—So it is the department's view that the reforms have indeed resulted in better targeting of migration programs to suit the Australian economy?

**Mr Kukoc**—We have a longitudinal survey of immigrants. We also recently conducted a continuing survey of immigrants—immigrants who arrived here before the reforms were conducted last year. While the research is still not public—and it is now with the minister pending his decision to make it public—the research clearly shows that these changes have significantly improved the labour market outcomes not only in terms of the unemployment rate for new skilled migrants but also in terms of the rate of them working in the skilled occupation for which they nominated themselves or were nominated by an employer.

**Senator PRATT**—So in fact you can see that in the employment outcomes of those migrants who migrated previously and who might have come in on skilled trades but are actually continuing to work in unskilled areas versus those who have come in over the last year or so where that has been better targeted; is that correct?

**Mr Kukoc**—That is correct.

**Senator PRATT**—What was wrong with the old skilled occupation list?

**Mr Kukoc**—The old skilled occupation list included a range of occupations. We had more than 400 occupations on that list. We need to take the streamlining of the skilled occupation list in the context of other changes that were made in the skilled migration program. In terms of meeting the immediate short-term needs of the labour market, we have very flexible and responsive employer sponsorship categories—457 employer sponsorship—where employers can bring in skills and people directly into jobs. With 457, the turnaround time can be as little as a few days.

We do have schemes that are able to meet the immediate needs of the labour market. That means that independent skilled migrants should, in that context, be better able to meet our medium- to long-term human capital needs—skills and occupations which this country will have shortages of in the long term. Skills Australia actually did very good research and analysis of the skills that Australia will need for its long-term future. This is how the new skilled occupation list was determined. Note that the skilled occupation list only applies for general skilled migration, independent skilled migration—people who are not coming here to meet the immediate long-term labour market needs. We are talking about a large time difference between the time they apply for a visa and the time they join the labour market. The gap can be two to three years. They were never able to meet the immediate labour market needs. That is why the decision was made to target this group to the long-term skills needs of Australia.

**Senator PRATT**—As I understand it, there has been a decline in net overseas migration but, notwithstanding that, clearly the migration program is better targeted to the skills demand in the economy; is that correct?

**Mr Kukoc**—That is correct. While the net overseas migration is clearly trending down, and we saw the net overseas migration reach 320,000 in March 2010, we believe that at the moment net overseas migration is around 200,000. It will further drop to between 180,000 and 190,000 in the year 2 period.

At the same time, while the net overseas migration has been reduced, we have seen a significant increase in the proportion of the components of net overseas migration that go directly into the supply of skilled labour. If you take into account the components of 457 or employer sponsorship or skilled migration, you will see that at the time when we had net overseas migration of well over 300,000, the proportion of the components of NOM that went straight into the supply of labour was less than 30 per cent—20 to 30 per cent. But now with the reduction in NOM, and increasing those demand driven categories, the components of NOM that go straight into the supply of skilled labour will increase to 40 or 50 per cent.

**Senator PRATT**—I want to ask some questions about 457 visas, and you have touched on 457 visas in the context of overall skilled migration. There has been some significant reform to that program, as you have highlighted. I include in your reference preventing the visa program from undercutting Australian workers and conditions. I understand that one of the things done within that was changing the minimum salary levels. Can you talk me through how the way 457 visas were being used to undercut local wages and conditions has been addressed in the reforms?

**Mr Kukoc**—The reforms were focused on equalising the terms and conditions of employment between the Australian workforce and the foreign skilled workers. In no way the reforms were aimed at or intended to reduce the supply of skilled labour or deprive business from bringing in foreign skilled labour. It was all about creating a level playing field between foreign skilled workers and domestic skilled workers so that we are absolutely sure that there is no undercutting of the terms and conditions of Australian workers and that employers look to employing overseas workers only in cases when there is a genuine skills shortage—so when there are no available Australian skilled workers.

That was the rationale for bringing into the spectrum of reforms this concept of market rate. There has been a lot of discussion and debate about what constitutes market rate and whether the government can assess what the market rate is. It is a very simple concept and employers are actually getting used to the concept and finding it much easier than the old MSL rules, which contain the minimum salary levels across a different range of occupations and at different levels. It is a very simple rule: the terms and conditions of employment that you would offer to an Australian skilled worker. That is it.

**Senator PRATT**—In most instances they would have Australian workers working alongside—

**Mr Kukoc**—In most instances, or they can have access to all sorts of industry surveys or examples of skilled workers used in the same industry in their region.

**Senator PRATT**—I understand that in the past the upfront loading of sponsorship costs meant that many 457 visa holders were bonded in various ways, whether it is to migration agents or to a range of parties, and that many of those visa holders can be made quite vulnerable by those financial obligations. Can you talk me through what has been done to, I suppose, make those workers as free as possible from those obligations?

**Mr Kukoc**—There are a couple of other changes that have improved the mobility of workers once they are in Australia which gives them more bargaining power with the employer—that is, if they change a job and find another sponsor then they do not need to apply for another visa. All it requires is nomination from a sponsoring employer. At the same time, we also addressed the concerns that some employers had about upfront costs that they have incurred for those workers that they bring into the country. So we reduced those upfront costs for employers. Health insurance costs are now transferred to the 457 employee, so the employer does not have to cover the health costs. All visa applicants need to have proper comprehensive health insurance coverage.

There were other similar arrangements where effectively the upfront costs to the employer have been reduced and the options or opportunities for the 457 employee to change employers have been increased which increases that bargaining power and ensures that we have reduced scope for exploitation without imposing undue costs on the employer. Actually the costs were reduced.

**Senator PRATT**—As I understand it, the previous scheme was vulnerable to fraudulent claims of skill levels and capabilities of the workers. I want to know the extent to which the department has been able to clean that up. I still come across allegations of people working when they are supposed to have an ELTS at a certain level, yet it is quite apparent that

workers do not speak English and the skill level that they are working at would not be commensurate with what the visa program for a 457 visa worker requires. Can you tell me how you are going in cleaning that up and to what extent you think those problems may still exist?

**Mr Kukoc**—With the implementation of the worker protection act and the implementation of all of these strengthened sponsorship obligations, we have also implemented the sponsor monitoring program. So we are actively monitoring sponsors to maintain the integrity of the sponsor visa programs and we enforce the sponsorship obligation framework. As I mentioned at an earlier Senate estimates, in the period post the rollout of the reforms we were focusing on educating sponsors about their responsibilities under the program. We have also instituted a program of inspectors and active sponsor monitoring. We are not applying a heavy-handed approach. It is about education, information and bringing to the employer instances of where they may find themselves in breach and offering them an opportunity to meet their obligations.

We also have powers. Under the new worker protection act we can issue infringement notices, and we have issued some infringement notices in the recent past. Under the 2009-10 program, 1,421 site visits were conducted. An additional 166 site visits have been conducted in the program year to the end of August this year. A total of 520 formal warnings have been issued to sponsors. In addition, 82 have been issued in the current program year to 31 August. We have imposed 164 sanctions, including bars and cancellations, on sponsors.

The new powers were used carefully. Three infringement notices have been issued since 14 September 2009. This is under the new power. This is a step-by-step approach. We go with infringement notices. Normally, if there are no other options we undertake civil prosecutions before the courts. Since 14 September we have had no civil prosecutions before the courts, but we have those powers.

I think our overall assessment of the situation is that employers are complying. We are able to implement a better, more flexible, more intelligent risk management system, targeting those employers who are likely to be in breach for all sorts of historical reasons or the environment of the industry, but we are not taking a heavy-handed approach. We have the education side of it, and we always offer them an opportunity to fix the problem before barring sponsorship or applying administrative sanctions or even issuing infringement notices.

**Senator PRATT**—How many warnings does it take to trigger a breach or a prosecution?

**Mr Kukoc**—There is no set rule, but I would have thought that after the first warning it would be pretty difficult for us not to issue an infringement notice as the next step if there is a repeat offence under the same circumstances.

**Senator PRATT**—If, for example, a local chamber of commerce or an industry or a union or other community representatives come across a situation with an employer who employs 457 visa workers that does not look right, what kind of process should they be going through to report that? I understand you have a dob-in line et cetera.

**Mr Kukoc**—We have a dob-in line. Of course the department will investigate those claims. On many occasions we would need to pass that information to the proper authority, which is

the Workplace Ombudsman. If there is an immigration breach, then we would follow up with our own inspectors.

**Senator PRATT**—Do you mean in terms of a breach of the 457 visa conditions?

**Mr Kukoc**—In terms of sponsorship obligations.

**Senator PRATT**—So that would be if there was not a sufficient level of English or if the work being undertaken was supposed to be for a specific trade but was of an unskilled nature—those kinds of examples.

**Mr Kukoc**—Yes. But if it is an occupational health and safety issue or a workplace relations issue, that would go to the Workplace Ombudsman or the relevant OHS authority in the state.

**Senator PRATT**—I want to ask about international students and the extent to which the student visa program is now moving student visas towards facilitating educational outcomes as opposed to migration outcomes. How is that reform program going?

**Mr Kukoc**—The overall intent of the reforms was actually to target the permanent residence skilled migration program to the labour market outcomes and to make sure that this program does not serve any other purpose than purely the genuine economic need in terms of labour market outcomes. That was the rationale for all of these changes. Unfortunately, as we know, the situation has developed over a number of years, and the student visa has been used and abused and exploited by many canny operators in terms of linking education to permanent residence, although, as far as I know, on all of our student visa papers when we grant a student visa we clearly say that there is no guarantee of the successful outcome of any subsequent visa that they may apply for onshore. Over time, that has evolved and quite a few students and some operators were working on the assumption that a student visa is an easy pathway into the permanent residence skilled migration program. So that has been largely stopped which gives the education industry and overseas students an opportunity to focus on the educational outcomes, which was always the intent of the student visa.

**Senator PRATT**—To what extent are people overseas who sell educational products now selling educational products as opposed to also marketing migration outcomes? Has the department got much awareness of whether that has now been cleaned up or whether there is still false advertising taking place? It is hard to police, I know.

**Mr Kukoc**—There is very little that the department can do overseas. We do not have extraterritorial powers over migration agents and we certainly do not have any legislative powers over education agents. That is controlled by DEEWR and the ESOS Act. It is difficult. But I think the message is getting through that the student visa program is for educational outcomes. If you gain a solid education in Australia—Australian education is solid and of high quality compared internationally—of course you will be able to follow a certain career path and get a skilled labour market outcome whether in Australia or overseas in another country. Visa issues are consequential and not the primary purpose of this sort of activity.

**CHAIR**—Thank you. There is no more on outcome 1. We will move to outcome 2, Refugee and humanitarian assistance.

**Senator CASH**—My first question is a point of clarification in relation to section 501 of the Migration Act. Are you able to confirm that under section 501 of the Migration Act the minister has the power to cancel a protection visa on general character grounds and that such grounds do not require a recorded conviction as a prerequisite for ministerial action?

**Ms Larkins**—That is my understanding.

**Senator CASH**—I want to confirm with you that the minister has the power to cancel a protection visa under section 501 and that that power is able to be exercised even where the person does not have a recorded criminal conviction.

**Ms Larkins**—That is my understanding.

**Senator CASH**—What steps have been taken by the current and former minister to cancel the protection visas of the three refugees found by the independent inquiry of the Northern Territory coroner as being involved in a sabotage of SIEV 36 which resulted in the death of four other asylum seekers and serious burns and injuries to 44 others, along with a number of ADF personnel?

**Ms Larkins**—Whilst the minister has that power, it is our usual practice to wait for the finalisation of any criminal proceedings before considering under section 501.

**Senator CASH**—You said it is ‘usual practice’. Does that mean that it is a legal requirement that the minister has to wait for the outcome of any legal proceedings?

**Ms Larkins**—My understanding is that it is not a legal requirement. But it is our normal practice.

**Senator CASH**—So, should the minister choose to exercise his power under section 501, there is absolutely nothing prohibiting him at this stage from doing so?

**Ms Larkins**—That is correct.

**Senator CASH**—Has the minister taken steps to exercise those powers?

**Ms Larkins**—Not that I am aware of.

**Senator CASH**—If there were no legal proceedings in place, would it be an automatic exercise of the power should he so choose?

**Ms Larkins**—It is not an automatic exercise of the ministerial power. In fact I think we have only had one ministerial decision in the last year. I will just confirm that that is correct. Decisions are normally made by a delegate of the minister and they are made after an issues paper is developed by the minister and given to that delegate.

**Senator CASH**—Are there any legal proceedings pending against these four people?

**Ms Larkins**—I am not aware of that. I do not have the details of the case.

**Senator CASH**—Does anybody else at the table have any information as to whether or not there are any legal actions pending against these four individuals?

**Ms Larkins**—I am sorry. I do not have a briefing on this particular issue, so I will take it on notice.



**Senator CASH**—Thank you. Does anybody here other than you have any information on the SIEV 36 issue or are you the appropriate officer?

**Ms Larkins**—Yes, I am.

**Senator CASH**—Can I then just reconfirm for the purposes of the *Hansard* record that under section 501 of the Migration Act the minister may at any time, and regardless of whether or not a recorded conviction for a criminal record is against the person, take ministerial action to refuse or cancel a visa.

**Ms Larkins**—He may.

**Senator CASH**—Can I just confirm that the minister to date has not taken any steps to do so in relation to the four people?

**Ms Larkins**—My colleague has just reminded me of an important qualification. Of course the minister can only do that if the character test is satisfied.

**Senator CASH**—Let us have a look at section 501. It states:

For the purposes of this section, a person does not pass the *character test* ...

You mean if the person does not pass the character test.

**Ms Larkins**—Yes.

**Senator CASH**—That is correct. It goes on:

if:

(a) the person has a substantial criminal record ... or;

... ..

(c) having regard to ...

So he can discount the substantial criminal record. As long as the minister has satisfied himself that the character test is failed, he may take steps to cancel or refuse the visas?

**Ms Larkins**—Yes, that is right.

**Senator CASH**—Thank you very much. And you have taken on notice whether or not there are any actions pending against the three refugees found by the independent inquiry as being involved in the sabotage of the SIEV 36?

**Ms Larkins**—Yes.

**Mr Metcalfe**—Just on that, it might be of interest of you—because I know you were not here last time—that there was a discussion about this on 26 May before this committee. That is in *Hansard* on pages 157 and 158. By way of context, were a visa to be cancelled in these circumstances the person would be rendered unlawful in Australia. The act requires that an unlawful person is detained and in fact is removed from Australia. Thus, a relevant consideration in this general area is in fact the application of the refugee convention and particularly whether or not a person's criminal conduct amounts to serious crimes. So, without going into what ministers may or may not have decided or not decided, the strict application of section 501 is only one consideration in the overall handling of such a matter.

**Senator CASH**—Thank you, Mr Metcalfe. In my very humble opinion, I would have thought that being involved in the sabotage of the SIEV 36, where the actions of the people resulted in the death of four other asylum seekers, serious burns and injuries to 44 others along with a number of ADF personnel, was a relevant consideration. But thank you for elaborating for us. I would like to now turn to the *Oceanic Viking*, Mr Fleming.

**Mr Fleming**—Yes, I can cover *Oceanic Viking*.

**Senator CASH**—Can you just remind the committee how many passengers were on board the *Oceanic Viking*?

**Mr Hughes**—I will answer that.

**Senator CASH**—Thank you, Mr Hughes.

**Mr Hughes**—There were 78.

**Senator CASH**—How many of those 78 people benefited from the then Rudd government's special deal with them and have been settled in Australia?

**Mr Hughes**—Fifteen have been resettled in Australia.

**Senator CASH**—When you say 'resettled', what visa have they been granted?

**Mr Hughes**—The refugees who were resettled in Australia were granted permanent humanitarian visas.

**Senator CASH**—How many of those 78 people have been resettled in third countries?

**Mr Hughes**—The total permanently resettled is 55. That includes the US, New Zealand, Canada, Norway and Australia.

**Senator CASH**—And that is the total number of countries?

**Mr Hughes**—In the United States 22 have been resettled, in New Zealand 13, in Canada two, in Norway three, and in Australia 15.

**Senator CASH**—And that gives us a total of 55, does it?

**Mr Hughes**—It should, Senator.

**Senator CASH**—So there are some outstanding?

**Mr Hughes**—Correct.

**Senator CASH**—In terms of those who have been resettled, are you able to advise the committee when they were resettled?

**Mr Hughes**—They were resettled progressively. I do not have the exact dates for each of them, but progressively from late 2009 until early 2010.

**Senator CASH**—Are you able to take on notice to provide the committee with that information?

**Mr Hughes**—Yes, Senator.

**Senator CASH**—Thank you very much. How many of the 78 were transited through Romania?

**Mr Metcalfe**—Forty-four is the figure I have here.

**Senator CASH**—How many were transited through other countries?

**Mr Metcalfe**—Thirteen were transited through the Philippines.

**Senator CASH**—Thirteen through the Philippines, yes. Is there any other information as to the others?

**Mr Metcalfe**—That is all I have.

**Mr Hughes**—They were the only ones who were transited through other countries—Romania and the Philippines.

**Senator CASH**—So 44 through Romania and 13 through the Philippines. How long were they there in transit?

**Mr Hughes**—I would have to take that on notice. It varied.

**Senator CASH**—Can you give me an approximate time frame?

**Mr Hughes**—I think most of the cases were resolved in the first half of 2010 and some were not.

**Senator CASH**—Thank you. Was there any cost to Australia as a result of the transiting?

**Mr Hughes**—Not for being looked after in the resettlement.

**Senator CASH**—Okay. Was there any cost at all to Australia?

**Mr Hughes**—I would have to check whether we paid for the travel to the centres.

**Senator CASH**—Could you please take that on notice.

**Mr Hughes**—Yes.

**Senator CASH**—Was there any cost at all to the Australian government as a result of the transiting of these individuals? Were any departmental officials sent to Romania at any time in relation to the 44 individuals?

**Mr Hughes**—Yes.

**Senator CASH**—Okay. Who were they, when did they go and what for?

**Mr Metcalfe**—Do you need names or positions?

**Senator CASH**—I am happy to take positions. If you could provide names, that would be appreciated.

**Mr Metcalfe**—I would prefer, unless it is really—

**Senator CASH**—If you could provide positions.

**Mr Metcalfe**—They are just officers doing their jobs. So we will give you positions if that is okay.

**Senator CASH**—Okay, and who were they? Do you have that information before you?

**Mr Hughes**—Not in detail, but at various times the department worked with some NGOs who went from Australia to counsel the people—people who had been involved with them during their original stay in Indonesia. Departmental staff also accompanied the NGOs whilst visiting the Sri Lankan refugees in Romania.

**Senator CASH**—Approximately how many departmental staff are we referring to?

**Mr Hughes**—I think the early visits involved one departmental staff member at the time, but we will give you full details on notice.

**Senator CASH**—And at what cost to the Australian government?

**Mr Hughes**—We will provide you with that. The departmental staff member, as I recall, came from our post in Belgrade, which is very close to Romania.

**Senator CASH**—Were any undertakings given to Romanian officials as a result of those individuals transiting through Romania?

**Mr Hughes**—I think there was an expectation on the part of the Romanian government that the conditions upon which they allow access to the centre would be complied with and the expectation of the Romanian government is that any cases that had come there at the request of Australia and UNHCR on behalf of Australia would leave by the end of December.

**Senator CASH**—Where are we at with those undertakings?

**Mr Hughes**—The minister recently announced that the residual 17 cases there that were not accepted for resettlement by other countries are being processed with a view to bringing them to Australia if they meet requirements within the deadlines and expectations of the Romanian government and UNHCR for use of the centre.

**Senator CASH**—Were any undertakings in relation to the 44 who were transited to Romania given to the UNHCR?

**Mr Hughes**—Again, the same expectation applies for both the UNHCR and the Romanian government—that the centre is there for transit purposes for a finite time and that a country that referred them there would ultimately take responsibility for the people departing before the fixed period came to an end.

**Senator CASH**—Do you have an exact date of when our fixed period is coming to an end?

**Mr Hughes**—I do not have an exact date. I think it would certainly be by the end of December.

**Senator CASH**—So that I can clarify so that I am not misrepresenting you, your evidence is that the Australian government did give undertakings to the Romanian officials. The undertakings given to these Romanian officials would be the same as those undertakings given to UNHCR officials. That was that, in relation to the 44 asylum seekers transiting through Romania, they would be there for a certain period of time. That certain period of time would possibly be to the end of December 2010. On the basis that we are almost there, the minister has made an announcement that the remaining 17 are likely to be repatriated back to Australia.

**Mr Hughes**—That is correct.

**Senator CASH**—Has the department provided any advice to the government about the feasibility of using the Romanian facility as a processing centre for all Australian-bound asylum seekers?

**Mr Hughes**—I think it is important that we understand the basis of the Romanian centre and the arrangements that it has with UNHCR. It is not a processing centre as such. It is a centre for use by people who are in an emergency situation and for whom there is a resettlement offer or a strong likelihood of resettlement—that is, people who have been found to be refugees, are in an emergency situation and for whom there is a very strong likelihood of resettlement.

**Senator CASH**—How many people are currently in the Romanian detention centre?

**Mr Hughes**—I am not sure it is strictly a detention centre as such.

**Senator CASH**—How many people—

**Mr Hughes**—Just as a transit centre.

**Senator CASH**—How many are currently in the Romanian centre?

**Mr Hughes**—I do not know the current numbers.

**Senator CASH**—Approximately. Are we talking hundreds or thousands?

**Mr Hughes**—The maximum capacity of the centre, I understand, is about 200, but I would have to confirm that for you. Obviously, it is used by UNHCR for a variety of purposes with people coming and going at different times. We do not even have information on the numbers at any particular time.

**Senator CASH**—In terms of the undertakings that the Australian government gave for transitional time frames, are the same undertakings given by other countries that transit asylum seekers through this centre? Is it an expectation that all countries will give a time frame or is that merely something the Australian government did?

**Mr Hughes**—No, it is an expectation. The Romanian government has conditions for use of the centre and they are conditions worked out with UNHCR. Going back to your earlier question, sending all people coming to Australia for processing there would not meet the conditions of use of the centre. The centre is an emergency transit centre for people found to be refugees for whom there is a resettlement offer and some immediate need for them to be housed in a transit location. The Romanian government imposes finite requirements on the amount of time you can spend there.

**Senator CASH**—I need to go back to my previous question in relation to whether or not the department had provided any advice to the government about the feasibility of using the Romanian facility as a processing centre for all Australian-bound asylum seekers. I appreciate the explanation that you gave in relation to the fact that it is a transit centre, but can I go back to my question. What is the answer to my question?

**Mr Metcalfe**—The answer is no.

**Mr Hughes**—The answer is not applicable.

**Mr Metcalfe**—We have not given any advice because it is not a centre where determinations of refugee status occur. It is a transit centre for people who have been found to be refugees pending their resettlement elsewhere.

**Senator CASH**—So the nature of the facilities is a transit centre. Who actually runs the facilities in Romania?

**Mr Hughes**—I will confirm that for you, but I think it is a combination of UNHCR and the Romanian government.

**Senator CASH**—I have to say that I am a little surprised by your answer in terms of the fact that we have sent people to these facilities to transit and the department is unaware as to who runs these facilities.

**Mr Hughes**—It is simply a question of the day-to-day management arrangements—that I would like to be absolutely certain of. I think both the Romanian government and UNHCR are involved. I want to be absolutely certain for you.

**Senator CASH**—I am sure that you will hopefully confirm that in a very short while. What kind of accommodation is provided?

**Mr Hughes**—There is information that we can provide to you and photographs and other things. It is a centre that was previously used for other purposes. I do not believe it was purpose-built but modified for the purposes of a transit centre. There is accommodation for single people and families. There are recreation and educational facilities and also facilities for eating and health and other things, so we can provide you with some photographs if you wish.

**Senator CASH**—That would be greatly appreciated. When you say that it was not purpose built and that it was previously another type of accommodation, what actually was it?

**Mr Hughes**—Again, I would have to double-check that for you.

**Senator CASH**—What is the nature of the population at the Romanian transit centre?

**Mr Metcalfe**—I think we have already taken that on notice, Senator. We do not know. Mr Hughes said that he thought there might be up to 200 places there, but we would have to check as to who is there now and what the population is. By definition, it will be people who have been found to be refugees by the United Nations.

**Senator CASH**—Basically what I am looking for there, though, is also what type of countries they have actually come from. So what is their classification?

**Mr Metcalfe**—We can ask UNHCR, if that is of interest to you.

**Senator CASH**—Basically what I have been looking for are different countries of origin, male/female, family groups, unaccompanied minors et cetera. Within the transit centre itself, are people free to move around, are they able to work, are they entitled to medical care, are there any other benefits?

**Mr Hughes**—They are not entitled to work as far as I am aware, but they are fully supported there and I can provide on notice the details of those questions.

**Senator CASH**—Thank you very much. In relation to the 17 asylum seekers that are transiting through Romania and still remain there, were they provided with opportunities to apply for third country resettlement?

**Mr Hughes**—The 17 who were there have been considered by third countries.

**Senator CASH**—What countries have they been considered by?

**Mr Hughes**—The United States and Canada.

**Senator CASH**—Why were they refused?

**Mr Hughes**—They were refused for a variety of reasons that meant they did not meet US and Canadian criteria.

**Senator CASH**—This is obviously a very, very contentious point. I would like you to elaborate for the committee why those 17 individuals did not meet the requirements under the USA and the Canadian law, please.

**Mr Hughes**—Senator, obviously ultimately that is a matter for the US and Canadian governments, because they have their own criteria which are different from Australian criteria and they make their own decisions. As far as we are aware, the decisions range across a variety of considerations: in some cases because the people did not have sufficient family connections in those countries; in some cases because of specific requirements of the US government in relation to something that is called ‘material assistance’ in the US refugee system, and in other cases for issues that appear to have some security considerations behind them.

**Senator CASH**—The Australian government is currently considering resettling these 17 individuals in Australia. These 17 individuals have been refused resettlement in the United States and in Canada. Can you please outline for the committee exactly what steps the department takes to ensure it fully understands the reasons why these individuals have been refused resettlement in the United States and Canada?

**Mr Hughes**—We have made inquiries about that and they have yielded some of the information that I have spoken to you about. Also, our security authorities have made their own inquiries with their own counterparts on issues related to security, but the people will be examined under Australian criteria to see whether they now meet Australian requirements for a visa.

**Senator CASH**—You mentioned in your list of reasons as to why some of the 17 had been refused resettlement that there were potential security concerns. Would you be kind enough to elaborate on those concerns for the committee?

**Mr Hughes**—Senator, that is really something for our security officials and not for the department. They would make the assessments, not us.

**Senator CASH**—Does the department have any knowledge at all of the security issues raised in relation to these 17 individuals?

**Mr Hughes**—That is something for the security agency in connection with their counterparts in the United States and Canada. It is not something that is passed through to our department.

**Senator CASH**—That is not my question, Mr Hughes, and I need for you to be very, very specific in answering my question. Does the department have any information at all as to the security concerns that have been raised by the United States and Canada in relation to these individuals?

**Mr Hughes**—Not in any more detail than I mentioned to you, Senator, because it is a matter between our security authorities. We do not, as a department, get information about the basis on which decisions are made in other countries and nor do we make security assessments about any individual who is being considered for resettlement in Australia. That is purely a matter for the security authorities.

**Senator CASH**—So ASIO does not provide any information to the department in relation to potential security concerns of those being considered for resettlement here?

**Mr Hughes**—Not the content, Senator. What they tell us is whether a person meets, in security terms, the requirements for an Australian visa or not.

**Senator CASH**—Do you not ask any questions?

**Senator Carr**—Senator, you have asked this question in a multitude of ways.

**Senator CASH**—I have, Minister.

**Senator Carr**—You have been given the same answer in a multitude of ways.

**Senator CASH**—The question has not yet been answered. You and I both know—

**Senator Carr**—There comes a point, Senator—

**Senator CASH**—that this is an exceptionally important issue.

**CHAIR**—Senator Cash, order! You will get an opportunity to respond to the minister when he is finished. Minister?

**Senator Carr**—Senator, the officers have tried to be incredibly helpful, incredibly patient. You have asked the same question six times and you have been given an answer. I do not think there is any more the officers can tell you.

**Senator CASH**—With all due respect, Minister—

**Senator Carr**—You know that is not true.

**Senator CASH**—and Mr Hughes, the officer has been very cute in answering my questions.

**Senator Carr**—No, he is not being cute.

**Senator CASH**—And I want a direct answer to my question.

**Senator Carr**—He has been very helpful to you and I do not think he deserves to be pursued in this way.

**Senator CASH**—I think he has been helpful to the government at this particular point in time, certainly not to me or this committee.

**CHAIR**—Senator Cash, I hope you are not alluding to the fact that you think you have been misled by the officer at the table.

**Senator CASH**—No, I am not. I am alluding to the fact that I do not believe that the officer has answered my question properly.

**Mr Metcalfe**—Senator, I think the deputy secretary has certainly tried to answer the question. Let me just summarise. We are aware that other countries have different



requirements to us. We certainly are aware that the United States, as a result of the Patriot Act, has particular requirements in relation to a concept called material assistance which may be relevant here but that, frankly, the security consideration of applicants for visas is a matter for ASIO.

**Senator CASH**—Let me make this very clear then. Are you suggesting that Australia is prepared to take on people who have been rejected by the United States and Canada on security grounds and the department is unaware of what those security grounds actually are?

**Mr Metcalfe**—What I am prepared to say is that the government has indicated that the department should commence considering those 17 persons, that they are persons who have not been granted visas by the United States and Canada, that that is not unusual—different countries have different requirements—and that the government has made it clear that the issue of whether the people come to Australia will be subject to normal security checking by ASIO, the competent authority.

**Senator CASH**—But certainly the media reports which claim that these 17 people being considered for resettlement in Australia have been refused by Canada and the US because of security concerns are correct?

**Mr Metcalfe**—I have not read every media report, but what I do know is that all of the persons will be subject to our health, character and national security requirements. There is no suggestion that persons who do not meet Australian security requirements will be granted a visa to Australia.

**Senator CASH**—We shall be watching exceptionally closely, I am sure you have no doubt—

**Mr Metcalfe**—Sorry, I do not want to interrupt, but I should say that these cases are complex. We are talking about people who have been found to be refugees by the United Nations High Commissioner for Refugees and therefore have a finding by the competent UN authorities that they have a well-founded fear of persecution should they be returned home. While, of course, we will ensure Australia's interests are completely protected in managing the situation, it does throw up very complex issues that go to human rights and international law and international responsibility. It is one of the hardest areas of immigration decision making. So I am just saying that of course we will manage this issue very carefully. To suggest otherwise—well, no-one is suggesting that we would not do this other than very carefully.

**CHAIR**—We will keep going with questions on outcome 2.

**Senator CASH**—The department would agree that national security is of paramount importance to the Australian government.

**Mr Metcalfe**—Absolutely. That is an uncontested issue.

**Senator CASH**—In relation to the refugee status assessments, the RSAs, undertaken for these 17 individuals, when was the last RSA actually undertaken?

**Mr Metcalfe**—We would have to check in relation to the precise 17 individuals because some were assessed as refugees I think following their arrival in Indonesia off the *Oceanic Viking*. Others from the broader group—and it may include some of these folks—had

previously been recognised as refugees by UNHCR before they in fact set out to Australia. So the precise time is something that we would need to take on notice, but all of them have been mandated as refugees by the United Nations High Commissioner for Refugees.

**Senator CASH**—Are any departmental officials, representatives or consultants from the department in Romania at this present point in time assessing these 17?

**Mr Metcalfe**—We can check. We have a team going. We are just checking now whether they have actually gone.

**Senator CASH**—Could you also advise the committee what they are actually doing and what the cost of this is?

**Mr Metcalfe**—We will have to take that on notice. Routinely, in this circumstance, we would now want to begin to consider applications for visas for Australia. That is a task, as we have explained, not only undertaken by my department but by the Australian Security Intelligence Organisation. The precise detail of how that is working is something that we will take on notice, and we will also take on notice the cost.

**Senator CASH**—Am I getting a response as to whether or not there are actually people in Romania at the moment? Is that something you are doing?

**Mr Hughes**—Yes, that is correct. The team is in Romania at the moment.

**Senator CASH**—Thank you. How many are in the team?

**Mr Hughes**—We will have to take that on notice or get it later this afternoon. I am not sure exactly.

**Senator CASH**—Later this afternoon would be greatly appreciated. What is the role of the team?

**Mr Metcalfe**—The role of the team is to consider applications for visas for Australia.

**Senator CASH**—Of these 17 individuals?

**Mr Metcalfe**—That is correct. That is why we sent the team there: to consider the applications.

**Senator CASH**—In terms of the fact that the government initiated the asylum freeze for Sri Lankan asylum seekers in April of this year on the basis of the improving conditions in their home country, is it possible that the refugee status of those the government now proposes to settle may not be current?

**Mr Metcalfe**—No. They have been mandated as refugees by UNHCR.

**Senator CASH**—Even though the government mandated a freeze on the basis that conditions may change in a country—

**Mr Metcalfe**—Yes. What occurred back in April was a three-month suspension for Sri Lankan asylum seekers arriving in Australia, and around the ending of that suspension we saw new country guidelines being produced. However—and Mr Hughes will add to this if necessary—my understanding is that the people concerned have been mandated as refugees and there is no intention by UNHCR to revisit that decision.

**Mr Hughes**—That is correct, just to confirm what Mr Metcalfe said. UNHCR, as recently as a couple of weeks ago, confirmed to me that they regard the people as mandated and there is an expectation that they will be resettled from Romania.

**Senator CASH**—An expectation that they will be resettled from Romania to—

**Mr Hughes**—To Australia. As I mentioned before, there was an expectation that if resettlement could not be arranged in a third country then it would ultimately be arranged in Australia.

**Senator CASH**—This is where it becomes very interesting though. If an undertaking was given to the Romanian government at the time that the transiting would be completed by no later than 2010, it is not completed. We have 17 individuals now who the Romanian government are saying need to be resettled. The expectation is that they will come to Australia. But, hold on—they have been rejected by the USA and Canada because of security concerns.

**Mr Metcalfe**—Well, you said that, not us.

**Senator CASH**—No, Mr Hughes stated that one of the reasons—

**Mr Metcalfe**—One of the reasons.

**Senator CASH**—Yes, that some of the 17 had been refused resettlement—

**Mr Metcalfe**—That some of the 17 had, yes.

**Senator CASH**—And you are going to provide on notice to me a list of all of the reasons in relation to the 17. The part of the puzzle here that is clearly not quite fitting is: are you telling me that these individuals are coming to Australia regardless of what their security assessment is based on an undertaking we have given to the Romanian government?

**Mr Metcalfe**—Sorry, Senator, I thought I made it clear before that they will be subject to Australian health, character and security checks.

**Senator CASH**—And if all 17 of those individuals fail, as they have failed in the USA and Canada, what then becomes their status given the undertakings the Australian government gave to the Romanian government?

**Mr Metcalfe**—Senator, again, you have been asking for very, very careful responses, so can I give you a very, very careful response? Mr Hughes has taken on notice the grounds for the refusal by US and Canadian authorities, but he has indicated in his response that while their perspective of security is one of the considerations there may be other reasons. So we are not confirming your statement that they have all been rejected on security grounds.

**Senator CASH**—I am happy to accept that.

**Mr Metcalfe**—We are checking that on notice. The issue of the management of the group should they be refused visas for Australia is obviously a difficult issue for the international community, and that is an issue that the government will need to consider in due course.

**Senator CASH**—Given that we gave an undertaking to the Romanian government, and the same undertaking was given to the UNHRC, that these individuals would only remain in transiting until the end of 2010, if these individuals are not accepted by Australia because they

failed our assessment process what does their status become given our undertakings to the Romanian government?

**Mr Metcalfe**—We would clearly need to have discussions with the UNHCR and with Romania, and continue to look for resettlement options for the group, bearing in mind that they have been mandated as refugees by the UNHCR.

**Senator CASH**—Has the department commenced those discussions yet, given that we are but weeks away from the final week of December 2010?

**Mr Metcalfe**—At this stage consideration has been given to applications for Australia. We have a team there. We expect that we will probably have a view about those issues relatively soon and, depending on the outcome, further steps may occur but that is getting a bit hypothetical at this stage.

**Senator CASH**—I wouldn't have thought so given we have about 10 weeks before the undertaking is up. Can I confirm, Mr Metcalfe—

**Mr Metcalfe**—Senator, I do not want anything that I say as secretary of the department to indicate any prejudgement of the issues. We have to consider these applications on their merits according to Australian requirements, and that is what we have said we will do.

**Senator CASH**—Has the Romanian government approached the Australian government with any concerns in relation to these 17 individuals as opposed to the Australian government raising it with the Romanian government?

**Mr Metcalfe**—Not to my knowledge, but we can check on that.

**Mr Hughes**—I am not sure what you mean by concerns.

**Senator CASH**—The fact that our undertaking is that the transiting process will have finished by the end of December 2010 and there are 17 individuals who have been refused access to the United States and Canada. We are still undertaking our assessment. Based on what Mr Metcalfe said, there is no guarantee that those individuals will be given refugee status in Australia. Has the Romanian government raised this as an issue in terms of what will happen to these individuals come the end of December 2010?

**Mr Hughes**—No, apart from agreeing that that was the time period for which people would stay there.

**Senator CASH**—Minister, are you aware of any discussions or any concerns that the Romanian government has raised with the Australian government regarding the resettlement of these 17 individuals?

**Senator Carr**—No.

**Senator CASH**—Are you able to take that on notice and check with the minister that you are representing here?

**Senator Carr**—Of course I will discuss the matter with the minister, but I think the officers have covered this area quite extensively.

**Senator CASH**—So that I do not misrepresent the department in any way, Mr Metcalfe, can you reconfirm for me: if these 17 individuals fail the Australian security test and are not

granted resettlement in Australia, what will happen to them? Are you able to guarantee that they will not be given visas to come into Australia if they do fail the security aspect of that test?

**Mr Metcalfe**—I do not think I can really add to what I have said. The government has agreed to consider the remaining persons for settlement in Australia. That is entirely consistent with our usual practice under the refugee resettlement program. Visa processing is underway. All of the people would need to meet Australia's health, character and national security requirements before a visa would be granted to them to resettle in Australia. I do not want anything that I have said today to be seen as in any way prejudging decisions that have yet to be taken by officers of my department.

**Senator CASH**—Thank you. In relation to the 17 individuals, has any consideration been given as to whether or not they will be taken to Christmas Island if there is no settlement of the issue by the end of the year?

**Mr Metcalfe**—That is a hypothetical issue at this stage. It is not something that has been considered, and whether it is needed to be considered is something that will only arise in the future after decisions are made.

**Senator CASH**—Again, I find that very difficult to believe because of the time frame that we are now dealing with.

**Mr Metcalfe**—We move fast.

**Senator CASH**—I am going to hold you to that, and obviously we will be revisiting that comment in light of what actually occurs. Will any of these 17 who have failed the security clearance, though, be removed to Christmas Island indefinitely, like the four others who had earlier failed security clearances? In other words, will they be coming on to Australian territory regardless of the outcome of their application?

**Mr Metcalfe**—That is a hypothetical question and, as far as I know, no decisions on, or considerations of, that issue have occurred.

**Senator CASH**—Again, because I do not want to misrepresent the department, am I understanding you correctly that, apart from the fact that we have a team in Romania currently undertaking assessments of these 17 individuals—despite the fact that we are in the third week of October and the undertaking that we gave to the Romanian government expires at the end of December 2010—the government and the department have given absolutely no thought whatsoever to what is going to happen to these individuals in the event that they fail the resettlement test in Australia?

**Mr Metcalfe**—Our focus at the moment is considering applications for resettlement in Australia.

**Senator CASH**—That was not an answer to my question. My question was: am I correct in saying that, based on the evidence that you have given, the government has given absolutely no thought whatsoever to what is going to happen to these individuals in the event that they are not resettled in Australia?

**Mr Metcalfe**—And my answer is that that issue has not arisen yet.

**Senator CASH**—Okay. Does that mean no, Mr Metcalfe?

**Mr Metcalfe**—It means that I have given you the answer I have given you, Senator.

**Senator CASH**—Mr Hughes, what would you like to put on the *Hansard* record in relation to my question?

**Mr Metcalfe**—I am speaking for the department on that matter. I think it is inappropriate for us to get drawn into hypotheticals about what might happen in the future, maybe, depending on whatever. We are dealing with applications. We have proper duties to consider those matters, and I think it is unhelpful to the people concerned and the international protection system to speculate on what might happen down the track.

**Senator CASH**—Mr Metcalfe, I am absolutely flabbergasted that as the department's secretary you can sit here and say to me that the issues I am raising in relation to what steps the government or the department has taken to understand what is going to occur if any of these 17 individuals are not resettled in Australia amount to a hypothetical question.

**Senator Carr**—Thanks for your opinion, Senator, but I do not think the officer needs to add anything more to what he has actually said.

**Senator CASH**—Fine. I will continue with my line of questioning, then. What guarantee, if any, has been given to the Romanian government about these individuals?

**Mr Metcalfe**—The undertaking is that they will not be in Romania after the end of this year.

**Senator CASH**—Is that the extent of the undertaking?

**Mr Metcalfe**—I will have to take on notice the precise detail of the undertaking. You are obviously wanting precise detail, so I will take it on notice.

**Senator CASH**—Thank you very much. I can assure you that, based on the evidence given today, I will be watching this very, very closely.

**Senator Carr**—That is a terrifying thought.

**Senator CASH**—It is, Minister, based on your government's record to date. I will turn now to irregular maritime arrivals. How many—and I will refer to them as IMAs for brevity, IMAs—has the department budgeted for in 2010-11?

**Mr Metcalfe**—Currently we are in outcome 2 which goes to refugee status decision making. The broad aspect of irregular maritime arrivals is relevant to outcome 2, outcome 3 and outcome 4. The reason I say that is that outcome 2 is about the decisions in relation to status, outcome 3 is around the actual border security issues and outcome 4 is around detention. So if the question is a whole question then we can take it here, but I just wanted to explain that the issue transcends a number of outcomes.

**Senator CASH**—I will read the question out and then you can let me know the most appropriate outcome for it to be taken in. How many IMAs has the department budgeted for in the 2010-11 period? How many did it budget for in 2009-10? What were the final arrivals for that period? What was the final cost to the budget of onshore detention facilities in 2009-10? What is the budget for 2010-11?

**Mr Metcalfe**—I think those questions initially fit into outcome 3, which is actually the arrivals. Our chief finance officer can take you through what has been budgeted. In relation to the cost of detention, that is outcome 4, but it may be simpler to wrap it up together.

**Senator CASH**—I will come back to outcome 3 then. By nationality and place of detention on the mainland, how many asylum seekers do not have an RSD?

**Mr Metcalfe**—We will get Mr Hughes or Mr Fleming to assist.

**Mr Fleming**—At the moment, of all IMA arrivals—

**Mr Metcalfe**—Senator, you said specifically on the mainland or—

**Senator CASH**—Correct. For this question it is on the mainland.

**Mr Metcalfe**—As opposed to on Christmas Island?

**Mr Fleming**—I do not have it broken down between the mainland and Christmas Island, but I can do that during the afternoon break if you would like?

**Senator CASH**—Thank you very much. So you will come back to me?

**Mr Metcalfe**—We can give you an aggregate number of persons seeking refugee status in Australia who have been IMAs, but the precise aspect of on the mainland we will need to disaggregate and we can come back to you on that.

**Senator CASH**—Not a problem at all. My follow-on questions from that, Mr Fleming, are: how many have had an application before the department but are not yet decided? How many are yet to lodge an application? How many were refused but are in the process of review? How many were refused and no application for review was made? How many were refused at review and are now awaiting departure?

**Mr Metcalfe**—To assist it may actually help you if that was asked in the aggregate because we have people on Christmas Island and we have people on the mainland. Some of the people on the mainland are some of the people who have been affected by the processing freeze. So we can certainly disaggregate Christmas Island and the mainland, but I do not know how meaningful that is for you.

**Senator CASH**—Perhaps for the purposes of this afternoon I can take it as an aggregate. Perhaps on notice you could provide it to me broken down. How much funding was provided to the IOM for activities in the region during the 2009-10 financial year?

**Mr Fleming**—That would be outcome 4.

**Senator CASH**—What is the current number of asylum seekers believed to be in Indonesia waiting passage to Australia?

**Mr Fleming**—That would be outcome 4 as well.

**Senator CASH**—So everything in relation to Indonesia is outcome 4?

**Mr Fleming**—Yes.

**Senator CASH**—How many asylum seekers currently held in Australian centres, either on Christmas Island or the mainland, were previously amongst the 255 passengers on board the boat detained by the Indonesian authorities at Marak? Is that this section?

**Mr Fleming**—I could answer that here.

**Senator CASH**—My questions are: what is their current status; how many have been given visas; how many have been refused; how many on appeal; and how many returned?

**Mr Fleming**—I will check how much of that detail I can get during the break.

**Senator CASH**—Thank you. How many IMAs arriving in Australia in 2009-10 reported paying a people smuggler to arrange their passage to Australia?

**Mr Fleming**—That would not be outcome 2. I think that would be probably be outcome 3.

**Senator CASH**—‘What is the range of payments?’ would be outcome 3?

**Mr Metcalfe**—We may have some information on this, but I suspect that the locus of understanding on that issue is with the Australian Customs and Border Protection Service.

**Senator CASH**—Happy to go with outcome 3. That is not a problem at all.

**Mr Metcalfe**—I am actually saying that it may be Australian Customs and Border Protection Service who have responsibility for aspects of that. We can certainly help as much as we can, but we may in fact say that the expertise amongst some of these issues sits with Customs.

**Senator CASH**—So that would have been yesterday.

**Mr Metcalfe**—Yes. They would have been on before us.

**Senator CASH**—Do you have any information as to how many IMAs reported paying a people smuggler to arrange passage to Australia?

**Mr Metcalfe**—If it is less than 100 per cent I would be a bit surprised. Most of them get help in some way.

**Senator CASH**—Can you come back to me on that?

**Mr Metcalfe**—We will come back to you on that.

**Senator CASH**—What is the range of payments reported to have been made by the IMAs to these people smugglers? What accounts have been provided by IMAs regarding representations made to them by people smugglers regarding the likelihood of their obtaining permanent residency or citizenship in Australia? How long is it currently taking for ASIO to make security assessments of offshore entry persons? Is that this outcome?

**Mr Fleming**—We could cover that under this outcome, but I do not think we have the right people right now. So we could come back to that later in this outcome.

**Senator CASH**—I will also be looking for how many IMAs in the course of this financial year have had ASIO security checks. How many have received negative assessments? Are there any cases in which ASIO has changed its assessment in the light of later information or for any other reasons? How many offshore applications for visas were made under our refugee and humanitarian program in 2009-10? If I could get that broken down by post and nationality, that would be appreciated.

**Mr Fleming**—I will get you some headline figures. That detailed breakdown we will have to take on notice.



**CHAIR**—Senator Cash, is it just easier to provide the officers with the list like last time?

**Mr Metcalfe**—It worked very well at lunchtime. If we had a bit of time to respond—

**Senator CASH**—Would you like me to do that? I actually do have quite a few. Would that facilitate the process by providing them to you in writing?

**Mr Fleming**—Yes, that would be very useful.

**CHAIR**—I am sure it will, because it will save Mr Fleming having to write it down himself and scramble for them.

**Senator CASH**—I am happy for you to move on to someone else while I facilitate that process.

**Senator PRATT**—Senator Cash asked about the 501. I was not actually here but I think it was in reference to some asylum seekers—

**Mr Metcalfe**—I think it was in relation to the so-called SIEV 36.

**Senator PRATT**—That is right. I think Senator Cash might have been asking why it was not being used in the instance of those asylum seekers. I am interested to know when the power was last used for a person who has not been criminally charged. As I understand it, they have not been criminally charged in this instance, and people may routinely be deported on the basis of significant criminal charges.

**Mr Metcalfe**—The precise limit of the power that Senator Cash was referring to was in relation to not a person who had been subject to a criminal conviction but through the general conduct. Ms Larkins may be able to assist.

**Ms Larkins**—I have since had a chance to get the background information on this case. In this particular case in relation to these clients the only relevant ground under the power that we could have used was past and present general conduct. But we had legal advice that the coroner's findings of themselves were not sufficient to enable the minister to find that individuals were not of good character having regard to past and present general conduct, which requires attention to the character of the person over a period of time, not just in a particular incident. The legal advice was the minister would not be on strong grounds to make a decision under the power of that type.

**Senator PRATT**—So there is good reason, I would expect, given that the last time this power was used in a similar way would have been in the Haneef case?

**Ms Larkins**—No, the Haneef case was the association power.

**Mr Metcalfe**—Dr Haneef had his visa cancelled because of the belief of the then minister that he was associating with criminals, and the full Federal Court elaborated that the association could not simply be a relationship—it was a cousin, I think, of one of the Glasgow bombers—but required some more active involvement. This particular limb of the section that Senator Cash raised is a broad section about general conduct but it sits directly next to criminal conduct. I think the legal advice we had was that, essentially, there had been suggestions about serious illegal behaviour, leading to the death of persons, but obviously it was an issue for the coroner, the police authorities and the courts as to whether there was

criminal behaviour. We can check as to the last time that that general conduct provision was used, but—

**Ms Larkins**—The Haneef case used the association power—part of the 501 power.

**Senator PRATT**—When using powers under 501, when you do not have a criminal conviction, clearly the Haneef case proves that you need to be very careful before exercising power—

**Mr Metcalfe**—This is a very serious power. It is essentially the equivalent of a deportation power. It has the effect of cancelling a permanent visa therefore rendering the person liable to detention and removal. For the reasons you suggested, it was therefore exercised carefully and with a great deal of consideration, not capriciously or flippantly. This is a serious power that requires a serious view that, in fact, it was appropriate to use in the circumstances.

**Senator PRATT**—Because, clearly, mistakes can be made.

#### **Proceedings suspended from 3.32 pm to 3.51 pm**

**CHAIR**—Let us continue. We have a sick minister, but we might continue.

**Mr Metcalfe**—Chair, we have some more issues that we can provide from earlier this morning if that would assist. We have been doing some work on Senator Cash's, but we can come to that straight afterwards. I think that Ms Prothero can provide some further advice on the questions about voluntary redundancies and also in relation to requests that we may have received from other departments to assist with staffing.

**Ms Prothero**—One of the questions that you asked was in relation to whether or not we had written similar letters. The answer to that is that to the best of our knowledge—and we have gone through our records—no, we have not. The other question was: if we received requests from other agencies along a similar line. Two that we did identify was one from the Department of Families, Housing, Community Services and Indigenous Affairs requesting assistance with the Northern Territory emergency response. That was in July 2007 and that was considered urgent. The other one was in relation to the Australian Electoral Commission which requested support in staffing polling stations in July 2010. That one was not considered urgent as such.

In relation to voluntary redundancies, I can confirm that there were four voluntary redundancies this financial year so far. We are still taking advice in relation to whether or not it is appropriate to release the size of those four redundancy payments. The other thing we would mention is that in relation to voluntary redundancies last year the 149 is correct. That was last financial year. It was a total of \$8,307,001.41 in relation to voluntary redundancy payments. That was for severance in lieu of notice and consideration period. It does not include any of the paid out employee entitlements such as annual leave, long service leave et cetera.

In relation to whether people who have accepted a VR—either the four or the 149—have been brought back into the department, I can confirm that to the best of our knowledge they have not. The information that we reviewed to check this was the AGS number, which is a standard number used across all departments—a unique identifier used across the APS. We also checked against the same first name and surname of all of those employees and none of

them to the best of our knowledge according to our records have started in DIAC. The note we would make here is that if an employee has changed their name by marriage or deed poll, obviously that check would not pick them up. If they worked for a contractor who is providing services direct back to DIAC—say, for example, some of our employees may have left to work with consultancy firms or something like that—to the best of our knowledge as well we have not identified any of those.

**Senator CASH**—Thank you very much for that information.

**Mr Metcalfe**—Madam Chair, Ms Hand can provide some additional information about our Gold Coast office and Southport issues that were raised earlier.

**Ms Hand**—Yes. I was asked by Senator Barnett about the running costs for Southport. In addition to the \$266,000 in lease per annum, there are additional running costs of \$222,000. That is direct running costs. There are some indirect ones that we are still following up as a result of a move to a global manager structure. I was also asked about the staff costs. Whilst I cannot provide specific staff costs by individual because that would be inappropriate, the average annual staff costs are \$77,000 per annum per person. I can confirm we do have 19.1 FTEs in Southport, 16 full-time staff and four part-time staff. I also can say we have 10.42 FTEs at the Gold Coast airport comprising seven full-time and seven part-time staff.

In terms of the volumes for our products and services processed at the Southport office, in 2009-10 2,102 clients were tested for citizenship tests at Southport. In the same financial year, 2,988 conferrals were made of which 1,810 were paper lodgement. In terms of citizenship by descent, there were 98, and citizenship and evidencing there were 489 approvals. I should say that not all the paper lodgements are in person. Many are received by paper, so not with people coming directly into the office. Finally, the total number of visa applications was 5,833 for the financial year 2009-10. As I said earlier, most of those were for resident return visas, for student visa applications and visitors nonsponsored.

**Senator CASH**—Chair, could I just raise one issue in terms of responses to the questions that I have provided to the department. Due to the limitations on time, I would prefer for mine to be either tabled or taken on notice so we can actually move through the outcomes.

**CHAIR**—All right. These are the ones you had asked—

**Senator CASH**—Yes. If you have the information, if you could table it. I do appreciate it, but it is getting very late and we will not be getting through all of the outcomes tonight if we do not move on.

**Mr Metcalfe**—Thank you for that. I do not think we are in a position to table anything. We do have some information but not all, so if the position is that we will take them on notice and respond on notice then we will do that.

**Senator CASH**—To the extent that you have information you could table purely so I can have a look at something over the next week, that would be great. But anything that needs to be broken down I am happy for you to take on notice.

**Mr Metcalfe**—Yes. I will just check with my colleagues, but I think that either we would be in a position to provide an oral answer or we would need to take it on notice. Is that the correct understanding?

**Senator CASH**—Take them on notice. That is fine. Take them on notice. Thank you very much.

**Senator PRATT**—I am interested to know how Australia compares with other industrialised countries. I know that Australia has had an increase in asylum seeker applications, for example, in 2009, so I would like to know how we compare internationally.

**Mr Hughes**—Senator, certainly if you look at the latest international figures available from UNHCR, quite a number of countries have reported an upsurge in asylum seekers. Particularly, I guess, ongoing instability in Afghanistan is an important source, as well as other conflict centres around the world. But in some other countries the latest figures reported by the UNHCR, which is for the calendar year 2009, showed increases along the following lines: Denmark a 59 per cent increase, Hungary a 50 per cent increase, Finland a 47 per cent increase, Poland a 47 per cent increase, Belgium a 40 per cent increase and New Zealand a 36 per cent increase.

**Senator PRATT**—You mentioned Afghanistan. I know that Australia has had an increase, but globally there has been an increase as well. Has the UNHCR made an assessment of the extent to which there has been an increase?

**Mr Hughes**—Certainly the majority of Afghan asylum seekers go to neighbouring countries such as Pakistan and Iran. There are 1.7 million Afghans in Pakistan. In terms of those moving out of their immediate region, the majority certainly do go to Europe. Australia, in terms of its global share of asylum seekers in 2009, was less than two per cent of the global asylum seeker population for that year.

**Senator PRATT**—Sorry, could you say that again?

**Mr Hughes**—The UNHCR report for 2009 said that there were 377,000 asylum applications in 44 European and non-European countries and that Australia's share in 2009 of the global asylum seeker population was less than two per cent.

**Senator PRATT**—So which countries are picking up the majority of that demand?

**Mr Hughes**—The European Union received about 286,000 claims, with the high numbers being France at about 42,000, the UK at about 30,000 and Germany at about 28,000. In North America, the US had just under 50,000 asylum claims and Canada about 33,000.

**Senator PRATT**—So we are clearly very low by world standards in terms of the number of asylum seekers that we are taking?

**Mr Hughes**—That is correct. We do remain very low in a global sense.

**Senator PRATT**—Our recent experience in terms of a spike in Afghan asylum seekers would just clearly be part of a global pattern, largely as a result of the ongoing instability and war in Afghanistan?

**Mr Hughes**—That is correct.

**Senator BACK**—Perhaps my question really is more appropriate in outcome 3, being about the entry of people into Australia. With your forbearance, if we are finished with outcome 2, I will ask the question if that is possible?

**CHAIR**—Yes. We might just need to swap officers at the table if we are finished with outcome 2. All right, let us move forward to outcome 3. I would like to check that we have the right people at the table to answer your question.

**Mr Metcalfe**—We will probably have a variety of officers coming forward, depending on the nature of the question. Mr Fleming's role does include the border security policy as well as refugee policy. He might want to hang around close by.

**Senator BACK**—My question is to do with irregular arrivals. I am wondering if you could help me. In this debate we hear it mentioned in the media and other places that the number of people arriving illegally by air vastly exceeds those arriving by boat, which causes me to ask the question, using last financial year: could you advise me in 2009-10 what proportion of people arriving in Australia by air were allowed into Australia without passport, visa or valid papers?

**Mr Metcalfe**—Senator, if I could just clarify the question? We would hope that no-one is let into Australia without a valid passport, visa or papers because they would be detected upon arrival. We have a number of people who arrive by air either having legitimately obtained a visa and then seeking to apply for refugee status after they arrive or some people who may have used a forged or stolen travel document to arrive in Australia. Some people seek asylum at the border. Some people who have arrived with a valid visa may, in fact, seek asylum subsequently. So there is a set of people who have travelled to Australia by air either with a valid visa or with a forged document and who are picked up either at the airport or subsequently.

The contrasting point are people who arrive with little or no documentation and that is more commonly people who are arriving by boat in Australia. The other scenario, which is very small, is third-country nationals who may come across the Torres Strait, but those numbers are really a handful each year because people just stand out so clearly in that particular perspective.

**Senator BACK**—Either, as you say, zero hopefully, or very, very low and in the main you would have some knowledge of the vast majority.

**Mr Metcalfe**—We are very confident that virtually no-one comes to Australia and enters the Australian community without us having checked or assessed them in some way. I could not entirely rule out the possibility of a stowaway who is able to clandestinely leave a vessel or whatever, but the vast majority of the millions of people who come to Australia each year get on an aeroplane with a travel document, get off and do whatever they are going to do. A small number may use false documents and we are now seeing a few thousand people who have arrived by boat who traditionally do not have any documents or who have left them behind or they have been used for other purposes.

**Senator BACK**—I would like to get to that when I can in a moment.

**Mr Metcalfe**—Those people are obviously intercepted by the Navy or by Customs and taken to Christmas Island and that is when immigration checking commences.

**Senator BACK**—My question then in terms of these comments about people arriving by air and not leaving: in the main, would they be people who have arrived legally and for

whatever reason overstay a visa? I know time is behind us, but if you took a six-month period after the expiry of their visa, would it be the case that the vast majority of those would, in fact, leave Australia?

**Mr Metcalfe**—Ninety-nine per cent of foreign nationals comply with visa requirements. So we are talking about one per cent. That one per cent includes boat people, people who have arrived on a forged document at an airport or people who overstay their visa having entered the Australian community.

**Senator BACK**—If I can then go to those arriving by boat. What proportion of those arriving by boat, who are subsequently processed as you say, do not have passport or valid papers acceptable to Australia in the last financial year?

**Mr Metcalfe**—I will get others to see if we have a precise figure, but the figure would be very high.

**Senator BACK**—Very high. Can I ask you then: what proportion of those people would arrive to be intercepted by our authorities having transited through perhaps Malaysia, Indonesia? A high proportion?

**Mr Metcalfe**—A high proportion.

**Senator BACK**—Would it be likely that they would actually have passports and other valid documents to arrive into Malaysia or Indonesia?

**Mr Metcalfe**—The answer is yes. Ordinarily, people who are coming from outside our region from places like Afghanistan, Sri Lanka, Iraq or Iran do so by air. We have, of course, seen some direct boat arrivals.

**Senator BACK**—We have. That is true.

**Mr Metcalfe**—But the vast majority fly to Malaysia or Indonesia. They need a legitimate travel document to get there. Whether it is forged or whether it is genuine can vary. Some move from Malaysia to Indonesia without travel documents. There are actually people smuggled from Malaysia to Indonesia and then moved through Indonesia. Others might fly into Indonesia on a valid document and then come on to Australia.

**Senator BACK**—So we assume then that they leave their country of origin with what I will call valid papers, they arrive at a transit airport in Malaysia or Indonesia, if they came through that path, with the valid papers, and yet when they are processed by Australian authorities they do not have valid papers.

**Mr Metcalfe**—As a broad generalisation, that is correct.

**Senator BACK**—Why, Mr Metcalfe?

**Mr Metcalfe**—Sorry?

**Senator BACK**—Why?

**Mr Metcalfe**—Why? Why don't they have valid papers when they arrive here?

**Senator BACK**—Yes.

**Mr Metcalfe**—Quite often those papers are recycled and used for other people to travel with.

**Senator BACK**—So that would trigger a signal to us, would it not—to your staff—that there is something irregular?

**Mr Metcalfe**—It means we have to work out who they are, Senator.

**Senator BACK**—How successful would you be in working out who they are?

**Mr Metcalfe**—We believe that we are very successful, but this is not an exact science. We have a whole range of protocols as to how we go about establishing identity. But there are issues as to what a person's age is and what their relationships might be, which obviously require expert work. One of the roles of our teams is to actually use well-established methods of seeking to establish who a person is, what their nationality is and how they have come to Australia. That can be more difficult if they do not have documents with them.

**Senator BACK**—Would it not be an early criterion to either reject them or at least to put them into some staging category until such time as your officers could satisfy themselves as to the validity of that situation?

**Mr Metcalfe**—Good question. Certainly the entry interviewing process is about establishing who the person is and why they have come to Australia and whether they are raising any issues that might mean that Australia actually has legal obligations in relation to them. We have obligations under a series of international treaties, best known as the refugees convention, but the convention against torture and the ICCPR also provide obligations towards Australia. So the role of immigration officials in that situation is to seek to establish who a person is and to identify whether there may be international obligations in relation to them. The fact of their arrival without documents is a consideration but it is not a determinative factor.

**Senator BACK**—Yet it would be had they arrived by air, I would imagine, from your earlier answer.

**Mr Metcalfe**—People are moving around the world in huge numbers, as we were discussing with Senator Pratt just before. Some have access to legitimate documents, some have funds to purchase forged documents, some have those documents provided and then recycled. That does not necessarily mean that they are not a refugee. It might mean that their circumstances are such that the only way they can find safety is through that particular method.

I accept that we are in a complex and often contentious area of administration here, but the job of my department is to try to establish who people are and whether there are any legal obligations that Australia has in relation to them; if we have none, and that happens from time to time, then to seek to return them back home. If people are uncooperative that can be a difficult process. We spend, quite often, a fair bit of time trying to establish who someone is and what their citizenship or nationality is and to seek to return them home if they have no legal rights to enter Australia. And, of course, we find some people where there may be issues that give us rise to think they might be a refugee and they are given a more detailed process, more detailed consideration. And, of course, some of those people are found not to be refugees and we seek to send them home. It is a complex, complicated area and I am just trying to describe it in general terms for you.

**Senator BACK**—Due to the constraints of time this will be my last question. Have you not described a circumstance in which if somebody presents themselves without documents it seems, from your answers, that a greater onus goes on Australia to actually accommodate them and to investigate them and try to find the right answer than on the person to explain to the Australian authorities how it is that they no longer have documents that they had when they left their country of origin and came through the transit country. Is that a reasonable—

**Mr Metcalfe**—No, I do not agree with that. Our job is to find out whether a person is a refugee. We have an obligation to protect refugees and not send them back if there is a fear that they will be persecuted or killed. So these are potentially life-and-death decisions that we are taking, and therefore we do it carefully because the consequences if we get it wrong can be catastrophic.

Part of the interviewing process—and, if it proceeds to a refugee status assessment, part of the assessment process—does go to a person's credibility. Do we believe them? Can they back up their story? Are there any other ways of them providing evidence? Do they raise issues that seem credible or fanciful? That is ultimately where fine judgements have to be made. The mere fact of arriving without a document does not mean that a person is not a refugee, but it does mean that there is a task to establish who the person is and whether they have refugee grounds.

**Senator BACK**—There does not seem to be an obligation on them to explain to the Australian authorities how or why—

**Mr Metcalfe**—They certainly have to explain themselves. There is no doubt about that. We say, 'Why have you come here?' We do not say, 'Welcome to Australia. You are welcome to stay.' We say, 'Welcome to Australia. We are very interested in who you are. We would like to know why you have come here.' We have had circumstances, and they arise reasonably frequently, where a person says, 'I've come here because I'm looking for a job.' We say, 'Sorry, there's a right way to do that and that's to apply for a visa overseas. So how about you go home.' So that is the situation, but the volume of people moving around means that this has become quite a big task for us.

**Senator BACK**—Thank you.

**CHAIR**—Senator Cash, do you have questions?

**Senator CASH**—I have nothing on outcome 3. I have placed them all on notice.

**CHAIR**—Okay.

**Senator PRATT**—I have some questions on outcome 3 and they follow a bit from Senator Back's question. He was asking about those who arrive by air and those who overstay their visa. Mr Metcalf, you have a program that means you catch up with unlawful noncitizens. How many of those have you needed to locate in the last year?

**Mr Metcalfe**—Ms Larkins will assist you.

**Ms Larkins**—Last year, 2009-10, we located 14,169, which was a 16 per cent increase on our locations the year before.



**Senator PRATT**—So it is an ongoing program to locate those people. They would normally be people who have arrived by air and who are here on holiday, work or tourist visas—

**Ms Larkins**—Any number of visas.

**Senator PRATT**—So any number of different kinds of short-term visas. What reasons do people generally give? I suppose people give very diverse reasons as to why they argue they should stay.

**Ms Larkins**—They are very diverse. They range from people with poor administration who have missed the date—

**Senator PRATT**—I think I have seen a few of those in my office.

**Ms Larkins**—to people who have fallen in love—there is a whole range—to people who deliberately stay. Some of my staff say that the people who have fallen in love have been hoodwinked so they are similarly deceived. The range of reasons for people overstaying is very, very broad. Of the people we see, some of the overstaying is deliberate and intentional; some of it is life happening to people.

**Senator PRATT**—I wanted to contextualise the number of asylum seekers we get versus the large number of people who are here unlawfully for a variety of reasons, probably not as compelling as needing to seek asylum from persecution in many instances.

**Mr Metcalfe**—We came up with an estimate. I think I discussed with one of your colleagues previously this morning that we do a reconciliation of who comes and who goes. I think the current figure for people who have overstayed their visa in Australia is just over 50,000. That is eight or nine times bigger than the number of boat people who are arriving at the moment. While we are never sanguine about this, I think that Australia can be pretty proud of its policies. This ranges from how we decide visas for people to how we monitor their stay and assist their departure. Our overstay rate—that 50,000—is 0.2 per cent of the Australian population. By comparison, the United States has an illegal immigration figure of just under 11 million, which is about 3.5 per cent of their population. We have a universal visa scheme. We obviously do not have land borders with other countries, unlike the US. We have strong operations through checking passports at airports before people come to Australia. We have an active program of working with employers in Australia to dissuade people from employing people who do not have work rights. We work with communities and people themselves. There is always a lot of work to do, and always more we can do, but we should be pretty proud of what we are doing.

**Senator PRATT**—Absolutely. I want now to ask about changes in technology that are actually helping you fulfil your duties as a department, including what I understand are called biometric checks of international passengers. What is that? How does it work?

**Mr Metcalfe**—The international standard for proof of identity for foreign travellers is now starting to change. The long traditional arrangement has been a passport with a photograph. Over the last few years the passport has become increasingly smarter with machine readable strips with antitampering, antiforgery devices. The Australian passport now has an electronic chip in the middle of it which contains information that can only be read on an approved visa.

The United States and the United Kingdom have now, as part of their overall visa processing for foreign nationals, brought in a requirement that a person must not only provide a passport but also provide a biometric identifier. The international standard is becoming eight fingerprints and two thumb prints and a photograph. Australia has been working very closely with the US and the UK and other countries on this. We have also been examining other technologies such as facial geometry. The biometrics of your face—even those of us who may put on a bit of weight over the years—your essential features, do not change. The distance between your pupils et cetera stays the same. There are various technologies which enable a person's unique identity to be captured and recorded and which make it very difficult to change the biometrics.

I mentioned this morning that the government, as part of the 2010-11 budget, provided funding to the department to undertake a trial utilising this technology and capture that information in 10 posts overseas, across a range of countries—not specifically to focus on nationals from that country per se but to really gain experience in how that technology is working. We are working and partnering with the UK border agency. Essentially, although a person may be able to obtain a forged passport or possibly arrive here without a document at all, if they have had an encounter with us overseas then we are able to check their biometric.

We have now commenced biometric recording of all persons who come to Christmas Island. For all boat arrivals we collect their fingerprints and photograph. We are now doing some checking and matching those records with other countries such as the UK and the US to see whether they have ever seen that person. That ability to exchange data becomes very powerful—for example, if a person seeks to change their identity from place to place through a different travel document because they find it impossible to change that biometric.

**Senator PRATT**—So someone could have hypothetically had an asylum claim rejected elsewhere but you would be able to establish that that was the same person, even if you could not establish their identity?

**Mr Metcalfe**—That is correct. We have seen examples of that. That can prove a number of things. It can prove that the same person has in fact been in another country and corroborate their story, or it could show that the same person has been in another country under a different name and in fact weaken their credibility if you have asked them about that particular issue. So there are a range of outcomes, but it does mean that a person cannot simply change identity through turning up without any information about themselves or on a false passport.

**Senator PRATT**—In terms of countries that are adopting this kind of technology, are many of those likely to be current transit countries? I suppose if they are the kinds of countries that frequently have people from different regions visiting then they cannot necessarily put much of that technology in place, because it starts to preclude visitors et cetera.

**Mr Metcalfe**—Yes. I think in 20 years time we will see it as probably a standard around the world. Right now it tends to be the major developed Western countries which are embracing this technology, because they are very attractive destinations for people, but clearly there is interest in places like Singapore and Hong Kong in using biometrics to facilitate their own citizens travelling. It is quite impressive if you look at the border crossings between

Malaysia and Singapore to see school kids coming through and producing a fingerprint. They go to school every day on the basis of a fingerprint.

**Senator PRATT**—Is there a point at which such technology might actually make it more difficult for people who authentically need to seek asylum to be able to leave their countries and transit, and is anyone monitoring that situation?

**Mr Metcalfe**—I do not think it is, but it is a reasonable question to ask. Refugee-producing situations are largely coming from people spontaneously moving across borders and seeking asylum. Even the cases that we see are largely people who have been displaced and are seeking to travel. But of course you are often dealing with mixed flows of some people who may be refugees and others who are simply looking for a better economic circumstance for themselves. I think it would be very difficult to imagine a world where a refugee would not be able to move to a place of safety and be given safety there. We heard before that there are 1.7 million Afghans living in Pakistan, and Pakistan has been incredibly generous in supporting that refugee population.

**Senator PRATT**—I suppose I can think of examples where a citizen might need to commit an act of fraud against their own government because they cannot leave without being detained because they have a fear of persecution that they are likely to be stopped from leaving. If those states adopt this kind of technology then to some extent people could be trapped.

**Mr Metcalfe**—Yes, in the same way that the internet is both good and bad, the technology could be used for positive reasons and for negative reasons. It is simply a way of establishing proof of identity, and in those thankfully few countries which actively prevent people from leaving then it could be seen as an exit control as well as an entry control.

**Senator PRATT**—Okay. Is the Enhanced Passenger Assessment and Clearance program an information-comparing and management program, or is it more scientific data?

**Mr Metcalfe**—I do not have a lot of detail on that. I think it is administered by the Australian Customs and Border Protection Service, so I suggest you talk to them about that.

**Senator PRATT**—I think it has something to do with travel histories.

**Mr Metcalfe**—Customs undertakes on our behalf the processing of passengers at the so-called primary stage at airports, so that when you arrive back in Sydney airport or Perth airport it is a customs officer that you see but they are actually undertaking the immigration function. Then when you collect the bags it becomes a customs function. Our officers get involved if there is a problem or an issue, then we have some specialist staff at airports for that situation. But clearly, we and Customs work very, very closely together in developing new technologies and centres of cooperation in this area.

**Senator PRATT**—And what about analysis of data to assess people for referral to agencies such as ASIO? What kind of programs do you have in place there?

**Mr Metcalfe**—Again, the overall visa arrangements are what we describe as a layered approach. Australia requires all foreign nationals to be in possession of a visa. Depending on the purpose or where the person comes from, that can be obtained electronically through the internet or through a travel agent or it may require a full written application. But we start

collecting data at that point and we run it across our alert systems, particularly the movement alert list, multiple times through the process—so when we consider the application, if the visa is granted, when a person is at the airport, when they are in the air and when they arrive in Australia. Included on that alert list are a whole range of persons of concern for immigration fraud purposes, security issues, law enforcement, Interpol red notices et cetera. So that is a clear area that if a person triggers a warning alert, there will be a referral to that agency.

**Senator PRATT**—So the Next Generation Border Security Initiative would fall into that category as one of those—

**Mr Metcalfe**—It is part of that overall suite. Essentially, what next generation border security does is build on work that we have done over the last couple of years in particular with ASIO about automating our visa-checking and security-checking processes, so it is being done increasingly through a data-matching system rather than a manual process. Next generation border security then provides a level of analytical capability across the top of that so that you can actually look at trends and patterns. So it will be a very significant border security enhancement.

**Senator PRATT**—And that is basically just an information management exercise that is now available today because of the more sophisticated programming and computing capacities that we have.

**Mr Metcalfe**—Yes, but it essentially takes you into automated data matching and analysis and replacing something that has been done by people checking individual things, with the ability of the systems to check a whole range of things and to look for unusual things—patterns, things that fall outside the normal et cetera.

**Senator PRATT**—Okay. Terrific. Thank you.

**CHAIR**—Thanks. Senator Cash?

**Senator CASH**—I have no questions on this outcome, sorry.

**CHAIR**—Okay. Let us wrap that up and go to outcome 4. Mr Metcalfe, just while we are changing people and places, I do have one question. I think the officers have probably gone, which is a bit remiss of me. How many people have we still got in this country now who have overstayed their visa or who have sought refugee status following the World Youth Day in Sydney?

**Mr Metcalfe**—I will see if we can get you an answer for that. Ms Larkins cannot help me. We will come back to you on that one.

**CHAIR**—Yes, I would be interested to know, because I think the number is surprising.

**Mr Metcalfe**—Quite a few people found love through that event as well.

**CHAIR**—Right. I see. That is the reason. I will await with interest that number.

**Mr Metcalfe**—Seriously, with any large international event, whether it is the Olympics, the Commonwealth Games or a World Youth Day, we take great care to work with the organising authority to ensure that people who come are legitimately coming, but sometimes we get let down.

**CHAIR**—Okay. We will see the answer. We will now go to outcome 4.

[4. 33 pm]

**Senator CASH**—Senator Crossin, in terms of outcome 4, I know that there are four parts to it. I want to put all of my questions for 4.1 on notice so we can move on.

**Mr Metcalfe**—That is visa compliance and status resolution.

**Senator CASH**—Correct. So we can move if at all possible. I am in your hands as to whether or not these are the departmental officers who answer all of the outcomes.

**CHAIR**—Yes. My understanding is these are the four most competent to do that.

**Senator CASH**—Excellent. So what can I turn to?

**CHAIR**—Just go.

**Mr Metcalfe**—4.2 relates to onshore detention.

**Senator CASH**—My preference is to turn to 4.3 because I have got a lot to go through on the Curtin Immigration Detention Centre, and we were going to get a departmental official who was able to answer questions in relation to that.

**Mr Metcalfe**—Mr Correll has got himself briefed up. Program 4.2 relates to onshore detention, so essentially centres on the mainland.

**Senator CASH**—Can I ask for a point of clarification. Thank you very much for that. Initially I was told that, for example, Curtin, because it had offshore people there, was actually going to be under 4.3, but are you saying it is actually under 4.2?

**Mr Metcalfe**—Again, Senator, because people move back and forth we are more than comfortable about taking 4.2 and 4.3 together. We do not want to say you should have asked that before.

**Senator CASH**—I appreciate that. Thank you very much. If I could now kick off with the Curtin detention facility, Mr Correll, I am going to refer to the master plan prepared for the Department of Immigration and Citizenship for the expansion of the Curtin detention centre. Can you please confirm that the first version of this master plan was issued for review on 21 July 2010?

**Mr Correll**—Senator, the document I think you are referring to is a broad site plan type document.

**Senator CASH**—Could I just hold it up? I am happy to table this just so that we all know that this is the document you are referring to.

**Mr Correll**—Yes. It is what I would call a broad site plan type document in relation to the Curtin Immigration Detention Centre. It was prepared for the department by a set of architects that are contracted to the department and has been progressively updated through a number of iterations. I would need to check the precision of that date you referred to, but it would be in that sort of broad range of timing, around July.

**Senator CASH**—Are you able to check that and come back to me this evening?

**Mr Correll**—I would need to check with my colleagues to see if they had that information. That particular broad site plan has gone through many iterations and so we just need to be careful about the timing of different versions of it.

**Senator CASH**—Thank you. And obviously I am referring to the very first site plan that was actually drafted. When was the original brief issued for the development of the master plan, by whom and under what authority?

**Mr Correll**—That would have occurred following the announcement of the use of the Curtin facility which occurred back in April. At that stage we would have been looking broadly at the potential for the way the site could be utilised.

**Senator CASH**—By whom was the brief issued?

**Mr Metcalfe**—It would have been issued by the department.

**Senator CASH**—And under what authority?

**Mr Metcalfe**—On 18 April I am sure you are aware that the former minister, Senator Evans, announced the use of Curtin as a detention facility and the intention to accommodate single adult men there. There were some facilities there already that had been left over from its previous use, some that the Air Force had been using. The budget provided funding for construction work for up to 1,200 places. We can take the precise question on notice as to the date of the plan and the authority, but it would have been issued by the department in that context.

**Senator CASH**—Can I just go back to a comment that you made that the budget provided—I missed the word there—for up to 1,200 places.

**Mr Metcalfe**—That is correct.

**Senator CASH**—So what did it provide, though? It provided—you mentioned a word there and I missed it.

**Mr Metcalfe**—Sorry, Senator?

**Senator CASH**—Did you say the budget provided accommodation?

**Mr Metcalfe**—The budget provided funding for the centre for construction works for up to 1,200 places, but I would make the key point, and this is an important point, that there was a set of decisions in relation to the funding of and constructing of places and there was a separate set of decisions about the actual use of those places.

**Senator CASH**—Where does it actually say 1,200?

**Mr Metcalfe**—I do not think the figure 1,200 was used in the budget, but the budget provides \$151.8 million in new capital funding for the expansion of detention centres. One of the measures within that was capital works for Curtin to go to 1,200 places.

**Senator CASH**—That is the bit that I am trying to find. How did we get to 1,200?

**Mr Metcalfe**—As I have said, the budget provided for the expansion of detention accommodation. One of the components of that was to provide up to 1,200 places to be used, if needed, and with a separate decision-making process as to the actual utilisation of those places. You would be aware that the decision to actually utilise up to 1,200 places was not made until 17 September by Minister Bowen.

**Senator CASH**—17 September was when they decided to use the 1,200 places?

**Mr Metcalfe**—That is right. We had been, obviously, going through a process over quite a while of expanding detention accommodation. That is no news to anyone. Christmas Island had been significantly expanded beyond the original North West Point and Phosphate Hill. We had expanded North West Point. We had put in additional compounds. We had been using marquee tents. We had been using interview rooms. In April it was decided that a number of people would be brought to the mainland, retaining, of course, their status as excised nonpersons. Some people went to Villawood, some people went to Northern in Darwin and the minister announced the commencement of the use of Curtin. That was on 18 April. Subsequent to that, the budget provided \$151 million for the expansion of detention facilities. That incorporated those works and various security works at Christmas Island and wherever.

**Senator CASH**—How many revisions of the master plan, the plan that I handed up before which we will call the master plan for purposes of the questioning, have been prepared since the original one? What is the current revision categorisation?

**Mr Correll**—There would have been quite a few revisions made to it. It is hard for me to be precise on that, but there would have been a number of revisions to it. As you would expect, formulating an overall master site plan like this is not something that we would see as particularly unusual for any detention facility. We have done many, many master site plans for locations like Villawood and other centres. It is essentially developing the overall plan of siting locations so that, if a decision is made by government to advance accommodation, we are able to move quickly, particularly in the current environment where there has been pressure on accommodation.

**Senator CASH**—Would revision A be master plan 1? Is that how it works? What I have in front of me says ‘Rev U’.

**Mr Correll**—We would have to check that. I am not sure that the world works to the perfect alphabetical arrangement like that in the revision of those plans. It would have gone through a number of iterations.

**Mr Metcalfe**—Did we give you this plan, Senator?

**Senator CASH**—Yes, you did.

**Mr Metcalfe**—Because I know there have been plans floating around and obviously there are real plans and other plans—

**Senator CASH**—My understanding is that this is the one that we were provided with during the site visit at the Curtin detention centre last week. I understand that I am looking at revision U, according to this document.

**Mr Correll**—That would make it, as at last week, the latest version.

**Senator CASH**—That would be the latest version. Was the minister advised that a brief had been issued for the development of the master plan when it was originally developed?

**Mr Correll**—Again, I need to check that fact precisely. It would not be surprising if there had not been a formal advice to the minister about that, because it is a process that happens, as I say, as a fairly regular matter in overall facilities planning.

**Mr Metcalfe**—I think the minister expected us to get on with it, didn't he?

**Mr Correll**—Yes, exactly. So I would not want to be absolutely categorical without checking the fact that there was nothing that went to the minister that advised him, but this would be standard operational business in detention facilities.

**Senator CASH**—Can you also confirm whether the minister or his office was shown or provided a copy of the master plan and, if so, when and what version and, if not, why not?

**Mr Correll**—We would check that. But I would emphasise that this is part of a normal operational planning process for detention facilities. So there is nothing special about a plan like this.

**Senator CASH**—Mr Correll, are you able to confirm that revision C of the master plan was issued on 23 July and contained a plan for two further stages of the development, being stage 2 and stage 3, and denoted on that particular plan as camp 02 proposed and camp 03 proposed?

**Mr Correll**—That sounds broadly accurate. I have a copy of the plan in front of me and it incorporates the different potential stages for development at Curtin.

**Senator CASH**—So we have camp 01 existing, camp 02 proposed and camp 03 provision for possible future expansion.

**Mr Correll**—Yes.

**Senator CASH**—Can you confirm that revision C provided for the placement of 150 I will refer to them as dongas, each containing four cabins that could each accommodate two people in camp 02 and 03, providing additional accommodation for 1,200 people?

**Mr Correll**—The overall broad site master plan essentially has three current components to it. One is the stage 1 component, which is currently in use. It has a central core area. That includes areas such as amenities areas and oval areas. Then it has the stage 2 area as well. It denotes the potential for a third stage area as well, with the site having capacity to take a third stage area.

**Senator CASH**—In terms of provision for possible future expansion, as it says on the map, how many dongas would you expect to go there?

**Mr Metcalfe**—Zero. The government has made it clear that there will not be any expansion of the centre beyond 1,200 persons.

**Senator CASH**—No, but in terms of provision for potential future expansion which is stated on the map—

**Mr Metcalfe**—That is camp 03, I think, isn't it?

**Senator CASH**—Yes, camp 03.

**Mr Metcalfe**—Just to get things clear, stage 1 was essentially the existing facilities augmented to take them up to 600 persons or thereabouts. Stage 2, which was funded in the budget, is to take them up to around 1,200 persons. The department, as part of routine contingency planning, had a look at whether there was capacity to go further—the so-called camp 03. Some preliminary site works were undertaken there which I think you may have seen, Senator, when you were there last week. But there has been no government approval for that stage, and the minister has made it clear that Curtin will go to around 1,200 detainees and



that future detention requirements would be fulfilled by going to Northern, with 11 Mile as a contingency. So we were doing some prudent contingency planning, and that is what the status of camp 03 is. There has not been any ordering of dongas or other demountables. There has been no planning for departmental staff or other people to go there. It was some contingency planning which, as it turned out, has not been required.

**Senator CASH**—In terms of the plan that we have in front of us, Mr Correll—camp 01 existing, camp 02 proposed and camp 03 provision for possible future expansion—in what revision of this plan was the provision for possible future expansion of stage 3 actually made?

**Mr Correll**—As to what version, I would have to check that fact.

**Senator CASH**—Did it appear in the master plan stage 3?

**Mr Correll**—The stage 3 provision for possible future expansion appears in this most recent version of the master plan. I would need to check when it originally went in there, but this is like the provision that can exist on any plan. It does not mean it is going to be built. It is simply a provision that exists as part of an overall site master plan.

**Mr Metcalfe**—It is certainly not a detailed construction plan or anything like that.

**Mr Correll**—It is not, no.

**Senator CASH**—Can the department confirm that the number of bunk houses or dongas provided for under the most recent revision of the master plan in stages 2 and 3 is the same as what was contained in revision C?

**Mr Correll**—I would need to check that detail.

**Mr Metcalfe**—Again, I think there is no commitment to stage 3. There is no detailed plan—

**Senator CASH**—No, I understand that there is no—

**Mr Metcalfe**—You mentioned stages 2 and 3, but we are stopping at 2.

**Senator CASH**—I know, but I have a plan in front of me that says ‘Camp 3—provision for possible future expansion’.

**Mr Metcalfe**—That is right, yes.

**Senator CASH**—There have been a number of issues surrounding stage 3.

**Mr Metcalfe**—No, I understand that.

**Senator CASH**—I would like to work through those issues to actually see—

**Mr Metcalfe**—Yes, and I was just making it clear that—

**Senator CASH**—And I appreciate that, Mr Metcalfe.

**Mr Metcalfe**—I was just making it clear that if someone said we needed to go further, that is where we would go. Indeed, we took advantage of there being some bulldozers and workers on the site to say ‘Gee, just in case we need it, let’s grade it down and put a few pipes in.’

**Senator CASH**—I think this is a really handy opportunity, because I will jump ahead to a photo that we took last week on our trip on 14 October to stage 3, and I am more than happy to table a copy of that photo. Obviously I am going to refer to the photo taken on 14 October

during a visit to the site by the shadow minister for immigration and citizenship and the member for Cook in the area known as 'Camp 03—provision for possible future expansion'. You will note from the photo that sewerage, drainage, electrical and communications conduits have been installed to the site; that a grader and dump truck is still on the site; and there are fresh tracks visible on the site where the grader and trucks have been working, presumably to fill in the trenches for the services. We also assume that the electrical and communication cabling is already installed there and there is a pull-through installed. Can the department advise when these works commenced on stage 3, who authorised their commencement, who undertakes these works and the estimated costs of the works?

**Mr Correll**—Senator, can I firstly say, yes, I would agree this is a picture of stage 3. I can be confident about that because when I look at the piping in here and electrical conduit that is set in it has no wiring coming out of it which is totally visible and completed in stage 2. What was done in relation to stage 3 was that, given the existence of the significant earthmoving equipment which you would have seen at your visit there, it was raised by the contractor with the department that it would be prudent to look at both grading and putting in the provision for connecting services. None of these pipes—

**Senator CASH**—For a site that is never going to be used?

**Mr Metcalfe**—It was, as we have said, prudent contingency planning.

**Senator CASH**—For a site that is never going to be used?

**Mr Metcalfe**—Prudent for a site that—

**Senator CASH**—For a site that is never going to be used?

**Mr Metcalfe**—The government decision is that it will not be used.

**Senator CASH**—Yes. So for a site that will never be used, it was prudent contingency planning to do these works?

**Mr Metcalfe**—As Mr Correll has explained, the marginal cost of undertaking the works was minimal because the heavy equipment was on site and the contractors were on site, and we are into prudent contingency planning.

**Senator CASH**—For sites that will never, ever be used?

**Mr Metcalfe**—It will never be used. However, that is a decision by the government.

**Senator CASH**—'However'. I like the 'however'.

**Mr Metcalfe**—Since we are going to have a talk about this, I point out that 11 or 12 years ago I was deputy secretary of the department and thousands of people were arriving in Australia. We were—

**Senator CASH**—Mr Metcalfe, I am not interested in what happened 11 or 12 years ago, with all due respect. What I am interested in at this present point in time is an announcement by the government that it is not going to expand the Curtin detention centre beyond 1,200 persons, despite the fact that we have a master plan that clearly denotes stage 3, despite the fact that we have a photo taken last week—and which you have confirmed—of works undertaken on that site and despite the fact that just yesterday the government announced an

extra 2,300 places in as-yet-unconstructed centres. That is what I would like to focus on now, please—not what happened over a decade ago.

**Mr Metcalfe**—I appreciate that, Senator, but it is up to me how I answer your questions.

**Senator CASH**—No, that is not right. I do not need this to be put into any form of context.

**CHAIR**—Senator Cash—

**Mr Metcalfe**—Senator, you do not need context?

**Senator CASH**—No, I do not need context.

**Mr Metcalfe**—I will note that you do not need context.

**CHAIR**—Senator Cash, have you got questions?

**Senator CASH**—Thank you, I do. Who authorised the commencement of works on stage 3?

**Mr Correll**—There was no commencement of works on stage 3. All I can give you in my response are the facts of the matter. The facts of the matter are that the contractor was working on stage 2. The contractor had heavy earthmoving equipment available and suggested that it would be sensible to use that earthmoving equipment to dig trenches and to lay unconnected, unserviced conduit and pipe in those trenches. That is exactly what has been done at that particular location to make provision should there be any need to use this in the future.

The judgement call was made at that time by officers in the department that it would be a sensible use of taxpayers' money to make that provision available so that should any future decision be made to utilise stage 3 there would be the capacity to do that. As we have emphasised many times, no such decision has been taken and it has certainly been made clear by the government since that time that no such plan is intended.

In hindsight, there may have been a marginal cost that has been incurred by the department that the department will need to wear as part of stage 2, but it represented a prudent decision in terms of the most efficient and sensible use of taxpayers' dollars at the time.

**Senator CASH**—I will actually come back to that. Both you and Mr Metcalfe refer to prudent contingency planning. I would have to ask: does the government or the department pick and choose when it decides to have prudent contingency planning? You are at pains to tell me now that, in relation to what I will refer to as 'the works' on stage 3 of the Curtin detention centre, that is prudent contingency planning, but when it comes to the 17 Sri Lankans in Romania we do not have any contingency planning.

**Mr Correll**—I can say that for the last many months the department has been very actively engaged in prudent contingency planning. That has involved examination of potential properties across Australia. On occasions the department has been labelled as skulking through parts of regional Australia. On occasions it has been claimed absurd numbers are proposed in different sites.

The department has faced a situation where there has been pressure on immigration detention accommodation. It would not have been doing its job in effective management if it

did not look at making preparations and undertaking that prudent contingency planning. We have done that for a range of different considerations across Australia.

**Senator CASH**—In your evidence, you mentioned that officers in the department authorised the commencement of the works. Can I ask you who those officers were?

**Mr Correll**—I do not—

**Mr Metcalfe**—It was undertaken by the department. We will take on notice whether we can provide more details.

**Senator CASH**—Mr Metcalfe, was it you? Did you authorise—

**Mr Metcalfe**—No, it was not me personally, but I am not going to start ruling in or out—

**Senator CASH**—Mr Correll, was it you—seeing you are both at the table.

**Mr Metcalfe**—Senator, I think I have answered the question.

**Senator CASH**—No. Mr Correll is here, that is all. That way I can—

**Senator Carr**—No, the secretary has answered the question.

**Senator CASH**—Mr Correll, are you able to provide the Senate with an estimated cost of the additional works?

**Mr Correll**—I do not have a precise figure for that. I would need to check it. I have been advised that it represented a relatively marginal cost in the overall scheme of the substantial site preparation work that needed to be undertaken for stage 2 and the core area.

**Senator CASH**—I would hope, though, that you would agree that, regardless of the extent of the cost, it is still taxpayers' money and it does need to be spent prudently.

**Mr Metcalfe**—Yes.

**Senator CASH**—The government yesterday, as we all know, made an announcement that they will be finding an extra 2,300 places in as yet unconstructed centres. What was the public policy reason behind not expanding the Curtin detention facility?

**Mr Metcalfe**—When Minister Bowen became minister, he obviously received a briefing from us. For a range of considerations that I am sure he can discuss if he wishes to, he believes that 1,200 is probably the optimal number of people at Curtin, which is quite a remote place, and that the other options that were available—particularly Northam, which is somewhat closer to Perth—presented a better way to proceed than taking Curtin beyond 1,200. So he made it very clear that 1,200 was where we would stop at Curtin.

**Senator CASH**—You advised that the minister received a briefing from the department.

**Mr Metcalfe**—Absolutely.

**Senator CASH**—What were the public policy reasons behind it? Well, did the department recommend the expansion of Curtin?

**Mr Metcalfe**—That is an issue that was in my incoming government brief to the minister. I would want to think carefully about whether I start going into advice to the minister.

**Senator CASH**—Can I please refer that to the minister?

**Senator Carr**—You can and I will take it up with him, but there is a standard convention here that advice to ministers is not the subject of consideration at the committee.

**Senator CASH**—What is the public policy reason behind the government not expanding the Curtin detention centre beyond 1,200 people?

**Mr Metcalfe**—I think we have taken that on notice. Can I just reiterate that there is a clear government decision. Sadly, I am not allowed to provide any context as to why the department is so keen on contingency planning.

**Senator Carr**—Yes, you can. I think you can provide some context here.

**Mr Metcalfe**—Thank you, Minister. In the past, the department has been accused of maladministration by not properly catering for potential need into the future. I was determined that the department not be caught short into the future. This particular opportunity around some earthworks and a few pipes seemed like prudent activity, but of course the government and the new minister on coming to office looked at a range of advice from the department. He accepted some of that advice, he modified some of the ideas and he did not proceed with some of the ideas. That is absolutely open to the minister.

**Senator CASH**—Does the department have a view on the expansion of the Curtin detention centre?

**Mr Metcalfe**—Our view is that it is to be expanded and completed at 1,200 places.

**Senator CASH**—Thank you.

**Mr Metcalfe**—I also should say—and I have not been asked the question, but with indulgence—that I know there were suggestions around about plans for 3,000 people at the centre. That has never, ever been a suggestion that we have had: that 3,000 people might be detained there. There was some media speculation about that, I am sure you have heard.

**Senator CASH**—I have.

**Mr Metcalfe**—Certainly, we are fixed now on having places for 1,200 people.

**Senator CASH**—Thank you. I am just getting a copy of master plan C so I can compare it with the plan that we have in front of us. Can the department confirm that a major review decision was made to the master plan for stage 3 on the map to accommodate the provision of a blast zone? You will see that there is a blast zone buffer on revision U.

**Mr Metcalfe**—I can see it, Senator. I do not know what it means. I do not know if Mr Correll can help us.

**Mr Correll**—No, I must say that I am not familiar with what the blast zone buffer represents, but we do need to appreciate that this is a Defence facility.

**Senator CASH**—Absolutely. I absolutely appreciate that.

**Mr Metcalfe**—This is totally speculative, but you can see the hatched area on the plan.

**Senator CASH**—The turkey nest dam?

**Mr Metcalfe**—It goes across the turkey nest dam in sort of a triangle from top left to sort of bottom right sort of thing—that hatched area. That I suspect is the blast zone buffer and I suspect that that has some military association and that that area is not to be used because of

presumably jet blast or some other reason. We will obviously try to provide more information on notice, because there is clearly a technical engineering purpose for that.

**Senator CASH**—Was any advice given to the department that the blast zone buffer would need to be put in that particular position because of the potential to expand into camp 3?

**Mr Correll**—No, I do not follow the question.

**Senator CASH**—My understanding is that on map C there is no provision for the blast zone and then on this revision here there is a provision for the blast zone. Did the department receive any advice that this blast zone needed to be moved at all?

**Mr Correll**—We would have to check that detail.

**Mr Metcalfe**—First to find out what the blast zone is and secondly to see if it was moved.

**Mr Correll**—That is right.

**Senator CASH**—Can the department confirm that revision P of the master plan, described as issued for construction, was issued on 3 September?

**Mr Correll**—I would again need to check that detail. It goes to a similar response to earlier points on the various versions of the master plan.

**Senator CASH**—Okay. Just bear with me for one moment.

**Senator BACK**—Could I ask a question related to the same physical area? Is that possible, Senator Cash?

**CHAIR**—Yes, that is possible.

**Senator CASH**—Absolutely.

**CHAIR**—Senator Boswell has some questions in relation to that as well.

**Senator BACK**—In that same area—and gentlemen, I am referring to the photograph that Senator Cash tabled—being Commonwealth land it would be the case that an environmental assessment would have to have been undertaken for the vegetation to be cleared. Is it possible for you to present to us that assessment under the EPBC Act?

**Mr Correll**—I think we can certainly follow that up and look to obtain that information. Certainly, questions of assessments of any environmental impact are always a key part of works of this character.

**Senator BACK**—In the same vein, drawing attention to the turkey nest dam, it has been represented to me by some constituents in the Kimberley area that the turkey nest dam is or is about to be used for a commercial aquaculture project. Could you throw any light on that concern?

**Mr Correll**—I can comment that, as part of activities at the centre, there is certainly work going into an aquaculture project that the people at the centre are in fact participating in. That centre is involved in essentially a barramundi hatchery arrangement and it involves the establishment of small ponds. It is also working in closely with the local Derby community to look at making a contribution from the Curtin centre back to the community. That has been what we see as quite an outstanding innovation in activities at that centre. The purpose of this is to try to ensure that there is a strong linkage between the local community and the activities

of the centre from the point of view of the staff, both departmental and Serco, and also the people in the centre. This, I think, has been a quite outstanding development, and it will work very well. There have also been substantial connections in other ways with the community and with the TAFE college in Derby. They are working on training programs.

**Senator BACK**—You mention engagement with the local community. By that do you mean local community members being involved in the potential project or the sale of fish products to the local community?

**Mr Correll**—It is more how the products themselves can be used within the centre for food purposes but also how the products can be provided to help the local community in terms of nutrition. One key area there is how the products can be used to help the local Indigenous community.

**Senator BACK**—I asked the question, Mr Correll, because the person who represented this case to me has over time spent several hundred thousand dollars trying to get an aquaculture project up and running in coordination and conjunction with the Indigenous communities, and he has been met with obstacles right down the line. You can understand his concern, expressed to me in fairly strong terms the other day, when, despite his efforts, his huge investment and his willingness to engage with the Indigenous community and his failure to be able to get these approved, he then finds on his doorstep a project funded by the federal government doing exactly what his own business plan has endeavoured to do for many years.

I concur with you; I applaud it. I can see a scenario in which there could be great involvement by some or all of these people. But I just wish to put on record this person's concern in what he sees as being a very, very unbalanced playing field. Again, because time does not permit, the question I would be most interested in is the source of the fish themselves in the first instance and what opportunity or capacity there is for somebody of his skill level to be involved in the project so that he can see some upside in it.

**Mr Metcalfe**—We would be very happy to meet with this gentleman to learn more about his situation and to see if there is anything we can do in some form of cooperation. This is very much about the fact that we have a lot of men in a confined space. We need to find ways to keep them busy and focused on positive things. I can obviously understand the concerns that you are raising, and we would be very happy for you to put us in touch with that gentleman to have a discussion with him.

**Senator BACK**—Thank you.

**Senator CASH**—Mr Correll, I think you were taking on notice the following: can the department confirm that revision P of the master plan described as issued for construction was issued on September 3; can the department confirm the total cost of capital works for stage 1 of the Curtin detention centre to provide accommodation for 600 people?

**Mr Correll**—So you are after the capital costs?

**Senator CASH**—Yes, thank you. The total costs of the capital works, yes.

**Mr Metcalfe**—For stage 1?

**Senator CASH**—For stage 1 for the accommodation of 600—

**Mr Metcalfe**—I had in mind that it was around \$30 million, because there was—

**Mr Correll**—No, \$31 million.

**Mr Metcalfe**—Yes, \$31 million and that, of course, is because there was a fair degree of existing material there and that is why stage 2 was a more expensive undertaking.

**Senator CASH**—It was more expensive.

**Mr Correll**—Stage 2 has, in fact, gone back. As you would have observed, stage 2 is also going back and putting in things in the core central area et cetera.

**Senator CASH**—So \$31 million for the total cost of capital works for stage 1.

**Mr Correll**—Yes.

**Senator CASH**—Are you able to provide separate estimates of the capital costs of stages 2 and 3 of the master plan—and there may well be nothing associated with stage 3? Do those costs include groundworks for stages 2 and 3, including land clearing, site levelling and ground services?

**Mr Correll**—Stage 3 is very easy; that is zero.

**Senator CASH**—My understanding was that there was a small cost incurred for the actual services—

**Mr Metcalfe**—You would have to think there would be, but I thought we had taken on notice earlier the cost of that work.

**Senator CASH**—In relation to stage 3, yes. Stage 2?

**Mr Metcalfe**—Stage 2 will have some separate figures. This all relates back to the \$150 million in the budget that I described before.

**Mr Correll**—Stage 2 funding, specifically for the stage 2 area, was a figure of \$55 million. Then there were a range of other works handled in association with stage 2 that really cover all aspects and cover the core aspects, and that includes things like the sports oval, medical aspects, the upgrade to power and water, the kitchen, the site preparation, clearing and in-ground services. That figure was \$52.2 million. The specific stage 2 costings were around \$55 million, and then the core elements associated with that are \$52.2 million. So the second round of work is a total of \$107 million.

**Senator CASH**—Thank you very much. Can the department confirm whether the capital budget contained in the 2010-11 budget and any subsequent allocation made prior to the election included funding for the development of stage 2 of the Curtin detention centre, providing accommodation for the further 600 people?

**Mr Metcalfe**—Yes. As I said earlier, that figure coming out of the May budget provided for funding for stages 1 and 2 of Curtin, and also some minor works that have been undertaken on Christmas island and in Darwin, from memory. The overwhelming amount was more Curtin.

**Senator CASH**—Just for clarification, in terms of the \$107 million and the fact that it came from the figure in the budget, that included the fact that at the time there was going to be additional accommodation for a further 600 people? That is included within that figure?



**Mr Metcalfe**—When you say a further 600, do you mean to go up to 1,200?

**Senator CASH**—Correct.

**Mr Metcalfe**—I am just very conscious—

**Senator CASH**—And I accept that. So within that \$107 million, that was stage 2 including the additional accommodation for 600.

**Mr Metcalfe**—That is right. I think the best way to describe it, because it is easy for all of us to get confused, is that at the centre before we went there were some existing facilities. So the initial decision to place people in there required about \$31 million of capital works. Stage 2 was in the order of \$55 million, but then collectively across the whole centre for 1,200 people another \$52 million was required for cyclone shelters and that sort of material. So it was \$30 million, then \$55 million, but then on top of that for the centre a further \$52 million. It brings you to a total of around \$137 million for 1,200 person capacity at Curtin.

**Senator CASH**—Can the department confirm whether the capital budget contained in the 2010-11 budget and any subsequent allocation made prior to the election included funding for the development of stage 3 of the Curtin detention centre providing accommodation for further people?

**Mr Metcalfe**—As I have said, Senator, there has been no government decision to have a stage 3. We have taken on notice the cost of the works for the contingency planning for a possible third stage, and the source of those funds we will take on notice as to precisely where they came from because there is a lot of different funds floating around. But essentially the view is that we had the machinery there and prudent contingency planning would have you use it.

Another piece of information that you might find helpful here is that there was correspondence to the Public Works Committee on 14 June in relation to all of these works and the former minister for finance tabled a statement on 24 June exempting infrastructure and upgrade works for Curtin, the NIDC and Christmas Island. So, again, there was a disclosure of its activity back in June.

**Senator CASH**—Thank you, Mr Metcalfe. I know that you were very careful in answering that question. What I actually heard, though, from your answer is ‘yes’.

**Mr Metcalfe**—Senator, you did not hear ‘yes’ for my answer.

**Senator CASH**—Can we go back to the question, then, because I do want to be quite specific here.

**Mr Metcalfe**—I have said that we have, I think, taken on notice three times the cost of the—

**Senator CASH**—The ground 3 works, and I accept you have taken that on notice.

**Mr Metcalfe**—contingency works on ground 3, and I am taking on notice where the funding for that came from.

**Senator CASH**—I appreciate that. My question to you is: do you have any knowledge of whether the capital budget contained in the 2010-11 budget papers and any subsequent

allocation made prior to the election included funding for the development of stage 3 of the Curtin detention centre? It is quite a different question.

**Mr Metcalfe**—Yes, and I have said that I will take that on notice, Senator.

**Senator CASH**—You have to take on notice your own personal knowledge?

**Mr Metcalfe**—Well, my personal knowledge is that I do not know, because I do not have that level of detail.

**Senator CASH**—Even though you do prudent forward planning?

**Mr Metcalfe**—I do lots of prudent forward planning, but—

**Senator CASH**—You are just not aware of the detail.

**Mr Metcalfe**—But I do not have—

**CHAIR**—Senator Cash, just let Mr Metcalfe finish.

**Mr Metcalfe**—But I do not have personal knowledge of the way every dollar that is allocated to the department is spent, and I am taking that on notice.

**Senator CASH**—Mr Correll, do you have any personal knowledge in relation to that question?

**Mr Metcalfe**—No, Senator. As the secretary has indicated, we take that on notice.

**Senator CASH**—On 17 September Minister Bowen said at a press conference:

... in relation to the Curtin Immigration Detention Centre in Western Australia, the department is currently undertaking work to expand the centre to accommodate 1200 single males. We will now expand these works to accommodate an extra 600 people.

When did the government first announce that the Curtin detention centre would be expanded to accommodate 1,200 single males?

**Mr Metcalfe**—I will take that on notice but refer you to the fact that the budget contained funding for that purpose.

**Senator CASH**—I understand that. But, again, where does the figure of 1,200 come from?

**Mr Metcalfe**—As I have said, I will take it on notice. I explained earlier a series of decisions about the provision of facilities and a series of announcements in relation to the use of those facilities. Minister Evans's announcement back on 18 April was about Curtin being recommissioned and some people moving there. Minister Bowen's announcement on 17 September was that the number of people there would be taken up to, you know, around 1,200 people. The budget provided funding for the construction to go up to 1,200 people, thus giving the option for the government to use those places if necessary, and Minister Bowen has indicated that the government will use those places up to 1,200 but has made it clear that that is the maximum number.

**Senator CASH**—I note that an immigration official was quoted in the *West Australian* on 18 August 2010 saying that there is currently no construction underway beyond the existing stage which can accommodate about 600 detainees. In light of this comment, can the department please explain what works were being conducted at the site at that time on 18 August?

**Mr Metcalfe**—Quite clearly we will have to look back at that comment and see where that came from.

**Senator CASH**—Mr Correll was nodding in agreement.

**Mr Metcalfe**—The reason I am being very cautious here is that people talk about another 600 and is that the first 600 or the second 600 or speculation about a third 600 or 3,000. So I am going to take that aspect on notice.

**Senator CASH**—That is fine, but is Mr Correll able to answer the question? He was nodding his head and I would hate to think that there is somebody at this table with knowledge of the answer to my question.

**Mr Metcalfe**—If Mr Correll can add to my answer he will. But as secretary I am answering the question. It is quite clear that the budget funded capital works for 1,200 people and that that construction has been underway over recent months, and it was certainly underway on 18 August when that alleged comment was made.

**Mr Correll**—Senator, I was nodding my head to agree with the secretary taking it on notice.

**Senator CASH**—Okay. When did the government commence undertaking works to expand the centre to accommodate 1,200 people?

**Mr Metcalfe**—Again just to be clear, when did the works commence to go beyond the stage 1?

**Senator CASH**—So that is beyond 600?

**Mr Metcalfe**—That is right, and essentially Mr Correll has described two sums—\$55 million and \$52 million. So when did that work commence?

**Mr Correll**—That work would have commenced in the September time frame. The initial accommodation available at Curtin was a figure of 300. The initial construction works built that figure up to 600 and then the subsequent works that you would have seen on your recent visit brings the overall total up to 1,200. In terms of the decision to be advancing to 1,200, that came at the time of the minister's announcement to move to a 1,200 total capacity at Curtin.

**Senator CASH**—Thank you for that information, but I am actually looking for quite specific dates as to when certain works were undertaken.

**Mr Metcalfe**—If you ask us which works, we will take on notice which dates.

**Senator CASH**—Land clearing, installation of ground services—the very first time someone went on to that site and undertook some work. If that constituted putting a shovel in and turning one sod over, then I would like to know what that particular date was.

**Mr Metcalfe**—All right. We will check that carefully and ask people about when they had a shovel with them.

**Senator CASH**—I take that quite seriously actually, Mr Metcalfe.

**Mr Metcalfe**—No, I agree, Senator.

**Senator CASH**—I hope that you were not in any way being sarcastic.

**Mr Metcalfe**—Senator, I have been appearing before—

**Senator Carr**—Come on, Senator! You have been quite sarcastic for quite a while.

**Mr Metcalfe**—Senator, I have been appearing before this committee for 14 years and no-one has accused me of being sarcastic until now.

**Senator CASH**—Well, there is a first time for everything, isn't there?

**CHAIR**—Senator Cash, you did ask for information about when someone used a shovel. It is a level of detail I do not think Mr Metcalfe is actually used to—

**Mr Metcalfe**—I said I was going to ask people about when they used a shovel.

**CHAIR**—digging down to, excuse the pun. But if that is the level of detail that you want, it may take some time to find that answer.

**Senator CASH**—It is absolutely the level of detail I would appreciate.

**CHAIR**—Then you need to be patient, because it is going to take some time to find that answer. It will need to be taken on notice.

**Mr Metcalfe**—We have a long record of cooperating with this committee and are very happy to answer detailed questions, but you will appreciate that in a big organisation quite often we will have to check the facts. I am very clear on your repeated statements that you did not want to quote us wrongly, so we are going to check and make sure we give you the right advice.

**Senator CASH**—Thank you for that clarification, Mr Metcalfe. All I can say is that I am a little surprised that this is estimates and we are talking about a detention centre that is exceptionally controversial, and you have come here today before this committee without this information. That surprises me.

**Mr Metcalfe**—Senator, when you ask me about whether a man has put a shovel in the ground, I am sorry, I do not have that knowledge.

**Senator CASH**—No, my initial question was, 'On what date did the works commence?' You wanted to be cute and ask me what specific works—

**CHAIR**—Senator Cash, I find that inference about Mr Metcalfe fairly offensive. If you want to rephrase your questions or your comments, please do, but I think you will find that the officers at the table have been more than cooperative.

**Senator CASH**—One of the issues that I am still unable to work through is that there continues to be a reference to 1,200 people or the ability to accommodate 1,200 people in the budget papers. Where do I see the figure of 1,200?

**Mr Metcalfe**—I think we have taken that on notice, Senator.

**Senator CASH**—I am generally asking, though. If it is not in the budget papers, where does it come from?

**Mr Metcalfe**—That is what I have said; we will take it on notice. In the budget there was—

**Senator CASH**—You said that it catered for 1,200, and I just want to know: am I not looking in the right place?

**Mr Metcalfe**—What I have said, Senator, is that the budget provides \$151.8 million in new capital funding for the expansion of detention centres. There are no surprises here. Clearly, a great deal of money was going to be spent on expanding detention centres. That followed the announcement by the former minister that some men were going to be sent to Curtin and that Curtin was going to be re-established and facilities provided there.

I mentioned also a letter to the Public Works Committee and an exemption motion that was tabled in the House. I note that the department has appeared at Senate estimates subsequent to the budget, and I do not recall anyone asking me questions about what the \$151 million was for. If you asked us, we probably would have told you—well, we would have told you.

**Senator CASH**—And I only wish I had been here at the time.

**Mr Metcalfe**—Senator, I have taken on notice the question that you have asked.

**Senator CASH**—I appreciate that. In relation to the budget papers for 2010-11, Capital Measures, Immigration and Citizenship, can you confirm for me whether there is any mention of the Curtin detention centre?

**Mr Metcalfe**—My understanding is that there is a provision—I have not got the paper in front of me, Senator—

**Senator CASH**—I am happy to have you provided with it.

**Mr Metcalfe**—No, you do not need to because my understanding is that it provides \$151.8 million and the measure is described as ‘expansion of detention centres’.

**Senator CASH**—So there is no mention of Curtin?

**Mr Metcalfe**—I have not said there was. I am agreeing with you.

**Senator CASH**—I just want to be clear for my own benefit.

**Mr Metcalfe**—What I have said is that you have asked me when expanding Curtin to 1,200 was raised, and I have said that we will need to take that on notice.

**Senator CASH**—Yes, but there was provision in the budget for that.

**Mr Metcalfe**—There was provision for \$151 million worth of work on detention centres, and that included the 1,200 places.

**Senator CASH**—Thank you very much. I know that the Prime Minister was quoted on 18 August in the *Canberra Times* as saying:

No work is planned at Curtin other than the work which is underway now and which has already been publicly disclosed, publicly released and talked about.

In terms of that statement, what works were underway which had already been publicly disclosed on 18 August? What works was the Prime Minister referring to in that statement?

**Mr Metcalfe**—You would have to ask the Prime Minister what she was saying, but I do notice that the PM commented on this matter in the House of Representatives in question time yesterday. No doubt that is in *Hansard*. I do know that the Prime Minister was being asked a question, ‘Were there plans to accommodate 3,000 people at Curtin,’ and she said, ‘No, there

never have been any plans, and I can confirm that.’ She said, ‘What is happening is basically what is happening,’ and she of course was referring to the fact that the budget provides \$151.8 million in new capital funding for the expansion of detention centres.

**Senator CASH**—Can I confirm: did the Prime Minister yesterday in the House of Representatives refer to 1,200 people?

**Mr Metcalfe**—I have not got *Hansard* with me, but that is my understanding—that there was some comment in relation to that.

**CHAIR**—There was a press conference I think around one o’clock, wasn’t there?

**Mr Metcalfe**—Chair, there was certainly a press conference involving the Prime Minister and the minister in relation to the new facilities at Northam and in South Australia and in relation to residence determination and community detention, but what I was referring to was her answer to the Leader of the Opposition and I think it was the first question of the Leader of the Opposition yesterday. I caught question time quickly and I just saw that.

**Senator CASH**—I appreciate that you cannot comment on the works that the Prime Minister was referring to when she made the statement on 18 August, but could you advise the Senate committee in terms of what was the work which was underway at the time which had been publicly disclosed, publicly released and publicly talked about?

**Mr Metcalfe**—What had been publicly talked about and what had been, for example, disclosed to the parliament through the Public Works Committee process was \$151.8 million in new capital funding for expansion of detention centres. It was well known that Curtin was being expanded. We have taken on notice when precisely works around stage 1 and stage 2 were underway, but the Prime Minister has made it clear I think that the budget made provision for 1,200 people. That is what she was referring to, and she was saying that in the context of rejecting a claim that was in the media about 3,000 people going to Curtin.

**Senator CASH**—Thank you for that. It then goes back to the figure of 1,200. Yet again you are saying that the Prime Minister referred to the figure of 1,200—

**Mr Metcalfe**—No, she referred yesterday to 1,200.

**Senator CASH**—Yes, sorry, yesterday; I was referring to your answer. She referred to the figure of 1,200, albeit to refute an allegation of 3,000. Again, I go back to the point that I am trying to work through: can the department advise where the government, through the Prime Minister or the department, issued or made any statement specifically referring to expanding the accommodation capacity of the Curtin detention centre to 1,200 prior to the last election? Is there a page on the budget paper that I am missing, or in the July financial statement or in the media statements? We are constantly referring to 1,200, but I cannot find reference to 1,200.

**Mr Metcalfe**—I am not disagreeing with you in that the budget did not mention 1,200. It mentioned \$151.8 million for expansion of the detention centres. It was quite clear that Curtin was a major centre for that expansion. I have taken on notice now several times—

**Senator CASH**—And I appreciate that.

**Mr Metcalfe**—to look and find out—

**Senator CASH**—No, I understand that. Each question though does come back to this 1,200. Every time we hear an answer to a question, the figure of 1,200 is referred to, yet we continue to be unable to actually state where the origin of the 1,200 was.

**Mr Metcalfe**—Certainly, what is clear beyond doubt is that the budget provided \$151 million—almost \$152 million—for expansion of detention centres and that the government has made announcements about the use of places in detention centres. Minister Evans made a series of announcements in relation to Christmas Island, Darwin, Villawood, Curtin and so on, and Minister Bowen, upon becoming minister and considering the issues, made an announcement on 17 September that the 1,200 places that were being built at Curtin would in fact be used. What I have undertaken to look for is the first announcement in relation to the construction of 1,200 places at Curtin, and I have taken that on notice. If we had been asked about this at budget estimates, we would have talked about it then.

**Senator CASH**—I appreciate that. Just by way of further clarification, in the event that you know the answer to this, was there any mention of the 1,200 perhaps in the July financial statement?

**Mr Metcalfe**—You are talking about PEFO?

**Senator CASH**—Yes.

**Mr Metcalfe**—I will have to check that.

**Senator CASH**—Again, could you look if there was any mention in any media statements?

**Mr Metcalfe**—We will look for it.

**Senator CASH**—Thank you. Can the department confirm that the head contractor for the development of the Curtin detention centre is Complete Site Services, also known as CSS?

**Mr Correll**—That is correct.

**Senator CASH**—When was Complete Site Services appointed? How was it appointed? Was it a tender, a direct source procurement?

**Mr Correll**—It was through a process of direct source recruitment, as I recall.

**Senator CASH**—Recruitment, not procurement?

**Mr Correll**—Procurement.

**Senator CASH**—Yes? Is that right?

**Mr Correll**—That is correct. It was direct source procurement.

**Senator CASH**—When were they appointed or procured?

**Mr Correll**—We will check the date for that.

**Senator CASH**—In terms of the appointment process that the department utilises, what justification was used by the department not to go to tender for these works?

**Mr Metcalfe**—Urgency.

**Senator CASH**—Could you elaborate on that?

**Mr Metcalfe**—We had lots of people we needed to provide accommodation for and we needed to move quickly. As I said before, we have had experience in having dealt with this sort of thing in the past.

**Senator Carr**—What was the experience?

**Mr Metcalfe**—Minister, it is very clear that the period of time between making a decision to provide accommodation and getting that work done can be quite lengthy, even if you are operating on Commonwealth land or military land. We found with centres in the past like Woomera that building a detention centre when you are trying to accommodate people there does not make for a happy experience for anyone.

**Senator CASH**—In terms of the direct source procurements, is value for money a consideration?

**Mr Correll**—Absolutely. It is always a consideration. On this occasion in a location like Curtin, there is a very limited range of suppliers that can provide this. We also used a specialist commercial adviser to advise us on value for money and they did that in ultimately supporting the direct source decision.

**Senator CASH**—Madam Chair, I had put the department on notice—and it might be that Mr Correll is the person—that I would be looking to ask questions of the contract manager from the department. The department had indicated that that person would be here, unless of course it is you, Mr Correll. But I had specifically requested, because I do have quite a few questions in relation to the nature of the contract, that that person be present, and I was advised that they would be available at estimates.

**Mr Correll**—I am happy to take on that responsibility.

**Senator CASH**—Thank you. What is the nature of the contract—fixed price, cost plus?

**Mr Correll**—It would be a contract that is, I think, a cost plus. Again, I will take some advice.

**Mr Metcalfe**—Mr Correll deals with lots of big contracts. So we want to make sure we give you the right answer.

**Mr Correll**—We literally have hundreds of contracts in detention and other areas. It went through another approach. Can I just correct the record slightly? I mentioned that there was a direct sourcing approach, but it was actually undertaken through a select tender, having briefed a series of possible providers on site and then the contract was signed on 25 June for the stage 1 work.

**Senator CASH**—So 25 June was for stage 1.

**Mr Correll**—The stage 1 work of course was the work that we talked about earlier, valued at the \$30 to \$31 million mark.

**Senator CASH**—It was not a direct source procurement; it was a select tender process.

**Mr Correll**—Yes.

**Senator CASH**—And you briefed a company.



**Mr Correll**—My recollection was that there were several potential providers that were briefed on the site and out of that process—

**Senator CASH**—Could I get the names of those potential providers or the specialist companies, did you refer to them as?

**Mr Correll**—I will take advice on that and take that on notice.

**Senator CASH**—When was the contract actually let?

**Mr Correll**—The contract was signed on 25 June.

**Senator CASH**—So that is the date that the contract was let. There is no difference in the dates.

**Mr Correll**—Yes, and it was a fixed price contract.

**Senator CASH**—It was a fixed price contract and a select tender process. What is the total value of the works so far undertaken by CSS under this contract?

**Mr Correll**—That one I would have to take on notice to get the precise figures.

**Senator CASH**—Do you have any indication as to where the figure would be heading?

**Mr Correll**—The value of stage 1 was, as we said, around the \$30 million mark. That would not have all been in relation to this single contract. It is a multimillion dollar contract. The precise amounts we would need to check.

**Senator CASH**—In terms of the value of the variations to the contract, and given that you said it was a fixed price contract—

**Mr Correll**—Yes.

**Senator CASH**—What is the value of the variations?

**Mr Correll**—Again, I would want to check the precise facts before giving them to you.

**Senator CASH**—Are you able to check them now and provide the answer? I am happy to have it after the dinner break if that is suitable.

**Mr Metcalfe**—As we have had before the previous breaks, if you have a series of questions it might be easier if you let us know them and we can see what we can answer tonight or whether we will need to take them on notice. For all of these we want to give you accurate information. If there is a series of questions coming, and given that Senator Hanson-Young is here in 15 minutes, it might be productive for you to let us know what you are interested in and we can try to find out the answers.

**Senator CASH**—What I will do for the next 15 minutes is ask questions. I have to say that I did expect these questions to be answered tonight because I had specifically put the department on notice—

**Mr Metcalfe**—We appreciate that.

**Senator CASH**—I drafted the questions around having the person here who would be able to answer the questions.

**Mr Metcalfe**—We have got the right person and the right deputy secretary here, but we are very concerned not to be evasive—far from it—but to ensure you are given the right answers.

Depending on what the question is, we will have to check to make sure we give you the right answer.

**Senator CASH**—So the total value of the work so far undertaken by CSS, Mr Correll—so I can understand the information that you are giving us—you are saying is approximately \$30 million, which equates to the stage 1 works?

**Mr Correll**—No, I did not say exactly that. I said it would obviously be within the figure of \$30 million relating to the stage 1 works. Then any subsequent work would obviously be within the overall figure for the stage 2 work.

**Senator CASH**—In terms of the total value of works so far undertaken, that does not include works on stage 2 or 3? That is what I am trying to get at.

**Mr Metcalfe**—Again, this is where we have to be really careful. If you recall what I said before, there was the \$31 million for stage 1, there was \$55 million for stage 2 and then \$52 million for the whole lot. You are going to start finding that these sums start moving around and you cannot just categorise them as stage 1 or stage 2 or whatever. We will let you ask the questions, but we will—

**Senator CASH**—I appreciate that. If the sums are going to move around and they could include other parts of different stages, in terms of the original contract, if this was the master plan—I understand it is not but it is the revision of the master plan—did the original fixed price figure therefore include stage 2 and, however minimal, stage 3 works?

**Mr Correll**—I understand that the stage 2 works represented a variation to the original works. The stage 2 works, as you would have observed, are underway at Curtin. The stage 2 works are proceeding in two broad tranches—each of 300 additional beds being provided. The first of those tranches is well advanced. What we will just need to check and be very precise on in the facts we give you is the actual expenditure that has been incurred on that work to the latest point.

**Mr Metcalfe**—Again, just to be quite clear: the precise figure will probably relate to invoices received. There are always delays between work occurring and invoices received. We will have to make it clear in our response as to whether it is work that has been undertaken that is yet to be invoiced or work that has been invoiced. You never know the final figure until the final bill comes in.

**Senator CASH**—I agree and I would make a comment about the BER and the committee I sat on, but we are not on that committee so I will not go there at this stage. However, what I just need to understand is that it is a fixed-price contract and what you are saying is that the fixed price was basically for what we know officially as stage 1 and variations of that contract had to be undertaken to accommodate stage 2 works.

**Mr Correll**—Correct. That is my understanding.

**Senator CASH**—In terms of the works that have been done on stage 3, was an additional variation gone into or was that part of stage 2?

**Mr Correll**—No, the provisioning of pipes in the ground was simply incorporated within the stage 2 works.

**Senator CASH**—Okay.

**Mr Metcalfe**—Opportunistic is how I would probably describe it—prudent contingency planning using an opportunity.

**Senator CASH**—When was CSS appointed to undertake the expansion works at the detention centre for stage 2, including the stage 3 prudent contingency planning works?

**Mr Correll**—It was, of course, only ever for stage 2, but I would just need to check the precise date of that to be absolutely accurate with you.

**Senator CASH**—I appreciate that. Are you able to provide that after the dinner break?

**Mr Correll**—I would hope so. We will have a look at that.

**Senator CASH**—Thank you very much. Could the department please provide a list of all subcontractors working on stage 2 and stage 3—because work has been undertaken on stage 3 of the project—and confirm when requests to tender and/or price on their involvement was sought by the head contractor CSS and when letters of intent were sent to the subcontractors for their involvement in the works?

**Mr Metcalfe**—We would probably have to check with CSS about that, I suspect. I think that would be one that we would need to take on notice rather than trying to answer today.

**Senator CASH**—Yes. Again, I do need to raise my disappointment. I had put the department on notice that they would have a person here who would actually be able to—

**Mr Metcalfe**—Senator, with the best will in the world you would not get that answer today, because you are asking about activities of a commercial organisation. So the contract administrator, Mr Correll, is not going to be able to answer about what the company did in terms of recruiting subcontractors and what dates and what numbers of people. We will have to ask them for that.

**Senator CASH**—My understanding was that I would be hearing from a person tonight who directly liaised with CSS. That was my understanding.

**Mr Metcalfe**—But even so, I do not think that that person would know what the company did to that level of detail. But if we can help tonight, we will.

**Senator CASH**—And I appreciate that. When did the head contractor and subcontractors commence procurement for the supply of materials and services to undertake the works?

**Mr Correll**—I think even if we had the construction supervisor in front of you today he would be wanting to check records and detail on those sorts of questions. That is a very, very precise question.

**Senator CASH**—That is right. So you will take that one on notice for me. That is fine. I would like to go back—and it was an issue that we canvassed this morning—to the confidentiality clauses and it was agreed that we would raise it today in outcome 4, where we actually are now. In terms of the contract that we are referring to, was it a requirement of the department that the contract include a confidentiality clause?

**Mr Correll**—Just a couple of things following up from that discussion this morning that we have looked at, all of the department's contracts across all areas, including detention

capital works contracts, have standard confidentiality provisions built into them and those contracts are all subject to verification and scrutiny through our specialist contract management area and all comply completely with Commonwealth procurement guidelines.

However, when I say that, the standard clauses require that if there is any information within any contract that needs to be protected that needs to be identified. And there is a set of very clear criteria that applies in applying confidentiality provisions to any contracts that the department enters into. That would also include capital works contracts and would include the specific contracts for Curtin. So those sorts of criteria are defined within the Department of Finance and Deregulation's financial management guidance on confidentiality—that is, guidance note No. 3 on confidentiality and procurement. There are four broad criteria that are used to assess whether there should be information that is maintained as confidential, and those criteria are considered and applied. There are a number of contracts that the department would enter into in circumstances where it does have to maintain confidentiality of some information. That would also apply in some areas of Detention Services, as you would appreciate, when we are doing works very often on Defence facilities. It will mean that there are requirements for confidentiality in some aspects of information, but that is something that is effectively looked at in defining the information that would need to be kept confidential on a case-by-case basis.

In relation to subcontracts where the subcontractors are then used, the department requires a level of consistency to be applied between the subcontract that the prime contractor enters into with a subcontractor. For example, if there are then specialist confidentiality provisions over certain information that exists in the prime contract then the department would expect that those provisions would apply in the subcontracting contracts that exist between the prime contractor and the subcontractor. So we have a consistency provision, but beyond that we do not specify the content of the subcontract, if you like. That is a matter then between the prime and the subcontractor.

**Senator CASH**—In terms of the contracts that the department enters into, you have standard confidentiality provisions?

**Mr Correll**—Yes.

**Senator CASH**—Are you able to table the precedent standard confidentiality provisions?

**Mr Correll**—Yes. I see no difficulty in tabling the standard confidentiality clause that applies in both the short-form and the long-form contracts that we use in Detention Services, for example.

**Senator CASH**—Thank you. Specifically in relation to CSS's contract, because that is the contract we are referring to here, was anything over and above the standard confidentiality clause entered into or required to be in the contract?

**Mr Correll**—To my knowledge—and I will have this checked specifically—and the information I have so far, no.

**Senator CASH**—No, but you will confirm that?

**Mr Correll**—Yes.

**Senator CASH**—Thank you very much. In terms of this particular project—CSS and the subcontractors—are they able to divulge publicly what works they are undertaking and where? For example, are they able to divulge publicly that they are undertaking tree clearing works for the department or they are undertaking sewerage laying works for the department? Is there any confidentiality at all surrounding divulging the type or nature of the work that is actually being undertaken?

**Mr Correll**—Within the broad, if you like, flow-on provisions from the department's contract with the prime—that is, the consistency provisions I referred to earlier—providing I can verify my comment that there were no special provisions then that would flow through to no special provisions from the department's point of view through to the subcontractor. That does not of course mean that the prime contractor has not inserted any provisions of their own within the contract.

**Senator CASH**—Subcontracts?

**Mr Correll**—Yes, correct. The department does not control the shape of that subcontract, apart from ensuring that there is that consistency flow. Of course, we also have an expectation of being clearly notified of any subcontractors as well.

**Senator CASH**—Can I just confirm, then, to your knowledge, other than standard confidentiality provisions in the head contract with CSS, CSS would be able to divulge the types of works that they are actually undertaking on behalf of the department?

**Mr Correll**—Yes, but your question was actually about the subcontractor working on particular works and whether they would be able to divulge. It would be a matter of what the provisions were within their contract with CSS.

**Senator CASH**—Absolutely, and I will come to that shortly. Is my comment in relation to CSS correct, that they are able to publicly divulge the nature of the works that they are undertaking?

**Mr Correll**—Yes. Subject to my earlier comment, there are no special confidentiality information provisions within the contract. That is subject to verification.

**Senator CASH**—Thank you. Mr Correll, did the department place any requirement on the head contractor to impose confidentiality other than the flow-on provisions in the subcontracts?

**Mr Correll**—Not to my knowledge, Senator, no.

**Senator CASH**—Has the department been made aware of confidentiality clauses being imposed by CSS on any subcontractors for works being undertaken for the department?

**Mr Correll**—I am not personally aware of such confidentiality provisions, but I want to check that. The only way we could effectively do that would be liaising with the prime contractor.

**Senator CASH**—Because one of the issues that has been raised with us personally is the fact that subcontractors are effectively being gagged and are unable to actually comment on the type or nature of works that they are actually undertaking within their subcontracts. Hence

my question goes to whether they are being gagged, whether there are confidentiality provisions in their contracts and whether or not they were authorised by the department.

**Mr Correll**—Clearly we would need to take that on notice. That is a matter that we would have to discuss with the prime contractor.

**Senator CASH**—Thank you. If the department became aware of such confidentiality provisions, is there a process in place that the department would follow to have them removed?

**Mr Correll**—I am a little reluctant to talk hypothetically about that type of situation. It would simply depend on the circumstances involved and we would, I think, want to talk to the prime contractor and understand, if there were any confidentiality clauses, what the nature of those were. We do need to remember that we are operating on a secure defence facility and site. I could imagine there would be circumstances that would justify that.

**Senator CASH**—Does the department have any problem with subcontractors publicly disclosing the types of works they are doing on the site?

**Mr Correll**—Similar to my earlier response, it depends on the circumstances. Certainly there would be a greater sensitivity in that area where the works are occurring on a defence facility than on other property, for example.

**Senator CASH**—I will move on now. Can the department confirm that CSS contracted Mine Site Services to undertake clearing and groundworks on stage 2 and stage 3, if you refer to the master plan that we have in front of us of the project, to remove the heavily wooded vegetation and level and grade the site for commencement of construction?

**Mr Correll**—I do not have the precision of that in front of me and I would like to check it, if you are agreeable, Senator. I would not mind that being on a list of questions that we could work through.

**Senator CASH**—Over the dinner break, perhaps?

**Mr Correll**—Yes. Can I emphasise that that is not a commitment that I will be able to answer all your questions.

**Senator CASH**—I understand that, thank you. The follow-on question from that will be: when were Mine Site Services provided with a letter of intent to conduct these works and what, if any, other works were Mine Site Services contracted to perform? My follow-on questions will actually depend on whether or not you can confirm that CSS actually contracted Mine Site Services, so I will provide them to you during the dinner break. On what date did all other subcontracts commence work on the site for stage 2 and/or stage 3 of this project?

**Mr Correll**—Again, would it be convenient if we put that on the list?

**Senator CASH**—Thank you. My understanding is that Senator Hanson-Young will actually take us through to the dinner break. Thank you very much, Mr Correll, and I will be providing questions to you. Thank you very much.

**Senator HANSON-YOUNG**—Thank you, Senator Cash. As I have limited time, I thought I would talk mainly about trying to tease out where we are going with the announcement

yesterday but then also some of the things in relation to the service providers in the various detention facilities. I might move to yesterday's announcement first. Firstly, I just want a clarification. Maybe if Senator Carr is not here—

**Mr Metcalfe**—He is not far away. We can keep going.

**Senator HANSON-YOUNG**—Okay. I am wondering whether, in light of yesterday's announcement, the minister's previously announced review into the detention network is still underway or was yesterday's announcement it? We wait for it to be rolled out?

**Mr Metcalfe**—Certainly I think the minister would probably say you would never say you are not going to review the facilities, but he has clearly said that there are firm plans to move to a couple of locations and there are clearly identified contingency facilities. So I do not think the minister would be seeing any need for further examination of the issue for the foreseeable future.

**Senator HANSON-YOUNG**—The review per se that had originally been announced is not necessarily still going?

**Mr Metcalfe**—The minister made it clear soon after he became minister on 17 September and he made some announcements that there would be further work done. That is clearly the work that has been done and announced yesterday and the minister has laid out a plan for what he believes is prudent, responsible provision of places in detention to be used if necessary. Some contingency sites have been clearly identified so that appropriate consultation and other discussions can occur. As well, of course, there was a major announcement relating to the use of residence determination for minors and for vulnerable families.

**Senator HANSON-YOUNG**—In relation to the announcement about residence determination, and particularly vulnerable children and families, we know that a time frame has been set down because of the reality of needing to roll out that process. I understand that. Has there been any thought of removing the restrictions of movement from the current facilities in which families are housed, such as the Aspen or the Darwin Lodge?

**Mr Metcalfe**—I am not aware of any such consideration, but I could take that on notice.

**Senator HANSON-YOUNG**—Could you?

**Mr Metcalfe**—Certainly the immediate focus is to now engage closely with the Red Cross and other organisations—church groups and others—and map out a plan for how we can bring about residence determinations. One of the things the minister made clear, though, was that they would be individual assessments based on particular needs and risks. That is why I think the focus is on working through the most vulnerable cases first, getting the arrangements in place. While I have taken it on notice, I have not seen any announcement about any change to the circumstances of people located in motels, for example, at the moment.

**Senator HANSON-YOUNG**—In relation to dealing with the need that the minister has identified to individually assess each person's status of vulnerability and therefore eligibility to fit within this new residence determination, is the department being tasked to increase

resources, for example personnel, to make sure we can move more people through that process ideally before June?

**Mr Metcalfe**—We certainly will be focused on that activity. It is probably more a reassignment of resources than additional resources. We will be going through a process and working with our key advisory body, the Council for Immigration Services and Status Resolution, to identify people most at risk—obviously unaccompanied minors or a particular priority group, such as the folks held at Port Augusta and at the MITA; vulnerable families; young children; or people in cases where there may be torture and trauma issues evident. We have a strong and established casework service and that will be the centrepiece. We are now moving to an implementation phase, and we are obviously happy to keep you briefed about that.

**Senator HANSON-YOUNG**—One of my concerns is that a number of the people who are in these facilities have not had that referral to, say, the external torture and trauma counsellors, so it would be good to get a determination or a recommendation back that those people should perhaps be on that vulnerable list. I would say that there needs to be a bit more of the direct, hands-on resources put in to get those people help.

**Mr Metcalfe**—There will certainly be proper resourcing. We are focused on implementing this properly and in accordance with the time frame, working closely with the community sector. The Red Cross has been a critical partner in this area, as well as, obviously, the torture and trauma groups and others. Of course, there will be consideration not only of needs but of risks; the minister has made that clear. So, where persons may not be prepared to abide by the conditions or where there may be security issues, clearly those are going to be factors as well. There will be individual case management of each of these folks, and we will be putting resources into making sure it happens properly.

**Senator HANSON-YOUNG**—In terms of the external organisations—the Red Cross, Uniting Care, Hotham Mission and all of those—what is the time frame for working out how much extra funding those organisations are going to need?

**Mr Metcalfe**—There are some initial discussions occurring tomorrow. Mr Tickner from the Red Cross will be in Canberra tomorrow meeting with senior departmental officials. As you know, we have had a very good relationship with the Red Cross. They have done a great job in the five or six years that residence determinations have been in place.

**Senator HANSON-YOUNG**—Absolutely.

**Mr Metcalfe**—It has been in relation to smaller numbers of people. So clearly we will be working with the Red Cross and others—you have mentioned Hotham Mission—to establish a way of managing this particular initiative. But there is a strong will to make this work effectively. We are delighted by the response from the community sector to help us in this area.

**Senator HANSON-YOUNG**—I think it is wonderful that people have been so willing to put up their hand and help. The issue is that they are going to need that extra support to do that.

**Mr Metcalfe**—That is correct.



**Senator HANSON-YOUNG**—The Red Cross, for example, are on the record saying they are going to need extra support.

**Mr Metcalfe**—They are supporting us and the Commonwealth will be supporting them in this particular measure.

**Senator HANSON-YOUNG**—Thank you. I want to go to the issues in relation to what is currently going on in some of these facilities. I want to firstly touch on the issues in relation to the increased number of attempted self-harm attempts and suicide. There obviously has been an increase. We could argue about that being because of numbers or whatever.

**Mr Metcalfe**—We are not arguing about it.

**Senator HANSON-YOUNG**—There has been an increase. What has the department started to put in place? What is your plan for dealing with the increase?

**Mr Metcalfe**—In my opening comments this morning, which are obviously in the *Hansard*, I said that it is a sad but regrettable fact that we are seeing, because of the increased length of some people's time in detention and because of their disappointment with decisions—either delayed decisions or the fact that decisions have not been positive for them—a range of behaviours occurring. Most tragically, of course, we saw a suicide recently, which is being properly investigated; I cannot comment further. That is obviously a very tragic occurrence. We have seen a number of self-harm attempts. We have seen other difficult issues for us to manage. We understand that, and we are very committed to working with people in detention to try to reduce the stress that they have, but we accept it is a sad fact of the business we are in. I also made the point that our staff and those of our service providers—IHMS, Life Without Barriers and Serco—are all very much focused on this issue as well, but Mr Correll might have a bit more detail on some of the precise measures that are underway.

**Mr Correll**—This is an area where the role of case managers is absolutely vital in all of the centres, and also the nature of activities that are set up and structured at the centres and keeping a strong activity program. There was discussion earlier in the hearings today about a major aquaculture activity at Curtin. Curtin was a site where almost all of the people were subject to the suspension arrangements and, therefore, the development of a very comprehensive activities program was vital. I think that has broken a lot of new ground in some terrific initiatives at that location. I think that shows when you visit that particular location.

So all of those measures are underway, together with close linkages into torture and trauma counselling and very close monitoring and review. Not only the department's case managers but also Serco are very heavily involved in this activity. Having said all of that, incidents of self-harm are still way down on where they have historically sometimes been in the past, but we are working across all of those measures. Certainly, the use of residential determinations should be a key area of help in that area. You would be aware that there have been some self-harm attempts at the MITA in Melbourne with the unaccompanied minors there. That is an area where we would see an immediate vulnerable group for careful consideration.

**Senator HANSON-YOUNG**—Can I just touch on the issue of case managers. It seems to me that it is always going to be very difficult to keep that monitoring of somebody's mental

health and their complex needs when we have a constant rotation of their case managers. I have spoken to many of them about how they share information and update each other and pass that on, but it seems to be one of the key issues that have been raised with me and with others—that people feel as if they are having to retell their story and rejustify their needs for assistance. They feel as if they were promised a referral and then it does not happen because their case manager has changed. What types of practical things are we doing to address the issue of the constant changeover of case managers?

**Mr Metcalfe**—Ms Hand might comment a little bit more about that.

**Ms Hand**—As you noted earlier, we need to make sure that we have the right ratio of case managers to our increasing client population. So we are in the midst, in concert with Marilyn Prothero, who is the division head for our people division, of a major recruitment exercise to bring in and train—and that is very important: train—more case managers. To date, we have been relying not predominantly but in large part, I should say, on internal people, because obviously you need specific skills to be able to do case management and have specific behaviours as a person—interpersonal skills et cetera.

To date, as you have said, we have had short-term deployments rather than longer term deployments. We are now looking at longer term deployments. We are also looking to increase significantly the number of case managers and assistant case managers and, in fact, over the course of the next five months to almost double the number we have not just to deal with IMAs but also to backfill the normal case management in areas from where we have taken people to look after IMAs. So we are very conscious of that and we have a very active program to manage clients on a sort of three-tiered basis—really active case management for sensitive clients.

**Senator HANSON-YOUNG**—It was quite positive to hear about the recruitment of more case managers. I think that is absolutely vital, and investing of course in our own internal Commonwealth capital means that when they are not needed they can go back but we have already trained those people when we do need them. I totally get that. I think that is really important. But just let me clarify: with the recruitment of those case managers, your view is to then be able to extend the period of time by which they are assigned individual cases; is that right?

**Ms Hand**—That is right, and not have so many short-term deployments. Obviously it is a taxing job and you would not want to put someone in a centre for three years, because they would be stressed themselves. The other thing I would say is that we are putting huge effort into the training and mentoring for case managers such that they are equipped if they are new people coming in to do the job well from the beginning.

**Senator HANSON-YOUNG**—Great. Thank you. Just moving on to the service providers within the facilities, I was just wondering whether the department has a scheduled review of performance of both Serco as the managers of the detention facilities and also IHMS? Is that something that is in our existing contracts with them and, if so, where are we up to? Are we in the process of a review?

**Mr Correll**—The answer to that is, yes, very much so. There is a very strong performance management regime built into the contracts with Serco and IHMS, the medical service provider. I will ask my colleague Ms Wilson to comment.

**Ms Wilson**—Clearly, in such a busy period of ramp-up we are meeting with all service providers quite regularly at a senior level, so we would meet with them face to face at least fortnightly and talk to them quite often. We have formal processes within both the IHMS contract and the Serco contract for monitoring performance monthly and to review a set of metrics to tell us how they are going against different criteria that are specified in each contract. We take those very seriously because, especially as we expand across centres, we need to make sure that each centre is self-sustaining, we have the right mix of staff and we have the right skilled and trained people. So we are actively following up on all of those arrangements on a regular basis.

**Senator HANSON-YOUNG**—Will there be any type of ministerial statement in terms of an audit of either of their performances? Is that something that is part of the contract? I know it is difficult for Senator Carr to answer this and it might be something that is going to have to be taken on notice, but would there be any publication of their performance and audit of their performance?

**Mr Correll**—Their performance is subject to the rigorous contract management. All of our regional managers have in fact gone through accredited contract management programs which have been specifically developed to give them very strong contract management skills. So they go through that process. They represent the local contract manager on the ground, working closely with Serco at a given site location. The overall contracts are managed from the centre, where Ms Wilson will liaise directly with the principals of the organisations concerned, and then there are periodic key performance review processes that are undertaken. If there are issues then performance under the contract will impact on the payments made under the contract. So there is a fairly rigorous process. I do not believe there are any proposals for more broadly publishing performance at this time, although there is of course a periodic tender process that it goes through where—

**Senator HANSON-YOUNG**—But we are still five years out or something, aren't we?

**Mr Correll**—That is a pretty tough performance regime to go through.

**Senator HANSON-YOUNG**—Have there been any recorded breaches of the arrangement—of the contract—in the last 12 months from Serco?

**Ms Wilson**—I am not sure if you would call it breaches per se, but as Mr Correll indicated there are abatement mechanisms under the contract, so for repeated failures in a number of areas. In addition to what Mr Correll said, we also monitor consistency and performance across centres because if there is a multiple breach in the same area then they are subject to an abatement as well. In a previous contract, it was just about a number of escapes or things like that; this is actually about delivering a certain standard of service across all facilities. As Mr Correll indicated, we train the staff in each centre but then we also look at the metrics of each centre on a monthly basis and compare improvements or deteriorations and then follow that up with a meeting at a senior level.

**Senator HANSON-YOUNG**—Unless I know something in particular which I had to ask you a question about, none of this is actually available publicly, is it?

**Ms Wilson**—No.

**Senator HANSON-YOUNG**—I assume that is not for Serco; that is also meant for the health provider, IHMS?

**Ms Wilson**—That is right.

**Senator HANSON-YOUNG**—My last question actually goes from the issues in relation to the service provision and publication of performance to the publication of the number of arrivals, the people in detention, children, their nationalities, those sorts of things—that is, the statistics. The department's own website says that the statistics will be updated weekly but this has not really been happening. What is the reason for that? Is this going to be rectified in the near future?

**Ms Wilson**—If you are talking about the document 'Immigration Detention Statistics Summary', we do aim to update it weekly. There have been problems with data and integrating data from different systems which we have experienced in the last few weeks. We are trying to get all of that sorted out and it certainly is still our aim to make those figures correct. We are just trying to work through some of those issues because the data that forms the basis of that document is extracted from a range of different systems.

**Senator HANSON-YOUNG**—It is because people are more dispersed now; is that what you are saying?

**Mr Correll**—The data area has been a challenge for us. As the number of irregular maritime arrivals has grown and we have had new sites come on stream, that has presented some technology challenges to the department to bring all of that into its mainstream computer system processing rather than having lots of small databases. We are getting there but it has presented some issues in the way we gather data and statistics. I think we are confident that we should be able to keep the data rolling at the present stage.

**Senator HANSON-YOUNG**—My concern is that it has not been updated, and I take on board that there have been reasons for that. For example, the information on there on 12 October was from 12 September, so it was a month out of date. When we are talking about a lot of public scrutiny going on and all of those types of things, I think it is really important that the information that is publicly available is correct information.

**Mr Correll**—We would agree with that.

**Ms Wilson**—I think we now have 30 September on but we are working hard to catch up from there as well.

**Senator HANSON-YOUNG**—In relation to the Joint Standing Committee on Migration reports. There were three reports, and we are yet to hear any response from the government to those reports or the recommendations. It has been quite some time now—12 months in relation to the most recent one and longer in relation to the other two. Is the government going to be responding to these reports? If so, when?

**Mr Metcalfe**—Senator, I will have to check with the minister in relation to that. Clearly, we have had a change of minister and he is getting across a whole range of issues. I do not know if he has considered that matter yet, but if you would like I could raise it with him and reply on notice.

**Senator HANSON-YOUNG**—Thank you.

**CHAIR**—We are going to break for dinner and resume at eight o'clock. Dinner is an hour and a half in these committees these days, balancing sense with sensibility and a decent tea-break.

#### **Proceedings suspended from 6.29 pm to 8.04 pm**

**CHAIR**—We will resume this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee's consideration of the supplementary budget estimates. We are still on outcome 4.

**Senator CASH**—I would like to, if at all possible, turn to the questions I gave prior to the dinner break and work through to see whether you have been able to obtain any information. Would it be easier if you just addressed them?

**Mr Correll**—That might be best. There was one question you put that was not on the list of questions. That was to clarify the actual expenditure on CSS for stage 1 and stage 2. I can advise that the expenditure to date in relation to stage 1 is \$15 million—that is just rounded up—and the expenditure on stage 2 to date is \$18 million. Going to the other listed questions, questions 1, 2, 3 and 4 all go to matters between CSS and one of their key subcontractors. That is not something we can respond to without some quite detailed discussions with CSS. I cannot do that for you tonight.

**Senator CASH**—That is fine. Thank you, Mr Correll.

**Mr Correll**—In relation to question 5—can the department confirm that the decision to build stage 2 of Curtin detention centre was taken by the government on 17 September 2010?—as discussed earlier, the budget contained funding for up to 1,200. The announcement of 17 September was an announcement to occupy the facility; not an announcement to build the facility. The authority to build the facility was reflected in the funding within the budget that had been made available. The accurate commentary is that the department can confirm that the decision to occupy and use stage 2 of the Curtin detention centre—that is, increase the usage to 1,200 at the centre—was taken by the government on 17 September.

The next question related to staffing at the Curtin IDC at 12 June. The answer is as follows: 24 DIAC, 51 Serco, 15 medical staff and two interpreters. You asked: how many staff are currently employed in the operation of the facility and how many more are planned? As at 18 October there were 30 DIAC staff, 81 Serco staff, 28 MSS subcontracted staff to Serco, 18 medical staff and 13 interpreters. We would have to take on notice the final element of that question relating to how many more are planned. We need to look at our overall staff planning in more detail before I can answer that, but that is a part answer to that question.

**Senator CASH**—Thank you very much.

**Mr Correll**—Question 7 was: as at 12 June 13 DIAC staff were engaged in case management. Has the number changed? What is the number currently engaged in case management? Again, as at 18 October there were 15 DIAC case managers engaged.

Question 8 was: the 2010-11 budget estimate for the annual cost of operating the Curtin immigration detention facility was \$98.76 million. Did this estimate include operating costs for stage 2? Does this include operating costs for stage 3? There are absolutely no operating costs for stage 3. Stage 3 does not exist. One has to be very cautious in the use of the \$98.76 million figure because of comments I gave earlier in relation to the total operating budget. You will recall within the budget papers that the total operating budget was about \$399 million, as we were discussing earlier. That is a figure that is based on certain assumptions to make an estimate within the budget figures but what will happen between November and February is the detailed process of discussions with the Department of Finance to establish the appropriate operational budget and that will take into account the actual cost usage to that point at Curtin.

**Senator CASH**—Yes.

**Mr Correll**—It will take into account the extent of costs being incurred through stage 2 but we will not know that figure until after that process. That figure will then be reflected in the portfolio additional estimates process and additional estimates statement. It is just like the total figure: you cannot rely on that other than its being an estimate that is based on assumptions at the start of the financial year and the budget process. This cannot be relied on as an accurate operational cost until we go through that adjustment process.

**Senator CASH**—Thank you very much for undertaking that work during the dinner break. I am not trying to be cute here but there was a second part to the question 5. I have no doubt that I know the answer but I would like you to confirm it for the *Hansard* record. Can the department confirm that there is still no decision to commence works on stage 3 of this project?

**Mr Correll**—I can certainly confirm that there is no decision to commence work and can go beyond that to say that the government has clearly articulated its position not to go to stage 3.

**Senator CASH**—Thank you very much. I do not know if any work was actually done during the dinner break in terms of working out where the figure for 1200 came from. Is there any report back?

**Mr Metcalfe**—We focussed on those questions and we will take the others on notice.

**Senator CASH**—Thank you very much. The estimate of costs for offshore detention facilities in 2010-11 was \$471 million based on 2,000 arrivals. When the minister says that releasing families into community will be contained within the existing budget, is he referring to the \$471 million contained in the budget papers or will you be seeking additional funds through MYEFO to support that decision?

**Senator CARR**—We will take those questions on notice.

**Senator CASH**—You will take them on notice? Okay. I am a little surprised that you need to take that on notice.

**Senator CARR**—Why should you be surprised about that?

**Senator CASH**—Are you able to provide a list of all locations that have been designated ‘places of detention’ being used by the department for the purpose of accommodating irregular maritime arrivals, the number of IMAs being detained at each location, including the number of children and unaccompanied children and this compares with 12 months ago?

**Mr Correll**—The answer would be: yes, we can provide all of that information. That is the first part of the answer. The second part of the answer is that that is a lot of information and it would probably be best provided in a table. That is something that could be pulled together quite quickly. I am not sure that it is possible to do that this evening, but quite quickly.

**Senator CASH**—Thank you. If you could attempt to get that it would be greatly appreciated.

**Mr Metcalfe**—Was the full question about the places designated as detention centres, numbers of persons, and the latest possible figure—which will probably be the end of September or something like that—compared with 12 months ago?

**Senator CASH**—Yes, and including the breakdown of children and unaccompanied children.

**Mr Metcalfe**—Yes, okay.

**Senator CASH**—In May 2010 the department made an estimate of IMAs for the 2009-10 period of 4,500 people. Given that more than 5,614 people ultimately arrived in the 2009-10 period what is the estimated additional cost to the budget for the 2009-10 financial year for offshore asylum seeker management? Alternatively, what is the revised estimate for the 2009-10 expenditure for program 4.3, in particular 4.3.1, providing a breakdown of administered and departmental expenses?

**Mr Metcalfe**—I will just ask the relevant officers to come to the table to see if they assist.

**Senator CASH**—Thank you very much. I have a number of questions surrounding IMAs and statistics.

**Mr Metcalfe**—We had a long discussion at the previous estimates about those figures. It may take us just a minute to get that together. Chair, I was going to say that, if it does not break the flow of Senator Cash’s questions, I do have a response for you on the World Youth Day issue that you raised earlier.

**Senator CASH**—Thank you.

**Mr Metcalfe**—If it is convenient to the committee then I will continue.

**CHAIR**—Yes.

**Mr Metcalfe**—As of 27 September 2010 there were 552 overstayers from people who came here for World Youth Day, of whom 231 did not have visas. That means that 552 have stayed longer than originally planned. Of those 231 were unlawful noncitizens.

**CHAIR**—Which means they did not seek refugee status or they have arrived here illegally?

**Mr Metcalfe**—That means that they are currently here illegally. They may have sought some other status and that may have been refused and they may not have departed. The figure I can get is that, as of 27 September 2010, 231 were unlawfully in Australia without a visa. We had around 100,000 pilgrims come here for World Youth Day. That figure of 552 overstayers represents about 0.55 per cent of the 100,000, which I note is lower than our general nonreturn rate for visitors, which is 0.75 per cent. I said earlier, possibly in response to Senator Pratt, that around 99 per cent of foreign nationals who come to Australia comply with our requirements. It is about 0.75 per cent of visitors generally who over stay, and World Youth Day was a lower figure.

**CHAIR**—Generally. Are the 552 in the system and under the watch of DIAC?

**Mr Metcalfe**—The 231 unlawfully here would not be under our watch. Normally if someone had come to our notice and was pursuing another visa application they would have a bridging visa and they would be lawfully in the community. Those 231 are in the community without a visa and clearly would be of interest to us if we located them. I am just putting that in the context that, while there is an overstayer number, it is actually a lower rate than we get from the general tourism population to Australia.

**CHAIR**—Thank you.

**Mr Metcalfe**—There was a very nice feature article on World Youth Day in our annual report last year on page 55 which talks about those sorts of over-stay rates. That appears to be about the number of people who overstayed.

**CHAIR**—Thank you for that.

**Senator CASH**—Before I go to Senator Boswell, I have a series of questions which I will go through surrounding IMAs and Sherga. Would you like me to repeat the first question?

**Mr Metcalfe**—Yes, please.

**Senator CASH**—In May 2010 the department made an estimate of IMAs for the 2009/10 period of 4,500 people. Given that more than 5,614 ultimately arrived in 2009-10, what is the estimated additional cost to the budget for the 2009-10 financial year for offshore asylum seeker management?

**Mr Sheehan**—The answer I have is for program 4.3 for IMA related costs in total, which equate to \$234,326,000 without depreciation and, with depreciation, \$251,065,100.

**Mr Metcalfe**—That is the total figure, I think.

**Mr Sheehan**—That is the total figure for both administered and departmental costs.

**Mr Metcalfe**—I think the senator was after the difference between the 4,500 and the 5,614.

**Mr Sheehan**—I do not have that answer with me for the incremental costs. I can tell you what the total costs are. The information I have with me this evening is the total cost for IMA related activity for program 4.3.

**Senator CASH**—Can you clarify for me if that is in relation to the estimate of 4,500 or if it is in relation to the actual 5,614?

**Mr Sheehan**—That is the actual cost.



**Senator CASH**—For 2009-10?

**Mr Sheehan**—Yes, for 2009-10.

**Senator CASH**—Are you able to take on notice to provide me with how that compares to the estimate of 4,500?

**Mr Sheehan**—We should be able to identify the difference between the estimate and the actual costs, but not the incremental cost difference between the estimated number of arrivals and the total number because there are fixed costs involved. It is not a one-to-one relationship between costs and arrivals, if you are following me. It is quite a complex calculation.

**Senator CASH**—To the extent that you can provide the breakdown, that would be appreciated. In May 2010 the department stated that it had based the 2010-11 program estimate on 2,000 IMAs. Given that 1,644 people have already arrived, has the department adjusted its estimates of arrivals in 2010-11 and, if so, when?

**Mr Sheehan**—At this point in time we have not adjusted our arrival estimate. It will be undertaken as part of the additional estimates process. As Mr Correll has mentioned earlier, that will be done between November and February as part of the additional estimates process.

**Senator CASH**—So November and February.

**Mr Sheehan**—Depending on when the additional estimates process is finalised.

**Senator CASH**—What is the average length of detention anticipated for IMAs used to frame the budget estimate for program 4.3 in 2010-11 and how does this compare with 2009-10?

**Mr Correll**—My colleagues will correct me if I am wrong on this but, before we have actually commenced the process of discussions with the department of finance, we would not have settled on the average period in detention at this stage. We would use the latest data points available for the commencement of those discussions in the setting. So it is really making sure that we use the latest data leading up to that process of review of the estimates. There are measures of average periods at the present stage but they would not necessarily be the ones that would be used. We would use the latest figures at that time.

**Senator CASH**—Mr Sheehan, going back to my previous question, do you expect you will be required to revise upward your budget estimate for 2010-11 based on the current rate of arrivals?

**Mr Sheehan**—I could not say positively. We will be undertaking that calculation over the coming weeks, and at this point I do not know the answer to that.

**Senator CASH**—The department does not do any prior work in terms of looking at what it budgeted for the actual number of arrivals at a given point in time and then projecting forward?

**Mr Metcalfe**—I think what we are saying is that we are about to commence that process with the department of finance.

**Mr Sheehan**—Yes.

**Mr Metcalfe**—It is quite clear the number will need to be adjusted. There is no debating that. What Mr Sheehan is properly saying is that we need to have a properly worked through conversation with the department of finance, and of course we draw on relevant material in framing that conversation on those assumptions.

**Senator CASH**—Can I confirm, from your perspective as the departmental head, you do expect to have to revise those numbers upwards?

**Mr Metcalfe**—I would expect that we will have to revise those numbers upwards.

**Senator CASH**—The forward estimates actually shows a budgeted 50 per cent or so reduction in expenditure in 2011 and 2012 with further reductions in subsequent years. What is the basis for these reductions?

**Mr Correll**—This is based on the formula approach that is used to setting the estimates. It is using a rolling five-year average figure. That is why we have emphasised caution with the figures that are in the budget, because it uses that standard methodology to set the figure each year. This is because of the extreme volatility of the numbers and how it is difficult to use sort of a crystal ball to project what is going to happen with those numbers.

The rolling five-year estimate is used to set the figure and that is the provision that is incorporated in the budget. Then, as actual events with arrivals transpire through the year, there is an adjustment process that is picked up in the additional estimates and fully published in the additional estimates. I emphasise that that is why one needs to use caution in using the original set of figures, because they are based on a formulae calculation.

**Senator CASH**—Thank you very much for that explanation of the rolling five-year average. The difficulty with the figures that have been used in the forward estimates is that, given that it is a rolling five-year average and based on the last 18 months or so, it would appear that that average is going to be a lot higher. The government is using the figures as stated in the forward estimates when determining whether or not the budget will return to surplus. Does the department believe that this is an accurate reflection of the costs, therefore? Do you know where I am going with this?

**Mr Metcalfe**—Yes. You would probably need to talk to the Department of Finance and Deregulation and the Treasury on those financial assumptions. Essentially, we have had discussions with the department of finance and that has been the advice as to the most accurate way to represent the figures, given that it is a highly volatile situation, as Mr Correll says. We have seen increases and we have seen decreases. I think I said last time at estimates that I do not have a crystal ball, to see what is going to happen into the future.

**Senator CASH**—Does the department advise Treasury on what they believe they will need by way of funds?

**Mr Metcalfe**—As I have said, the way that it has been settled with Finance is to adopt this formula method of the five-year rolling average as being a reasonable way of describing the financial impacts. I accept the point you are making. That is not us providing an educated intelligence assessment of the likely number of irregular maritime arrivals to come to our shores in the next five years because we do not know. It is a financial accounting method that

has been devised by the department of finance to most accurately reflect something that is in fact a volatile number.

**Senator CASH**—Mr Metcalfe, you have pointed out to me several times today that you are exceptionally experienced in this area.

**Mr Metcalfe**—Thank you.

**Senator CASH**—Based on that experience, is there anything in the government policy setting that you believe would support a 60 per cent reduction next year?

**Mr Metcalfe**—You are asking me a policy question.

**Senator CASH**—No, I am asking whether or not, based on your experience in this area—which you have highlighted several times before the committee today—that is a reasonable reduction.

**Mr Metcalfe**—What I can say is that, based on my experience, the one thing I know is that it is very hard to predict the future in this area. It is hard to anticipate large increases in arrivals; it is hard to anticipate significant downfalls.

**Senator CASH**—There will not be a significant downfall.

**Mr Metcalfe**—Unfortunately, I have been prevented from providing context, otherwise I am happy to talk about what has happened in the past. I am not trying to be difficult here. I am just saying that this is a notoriously unpredictable area. When you look at international comparisons, the push factors, the efforts of countries in the region, the activities of people smugglers, the suppression effects, there are many variables.

**Senator ABETZ**—Any more factors?

**Mr Metcalfe**—Australia is a great place and people want to come here.

**Senator CASH**—They do. They do, especially under this government.

**Mr Metcalfe**—They want to go to Europe as well. They want to go to North America.

**Senator CASH**—The department of finance, though—

**CHAIR**—They did under your government as well, Senator. Let us stick to questions.

**Senator CASH**—The department of finance would not know what the likely arrivals are going forward. I think that would be a fair comment.

**Mr Metcalfe**—The point that we have made, and we made this point at the last estimates, is that for accounting purposes a number has to be established and there is a method as to how that has occurred. But that is not a statement by the department as to our estimate of arrivals, because we do not know what is going to happen.

**Senator CASH**—No, but you say that it is extremely volatile.

**Mr Metcalfe**—Yes.

**Senator CASH**—What events could lead to such a level of reduction?

**Mr Metcalfe**—As we saw in 2001, a significant change in the human rights situation in Afghanistan led to several million people returning home. I do not want to get into a debate on Afghanistan—the parliament is already having one of those—but, clearly, the end of the

civil war in Sri Lanka, the events leading up to the end of the civil war and the events since the civil war are pertinent to that particular case load. What I am saying is that the number of people arriving in Australia is a complex outcome of many factors: the attractiveness of Australia, Europe and North America, how effective people smugglers are, how effective countries in the region are in suppressing those flows, and factors in the regions themselves. There are a lot of different variables and that is why I am not going to give you an answer.

**Senator CASH**—No, no.

**Senator ABETZ**—That was a very long way to tell us that.

**Senator CASH**—How accurate has the accounting method that you refer to been in forecasting arrivals and costs in the last two years?

**Mr Metcalfe**—I think for some years the nominal figure of arrivals was around 200. Clearly, that needed to be revised upwards and that has occurred. Last year's starting position of 2,000 clearly had to be revised upwards. As Mr Correll and Mr Sheehan have said, the only way to accurately deal with this is in arrears. That is why we have a forecasting accounting process with Finance, but the funding that comes to the department is a factor of what we need to spend based on what actually occurs.

**Senator CASH**—Would you be happy to receive the current funds in the forward estimates?

**Mr Metcalfe**—I would be happy to be recompensed for what we spend—which is what happens now.

**CHAIR**—We are going to Senator Boswell now.

**Senator CASH**—I have one more question on this. What is a reasonable estimate of IMAs for the 2010-11 financial year?

**Mr Metcalfe**—I think I have answered that by saying I cannot give you that estimate.

**Senator CASH**—Okay, but you would expect it to be revised up, based on—

**Mr Metcalfe**—I have said that the nominal figure is 2,000 and we are fairly close to that now, so as a matter of course it will have to be revised upwards.

**Senator CASH**—If the expectation is for 2,000—which is indicated in the budget papers—and 1,644 have already arrived to date, why is the government building extra accommodation onshore for 3,300 people?

**Mr Metcalfe**—The minister made it clear yesterday that a combination of factors, such as arrival numbers and an increasing number of refusals—which means that people stay in detention longer—together with the ability to return non-refugees home, which the governments have traditionally found to be quite a complex issue, means that we are having more people spend longer times in detention. The minister also made it very clear that, as part of the additional facilities, he plans to close down what are seen as temporary facilities. Scherger is one that will be used for a temporary period of time until additional capacity becomes available. There will be marquees at Christmas Island and the use of recreation and interviewing rooms and other things that we have been required to do. Bearing in mind that you have to plan for the worst and work to achieve something far better than that, the minister

has indicated that we do need to make provision for places to be used if necessary. The minister has also indicated policy changes relating to unaccompanied minors and vulnerable families. The other factor is that the government is working on a regional protection framework and a regional processing centre. That will be a key factor as well in the overall policy environment.

The minister has taken all of those matters together and said that prudent management of this issue is that you do need to detain people and you do need to have the facilities available. They were not available 10 years ago and that resulted in real problems at Woomera. We need to be ready if necessary. It should not be a reflection of 'if you build it they will come'. You need to be ready for all contingencies and work very, very hard to reduce the numbers of people coming.

**Senator CASH**—Just briefly, you did mention minors. How many children were there in detention in 2007?

**Mr Metcalfe**—We would have to check that. The answer is that there were very few.

**Senator CASH**—Really?

**Mr Metcalfe**—In 2007, yes, very few.

**Senator CASH**—2008, 2009, 2010, is there someone in the room who can actually provide us with—

**Mr Metcalfe**—We will have to see if we have those figures.

**Mr Correll**—We would have to take those historical numbers for minors on notice.

**Senator ABETZ**—Well what about now?

**Mr Correll**—Yes.

**Senator CASH**—So how many?

**Mr Correll**—The question was minors, or unaccompanied minors, or children?

**Mr Metcalfe**—We classify unaccompanied minors, who are young people under the age of 18 who are here without parents, and we have children who are here with a parent or parents. If the question is about how many people under the age of 18 are legally in immigration detention, I think that figure was indicated by the minister yesterday. In terms of the use of community detention arrangements, it was around 700 or so.

**Mr Correll**—It is was little over 700.

**Senator ABETZ**—That is in community detention.

**Mr Metcalfe**—No, Senator. Those are folks who are currently in detention. The minister's and Prime Minister's announcement yesterday was that they would be progressively moved from places like the immigration transit accommodation in Melbourne and motels and other facilities and placed into residents, determination or community detention arrangements in partnership with the Red Cross and community groups. They will still legally be in detention but they will be in section 197AB detention.

**Senator ABETZ**—Which is not in the detention centres.

**Mr Metcalfe**—No children have been held in a detention centre since June 2005.

**Senator ABETZ**—So minister, can you explain to us the Prime Minister's hyperbole and assertion that she was going to cut the razor wire and let the children out of detention when we have just been told there are in fact no children behind razor wire.

**Senator Carr**—Senator Abetz, I think you would appreciate this is complex policy area. The government has a clear policy statement that we do not want to see children placed in detention under most circumstances and there will be exceptions to that.

**Senator ABETZ**—There is nothing complex about finding out from your department that there are no children behind razor wire. Why make an assertion that is clearly not factually based?

**Senator Carr**—You make assertions now, Senator.

**Senator ABETZ**—It is not an assertion. The department have told us that there are no children behind razor wire, yet in a typical outburst of hyperbole and spin we have the Prime Minister saying that she is 'cutting the razor wire, setting the children free', but there are no kids behind razor wire. Why make that outrageous statement?

**Senator Carr**—What the officers have told you is that there are some 700 children currently in detention facilities.

**Senator ABETZ**—Not centres with razor wire.

**Senator Carr**—You want to go on with the histrionics now. The government's intention is to have people in other forms of supervised community interaction to the highest level possible. There are quite clearly a whole series of issues that need to be addressed in determining who is to be put into those circumstances. That is the approach the government is taking.

**Mr Metcalfe**—The minister's comments yesterday were that families with children and unaccompanied minors are being held in fairly close detention in immigration transit centres, which in legal terms are detention centres but which are motels with severely restricted movement and there has been a fair bit of—

**Senator ABETZ**—Can you tell us how many motels in Australia have razor wire around them?

**Mr Metcalfe**—I do not have the answer to that, Senator.

**Senator ABETZ**—I think we all know what the answer is. The issue here clearly is not that these kids are in detention but the factually incorrect if not dishonest hyperbole of the Prime Minister in claiming that she was the great freedom giver, cutting razor wire to let children free. We know that that is just factually incorrect.

**Mr Metcalfe**—The minister certainly was pointing out, as I was saying, that the forms of detention facility—motels such as the Virginia Palms in Brisbane and the Asti in Darwin, and particularly the construction camp on Christmas Island—are certainly not suitable for long-term detention of young people. They do not have adequate ability to get out, play and interact with other people. That was the context of the comments made yesterday.

**Senator ABETZ**—The context of the comments was razor wire, which is clearly, on all the evidence from the officials, false. The minister's bumbling attempts clearly cannot be justified. Minister, will you ask the Prime Minister to withdraw that comment and apologise, given that there is no factual basis for her pathetic hyperbole? She is trying to build herself up into something that she is not.

**Senator Carr**—Senator, you know—

**Senator ABETZ**—That the Prime Minister will not apologise; you are right.

**Senator Carr**—that you are once again engaging in pathetic histrionics.

**Senator ABETZ**—Is it true that any child was behind razor wire—yes or no? The answer is no, so the question is: why did the Prime Minister falsely assert that?

**Senator Carr**—Oh, dear.

**Senator ABETZ**—I thought truth in public commentary was something—

**Senator Carr**—You would be the last to talk about that. You are on very thin ice there, Senator. You want to talk about truth at an estimates hearing, for Christ's sake!

**Senator ABETZ**—Senator Carr, can I tell you one thing about me that you will not find in Gillard is this.

**CHAIR**—Senator Abetz, if you are going to refer to the Prime Minister—

**Senator ABETZ**—When I am shown to make a mistake I have the good grace to apologise.

**CHAIR**—Senator Abetz! If you are going to refer to the Prime Minister, you need to use the appropriate title.

**Senator ABETZ**—My apologies if I did not in the heat of that.

**CHAIR**—You know you did not.

**Senator ABETZ**—Excuse me, Chair.

**CHAIR**—I ask you to withdraw that and use the correct title.

**Senator ABETZ**—I apologised and said if I did not then I accept that. But, if you think you can look in my mind, good luck to you. You might learn something if you did, but the reality is—

**CHAIR**—Mr Metcalfe, perhaps you could tell us how many children were behind razor wire prior to 2005, if we want to have this debate.

**Senator ABETZ**—No.

**CHAIR**—Oh, no?

**Senator ABETZ**—Ms Gillard was letting kids out from behind razor wire with her grand announcement. In fact, the first Prime Minister to put children behind razor wire was a Labor Prime Minister, Mr Keating, and we reduced the numbers under the Howard government. I am sure Mr Metcalfe can tell you that history if you are really interested in it. The simple fact is, Minister: the Prime Minister cannot justify that which she asserted yesterday and she should correct the public record.

**Senator Carr**—Thanks for your advice. I am sure there are other questions. Have you got any?

**Senator ABETZ**—Why won't the Prime Minister correct the public record?

*Senator Pratt interjecting—*

**Senator ABETZ**—Sorry?

**CHAIR**—Senator Abetz, I think Senator Boswell has been waiting for quite a while.

**Senator ABETZ**—All right, let Senator Boswell ask his questions.

**Senator BOSWELL**—I have been waiting a long while. All things come to those who wait. When was the Scherger detention centre near Weipa made a refuge for asylum seekers?

**Mr Metcalfe**—Sorry?

**Senator BOSWELL**—When did the government decide it would be used as a detention centre?

**Ms Wilson**—The announcement to use Scherger, which is a defence base, was made by the minister on 17 September.

**Senator BOSWELL**—When was it first decided to put the necessary infrastructure, such as fences, lighting and so on, into Scherger?

**Mr Correll**—One of the key reasons the Scherger RAAF base site was selected and announced is that the accommodation that is presently there needs very minimal work to make it available for immediate use. As part of our overall contingency planning we have had discussions with the defence department about potentially using Scherger. The defence department certainly secured some fencing and put that fencing into storage. Again, that was part of the contingency work that we were looking to do. This has meant that, since the announcement was made on 17 September on the use of Scherger, we have been able to move very quickly to make Scherger operational. We expect to have it ready for use within days.

**Senator BOSWELL**—Can you tell me when the 4,000 post holes were dug for the 12-kilometre internal fence and when a number of accommodation blocks were put there?

**Ms Wilson**—The work on installing the fence did not start until 14 October last week.

**Senator BOSWELL**—And what about the accommodation blocks?

**Ms Wilson**—The accommodation blocks, as we described it, are already at the base, which means that all of the accommodation is already available on site. We are not putting in any. As Mr Correll indicated, there is very minimal work for us to do to make it ready to occupy.

**Senator BOSWELL**—The *Cairns Post* announced that 4,000 post holes had been dug before 20 August and that a number of accommodation blocks had also been delivered to the base. That was done well before. They wrote the story on 2 August. Now you are saying that the holes were dug yesterday, did you say?

**Ms Wilson**—On 14 October it started being put up.

**Senator BOSWELL**—There is a strong inconsistency there because the article also said, after the *Cairns Post* asked the defence department about it:



... there is no construction activity at RAAF Scherger,' a Labor spokesman said.

'On current plans, asylum seekers will not be housed at RAAF Scherger.

'Nor will an immigration detention centre be built at RAAF Scherger,'

'The defence facility at Curtin is the only defence site being used by the Government to accommodate asylum

seekers.'

A Weipa local, who asked not to be named, said the latest activity at Scherger was unusual.

'Something strange is going on', he said.

Now, either the *Cairns Post* has completely got its story wrong or you have completely got your dates wrong. I cannot imagine the *Cairns Post* making an announcement that 4,000 posts had been dug to build a 12 kilometre internal fence at the base when you tell me it started a couple of days ago.

**Mr Correll**—There was activity at Scherger in that we had people inspecting the Scherger site, as we did for many sites when we were looking at potentially viable accommodation spots for irregular maritime arrivals. We had people pay a visit to Scherger and look at its viability from that point of view. That was when we were able to establish that in fact the accommodation that was there was very much fit and able to be used very, very quickly. The securing of fencing by Defence was to be able to quickly put Scherger into a position of readiness, should a decision be made to move to Scherger.

**Senator BOSWELL**—That may well be the case, but Ms Wilson just told me that the holes were dug on 14 October. I am not denying that the defence department rocked up there at any time and said, 'This would be a you-beaut place to put a detention centre.' But can you see that there is a huge discrepancy between what Ms Wilson told the Senate and what you are saying and what the *Cairns Post* is saying? Four thousand post-holes have been dug. This announcement was made on 2 August. It could have been done before then. Then we have, straight out, Defence saying:

... there is no construction activity at RAAF Scherger... On current plans, asylum-seekers will not be housed at RAAF Scherger. Nor will an immigration detention centre be built at RAAF Scherger.

This was on 2 August.

**Mr Correll**—On the date when that comment was made, that was an accurate comment. There was no use of Scherger at that time and there was no decision to use Scherger at that time.

**Senator BOSWELL**—Why put in the 4,000 post-holes and the fence?

**Mr Correll**—The 4,000 post-holes is claimed by the *Cairns Post*. I have no knowledge of 4,000 post-holes. What we do know is that the Department of Defence completed the erection of the fence on the date that Ms Wilson referred to.

**Ms Wilson**—I think you said, Senator, that it was 12 kilometres of fencing. Defence told us recently that it was a fence of only three kilometres, so I question the claim about 4,000 holes as well.

**Senator BOSWELL**—Whether it was 4,000 or whether it was three or 12 kilometres or whatever—

**Senator Carr**—Senator, the advice I have here is that the decision was not made at the time at which the *Cairns Post* carried the report. The *Cairns Post* was carrying a report about work that the defence department has undertaken. I urge you to go and talk to the defence department about work that it has undertaken.

**Senator BOSWELL**—Thank you. I will take your advice Senator Carr.

**Senator Carr**—I am not trying to be difficult here, but what I am told is that work on installing the fence started on 14 October 2010. As an experienced politician, I know you would not rely on the printed report of something being factual in every account.

**Senator BOSWELL**—Actually, I am relying on some Aboriginals who live up there and told me.

**Senator Carr**—The defence department is responsible for that fence, and it is not really a matter for these officers to deal with.

**Senator BOSWELL**—I take your point and I will take it up with Defence. Can you tell me when the Scherger defence facility was declared to be a refugee retention centre.

**Senator Carr**—I am advised here that the decision to go ahead was confirmed by the minister's public announcement on 17 September 2010.

**Senator BOSWELL**—On 17 September?

**Senator Carr**—That is the date on which I am advised that the public announcement was made.

**Senator BOSWELL**—This article was written on 2 August. The article would have been written after the decision was made, and people were told that there would not be any refugee centre.

**Senator Carr**—There are two things. A question was put to the department at an earlier date and the statements were made then. There were no plans for a detention centre on that date, 28 July. I am advised that that is an accurate statement. The announcement was made on 17 September to use the facility for a detention centre. The question of the fence was a matter for the defence department. The question is when they started any construction of a fence or when they finished it. I am advised that it was started on 14 October, but you can check that with the Department of Defence.

**Senator BOSWELL**—The election was on 21 August. When was this declared a refugee centre?

**Senator Carr**—The decision was announced on 17 September.

**Senator BOSWELL**—Probably a week or two after the election.

**Senator Carr**—On 17 September the public announcement was made.

**Senator BOSWELL**—Can't you see the obfuscation?

**Senator Carr**—No.

**Senator BOSWELL**—A decision was made two weeks after an election. We were told it was not going to be one; two weeks after an election there was going to be one. It is a bit like the wild rivers.

**Senator Carr**—Senator, I cannot help you any more than that.

**Senator BOSWELL**—I know you can't.

**Senator Carr**—The 17th September was the announcement date. The officers are not contradicting me so I presume I am right on that score. I trust they would tell me if I did the wrong thing. That is the advice I have. The decision was announced on 17 September.

**Senator CASH**—Just following up, in terms of the contract to make the facility a usable detention centre in the short term, who was the contract with?

**Mr Correll**—We would need to check that, but the only work that was required at Scherger was to put a fence around the accommodation area and very minor furniture and slight fittings in the facility so there was very limited work. We would just need to check with the Department of Defence on who had the contract to do that fencing. I am not sure that we have that information.

**Senator CASH**—That is okay, because what I am also specifically looking for in relation to those contracts is when were the contracts actually signed and, in terms of the contractor, when did the department begin discussions with the contractor about the work that was required? A decision was made on 17 September, but I am interested in the contracts to do the work.

**Mr Correll**—That would be information that the Department of Defence has. They are not contracts that we entered into, so it really is probably a question that should be put to the Department of Defence.

**Senator CASH**—If you do not have the information, you do not have information.

**Senator BOSWELL**—I am just looking at this article from the *Cairns Post*. It says the locals witnessed with their own eyes 4,000 post holes being dug to build a 12-kilometre internal fence at the base and lighting on the airstrip being upgraded. It says a number of accommodation blocks have been delivered. Something is not gelling here.

**Senator Carr**—That is why I am suggesting you go and talk to the Department of Defence about the works that clearly are their responsibility. It may not be this department, but—

**Senator CASH**—Wouldn't the department be aware, if a facility had been upgraded, when those works commenced? Wouldn't you be liaising with the Department of Defence to ensure that it was of an appropriate standard for you to put detainees into it?

**Mr Correll**—Yes, we have considerable discussions with the Department of Defence over facilities, but I am just a little cautious here because the Scherger RAAF base is a live operational base and Defence would have a number of contracting activities going on there. I just think we need to be careful that people have not witnessed something and confused it with other things. As I said, there is no additional accommodation going into Scherger, so it does not make sense.

**Senator BOSWELL**—I will take it up with the *Cairns Post* tomorrow. If I cannot get to the Defence department—I think they are here until today—I will put the questions on notice.

**Senator CASH**—I would like to now turn to the East Timor regional processing centre. What provision was made in the 2010-11 budget for a regional processing centre to be constructed in East Timor?

**Mr Metcalfe**—None, Senator. It was an announcement by the Prime Minister in early July, after the budget.

**Senator CASH**—I note the discussions on this matter prior to the election with regional partners, in particular with Indonesia and Papua New Guinea, were undertaken by the foreign minister. When was the responsibility for carriage of this matter and negotiations with the region transferred to the Minister for Immigration and Citizenship, supported by the department?

**Mr Metcalfe**—My understanding is that, when Mr Bowen was appointed, the Prime Minister indicated that he should take the lead role, obviously working closely with the foreign minister.

**Senator CASH**—So you are basically saying that it was on the date Mr Bowen was appointed as the new minister?

**Mr Metcalfe**—Yes. I think it was publicly indicated by Mr Bowen that he had been asked to take on that particular role, but that is not to say that clearly the foreign minister and his department will be critical as part of the overall discussions around a regional framework and a regional centre.

**Senator CASH**—I note that the minister recently stated in East Timor that the establishment of an offshore processing centre in East Timor would be more than \$30 million. Has the department undertaken any cost estimates to construct and run a centre in East Timor?

**Mr Metcalfe**—Not yet, Senator. We are looking forward to more detailed discussions with the East Timorese and will then be able to start fleshing out what a centre would look like, where it might be located and so on. It is too early to enter into assumptions, but, clearly, it will be a significant cost. There is no doubt about that.

**Senator CASH**—When was the department first made aware of the government's policy to locate a regional processing centre in East Timor?

**Mr Metcalfe**—Clearly, the Prime Minister made an announcement in her address to the Lowy Institute in early July and the department was notified through appropriate processes following government consideration of the matter around that time. That takes you into cabinet confidentiality type issues.

**Senator CASH**—I would not have thought that notification by the department of the government's policy to locate a regional processing centre in East Timor were subject to cabinet confidentiality.

**Mr Metcalfe**—It was a cabinet decision and we were notified of the cabinet decision.

**Senator CASH**—Was it prior to 7 July or after 7 July?

**Mr Metcalfe**—I do not know if I can go into issues of when cabinet met and decided things. Clearly, the Prime Minister made an announcement around 7 July and, from recollection, it was not very long after she became Prime Minister. It was in that period.

**Senator CASH**—How was the department made aware of the decision?

**Mr Metcalfe**—We are party to cabinet processes.

**Senator CASH**—By whom—the cabinet?

**Senator Carr**—Standard processes.

**Senator CASH**—What instructions has the department been given in relation to progressing this policy?

**Mr Metcalfe**—The minister, as lead minister on the issue, has clearly undertaken some significant discussions with President Ramos-Horta and a range of other political leaders and members of civil society in East Timor, and as part of their joint discussions and subsequent media conference—I was obviously there—the minister asked me and the Ambassador for People Smuggling Issues, Mr James Larsen, to meet again with East Timorese officials in a few weeks time. That is what we will do. We are obviously getting ready for that meeting now.

**Senator CASH**—When were those instructions given?

**Mr Metcalfe**—They were articulated as part of the agreement between the minister and President Ramos-Horta.

**Senator CASH**—During those discussions?

**Mr Metcalfe**—It was in that meeting.

**Senator CASH**—Was the department asked to provide advice on the establishment of the centre prior to the decision actually being made?

**Mr Metcalfe**—That is an issue that goes to policy advice and government and cabinet issues, Senator.

**Senator CASH**—I cannot understand how it could possibly go to cabinet issues. Were you asked to provide advice? I am not asking what the advice was; I am not asking what the nature of the advice was; I merely asked: were you asked to provide advice?

**Senator Carr**—I think it is on the public record that Senator Evans at the time carried forward the initiatives, and of course the department provided advice. But as to the detail, I do not think it is appropriate that the officers be asked about that.

**Senator CASH**—I am not asking for the detail of the advice. I would just like to seek confirmation that the department did provide advice to the minister on the regional processing centre prior to the announcement being made.

**Mr Metcalfe**—Yes, we did.

**Senator CASH**—Thank you very much. When was that advice provided?

**Mr Metcalfe**—I will have to check. A range of advice was provided on a range of issues, this being part of it, over a period of time. I suspect it was in the context of preparing material for cabinet as well. I will take it on notice and I will answer according to protocols.

**Senator CASH**—I am not asking for the nature of the advice, but you had indicated that advice was provided by the department to the minister prior to the minister's announcement being made. When you go back and look at when you provided that advice, if it was provided on more than one occasion can I please have the dates on which you provided advice to the government on the establishment of the regional processing centre in East Timor?

**Mr Metcalfe**—Providing that does not offend normal confidentiality associated with cabinet matters I will take that on notice and advise you what I can say.

**Senator CASH**—Thank you very much. Has a formal proposal for the establishment of a regional processing centre been developed setting out the size of the facility, proposed accommodation capacity et cetera?

**Mr Metcalfe**—No. That is what we are working on now, Senator. It is very clear that this is not going to be an iterative process. The minister and President Ramos-Horta made it clear that there needed to be detailed discussions about how a centre would operate, where it might be located, what capacity or scale it might have, and so we are now moving into that next level of detail, having been given a positive indication that East Timor is happy to have those conversations.

**Senator CASH**—When was the department first made aware that the proposal was under consideration by the government?

**Mr Metcalfe**—That takes us back to cabinet processes, Senator. I have indicated that the department has provided advice to the government on this matter. I have taken on notice the question whether I can tell you when that advice may have been obtained and I think that has been encapsulated within the question you have just asked.

**Senator BOSWELL**—I have had a bit of experience in East Timor. I have been there. It seems to me that the accommodation that we will be offering refugees will usually be in excess, and better by a large factor, than the local people live in. Does this concern you? There will be assumptions made by the locals that they cannot live that way. Does that concern you?

**Mr Metcalfe**—It certainly a consideration. I think that it is a fair point, and that is exactly why we do need to have detailed conversations with East Timor as to what such a facility might look like, what type of accommodation might be offered, and what services should be available. I think that it is fairly plain that we are talking about a community housing style where people would not be detained but living in a community and, clearly, the issues about a differential standard of accommodation for asylum seekers from the local community is one factor that will certainly be considered.

**Senator BOSWELL**—I was there 12 months ago maybe—it might have been a little bit longer. They have the refugee problem themselves—or they did have at the time. When people left the villages and came and lived in camps those camps were made of cardboard and canvas and just put together. I would imagine that by comparison this would be a million per

cent better. I have always wondered whether the comparison would be unacceptable to the locals.

**Mr Metcalfe**—You raise a very important point. What is acceptable in terms of Australian standards may be quite different to what is locally the prevailing standard in a large range of overseas countries. We will obviously be working closely not only with East Timor but with key organisations such as the International Organisation for Migration, who ran the facilities for the previous government on Nauru and Manus Island, and, of course, the United Nations High Commissioner for Refugees. Those sorts of considerations are certainly factors that will be taken as we work through this issue.

**Senator CASH**—In terms of the advice that the department provided to the government on previous occasions or prior to the announcement being made, was any advice provided to the government during the time Prime Minister Rudd was in office?

**Mr Metcalfe**—I will have to check on it.

**Senator CASH**—Do you have any details at all in terms of the size of the centre being discussed, where it will be located, whether it will be a secure facility, its estimated cost, and whether it will accommodate families and children? Are there any details surrounding this process?

**Mr Metcalfe**—These are all the sorts of issues that will be discussed, but Minister Bowen has made it clear that we certainly would be establishing a facility that we would expect to be in place for some time, to be used if needed over some years. So there would be a substantial investment required. President Ramos-Horta may have put the figure of \$30 million into the public domain, but that was, I think, a figure he arrived at based on experience elsewhere. Certainly our experience in Nauru, Manus and other places indicate that these are expensive facilities to create, and clearly a long-term use of the facility, if needed, is something to consider.

I think it is fairly clear that we are not talking about a detention facility, although the facility might need to have some minimal capability depending on the specific circumstances of some individuals. So that would be a point for discussion. We would be looking at a community based facility so families could be accommodated up there. In terms of numbers, I certainly do not think we would be looking at anything exceeding a couple of thousand places, but we would probably be looking at something of a minimum of 500. As I have said, no detailed proposals have been worked through. The agreement with the minister and the President was that senior officials should now carry forward that work, and I am looking forward to that.

**Senator CASH**—Will other nations be involved in funding the centre, or is it something that Australia itself will be funding?

**Mr Metcalfe**—We certainly can expect to be funding a significant component. The centre, of course, is very deliberately intended to be part of an overall regional protection framework. The minister, of course, not only had meetings in East Timor but also in Jakarta and Kuala Lumpur last week and was discussing with key counterparts the Australian concept of a regional protection framework, of collective responsibility between nations in our region and possibly elsewhere—other resettlement countries—and relevant international organisations

such as IOM and UNHCR. It was agreed that this would be advanced through the Bali process, which was established by the government back in late 2001-02, jointly chaired with Indonesia.

So there is an international framework existing in the Bali process, and the government wants to utilise that capacity to provide a clear framework for dealing with displaced persons, to assess whether they are refugees, to accommodate them in the region, and to avoid their seeking to make the perilous journey to Australia with all the tragedies that can occur as a result, to find durable solutions for people who are not refugees to return home in conditions of safety, and, for people who are refugees, for their resettlement. So those are the broad aspects of a regional framework, and a regional processing centre sits within that as a key capability, so that people could be sent to a centre for refugee claims to be assessed—in the same way that people intercepted in Indonesia over the last many years are accommodated by Indonesia, supported by IOM and assessed by UNHCR, and the Australian government is a substantial contributor to that.

**Senator CASH**—In terms of the numbers, you said potentially a few thousand but possibly no less than 500.

**Mr Metcalfe**—We were thinking of between 500 and 2,000 as being a viable size.

**Senator CASH**—Given that there are already approximately 5,000 people in detention at present in Australia, how will a facility with only up to 2,000 people solve our problems in any way at all?

**Mr Metcalfe**—It is seen as a key capability within an overall regional protection framework. I think one issue that is very clear here is that there is no magic bullet—otherwise that would have been fired!

**Senator CASH**—I think the Howard government fired that bullet.

**Mr Metcalfe**—Well, I cannot go into context, Senator; otherwise, we could have a conversation about that.

**Senator CASH**—You would be able to confirm what I have actually said.

**Mr Metcalfe**—I would be able to give you my own views, but I will not do that. What I can say is that this is a complex issue. It involves a number of countries. It involves people in various statuses and with various rights and hopes, and it is an issue that governments of both persuasions have understood requires cooperation with our neighbours.

**Senator CASH**—You mentioned the Bali process; has the idea of a regional processing centre ever been put on the agenda of the Bali process before?

**Mr Metcalfe**—I will have to check on that, but it is certainly something that has been put on the agenda now.

**Senator CASH**—In terms of checking whether or not it has been put on the agenda before, could you please tell me: if so, by whom, and what was the reaction of the participants in the Bali process?

**Mr Metcalfe**—I would be happy to.

**Senator CASH**—Thank you. In terms of the word ‘region’, what is the region?



**Mr Metcalfe**—The region, in my terminology here tonight, is the region of countries in South and East Asia—largely members of the Bali process, in other words.

**Senator CASH**—Could I get you to name those countries please?

**Mr Metcalfe**—I think there are 44. If you want, I could take it on notice.

**Senator CASH**—Could you please take it on notice. In terms of your terminology tonight, is there a more formal terminology for what the region might be? Have you had any discussions with East Timor as to what the region might be?

**Mr Metcalfe**—Sorry, Senator—please forgive me. Can I just say: I used the words, ‘I think there are 44’; I will check that, because it is a figure that sprang into my head. I will check and we will give you a list on notice. I am sorry—could you repeat the next question?

**Senator CASH**—You said, in terms of the terminology you are using in terms of the region: the government continues to say it is a regional processing centre. Is there a more definitive definition of ‘region’?

**Mr Metcalfe**—As I have said, we are largely talking about countries where displaced persons are travelling through. So of course we would include Indonesia, Malaysia, Thailand, Cambodia, Vietnam and other countries in Indochina, but the Bali process incorporates a number of other countries as well. Within our region, obviously, Papua New Guinea, Timor-Leste and New Zealand are all seen as part of this region.

**Senator CASH**—And you said ‘44’; that is basically the definition of the region as the Bali process membership.

**Mr Metcalfe**—Yes, and I will check on that number, and I have undertaken to give you a list of countries who are members of the Bali process.

**Senator CASH**—Could I just go back to who will actually be eligible to be processed in the centre. Is it anyone who is in the region seeking asylum? Is it only those who have been found to be refugees and are awaiting a resettlement outcome? What is the thought about who can actually go into this centre?

**Mr Metcalfe**—Certainly the Australian intention is that this would be a regional assessment centre or processing centre. They will be people who have yet to receive a decision in relation to their status and they would be sent to this place for assessment of any refugee claims. So it would not be a centre solely to accommodate people found to be refugees pending their resettlement; it would be a place where people would be assessed and then, if found to be refugees, await resettlement.

**Senator CASH**—Let me just get this right in my head. If a person managed to get to, say, the Philippines would they be eligible to be transferred to the centre?

**Mr Metcalfe**—That is part of the concept that we are working through. As you will appreciate, we have not had conversations with all of our regional partners; that is an effort that is currently underway. I am trying to be as helpful as I can, but this is a continuing conversation. The overarching concept is that there would be collective responsibility for displaced persons in the region and that it would be open to countries in the region to send persons to an assessment centre to have a determination made as to whether they are refugees.

It would be a place, therefore, where resettlement countries would be active in seeking to consider people for resettlement. The Prime Minister has made it clear that one of the intentions for a regional processing centre or a regional assessment centre is that it would break the business model for the people smugglers, on the basis that there would be no advantage in getting on a boat and coming to Australia because we would be seeking to have people transferred to the regional processing centre for consideration there. Therefore, people risking their lives and getting on a boat would not occur and people smugglers would not be able to offer the automatic destination of Australia in terms of what they are selling.

**Senator CASH**—Unless there was an overflow of the 3,000 and they had to look elsewhere.

**Mr Metcalfe**—All of these issues have got to be discussed as to whether there is one centre or more. Of course, it builds on arrangements already existing in the region. The UNHCR is operating in countries like Indonesia and the Philippines. Indonesia has hosted populations of people who have been bound for Australia and have been intercepted and interrupted. The International Organisation for Migration has provided for their support and the UNHCR has undertaken refugee determination processes. We heard when we were in Jakarta that some 400 people this year have voluntarily returned from Indonesia to the countries from whence they came. So some of these concepts have already been operating. The concept that the government has is to build on that architecture and make it an interlocking series of agreements—a regional framework—to provide a durable solution and to essentially remove the incentives for people to access people smuggling and to remove the irregular nature of this access and make it into a more regular type process.

**Senator CASH**—I just want to go back to the people you said would be entitled to go to the regional processing centre. If someone is already waiting in Indonesia and they have already been given UNHCR status, will they continue to wait there—they will not be transferred to the centre—because they have already had their refugee status determined?

**Mr Metcalfe**—That is the concept but I cannot pre-empt the eventual outcome of what will clearly be a series of—

**Senator CASH**—No, but in terms of the negotiations to date.

**Mr Metcalfe**—I am reluctant to get drawn into detail. We clearly have to work through a lot of detail and negotiate with a number of countries. All sorts of considerations will be brought up and will need to be taken into account. Indonesia has been very generous in hosting populations of refugees. Australia and other countries have resettled people from Indonesia and from other countries in the region. Thailand has carried large populations of refugees and so has Malaysia. So there is an international framework that we are seeking to expand upon to try to break the cycle of the people smugglers.

**Senator CASH**—To go back to the definition of the ‘region’, you have referred basically to those countries participating in the Bali process. My understanding is that, in that respect, Afghanistan, Iraq, Iran and India participate in the Bali process, so those countries would be considered to be part of the region.

**Mr Metcalfe**—Yes. The Bali process includes some source countries, some transit countries and some destination countries.

**Senator CASH**—What I am hearing is that no thought has really been given to what the ‘region’ actually is if you are telling me that the 44 countries who participate in the Bali process are going to make up the ‘region’.

**Mr Metcalfe**—I do not know what you are hearing other than what I am saying. There is a clear membership in the Bali process—

**Senator CASH**—And that is the ‘region’.

**Mr Metcalfe**—and it is clear that we are going to advance this issue through the Bali process established by Mr Downer some years ago.

**Senator CASH**—So at this particular point in time—so I do not misconstrue what the department is telling me—in the conversations to date in terms of the ‘regional processing centre’ and the ‘region’, the Bali process and the membership thereof defines the ‘region’.

**Mr Metcalfe**—What I am saying is that we and Indonesia co-chair the Bali process. It is clear that we will work with Indonesia to advance these discussions through the Bali process. It is a matter for individual countries how much or how little they want to be involved, but clearly we are dealing with phenomena of people coming to our part of the world from the Middle East and from South Asia looking for a better life, some of whom are refugees and some of whom are not, and we need to work with the countries between there and New Zealand to fix this problem collectively, because no one single country can fix this problem.

**Senator CASH**—No, and I am glad you mentioned the word ‘collectively’, because I would have thought that with, for example, 44 countries making up the ‘region’, each country would make a financial contribution which would lessen the burden on Australia in terms of the amount that Australia will be providing to the regional processing centre. I note that your earlier evidence was that we would be providing a considerable amount of money in relation to the centre.

**Mr Metcalfe**—Certainly we do already; we have for many years. Australia makes a \$20-million-a-year donation to UNHCR as part of the international framework. We resettle 13½ thousand people. We make a substantial contribution. We should be very proud of that.

**Senator CASH**—But in terms of funding for our idea.

**Mr Metcalfe**—In terms of this issue—matters of funding, the detail of funding and the burden sharing—we are clearly at the beginning of the conversation.

**Senator CASH**—Is it accurate to say that the region has not yet been identified in terms of who is going to be transported to the centre?

**Mr Metcalfe**—That is yet to be worked through.

**Senator CASH**—So my statement would therefore be accurate?

**Mr Metcalfe**—That is correct. I think I made it pretty clear. You are obviously interested in the region, but the minister has indicated that we are now progressing a series of discussions around a regional protection framework. We are at the beginning of that, and where we get to in the end is a process that we work through in the Bali process, where Australia and Indonesia play a key role together. I cannot anticipate exactly where that will end up. We have

a clear idea of what we would like. I am not going to disclose all of that publicly. We clearly have to work with a range of people and negotiate a range of issues.

**Senator CASH**—Seeing that we know what we would like, has any consideration been given to the thousands of people in camps on the Thailand-Burma border and whether or not they would be transferred to the regional processing centre?

**Mr Metcalfe**—We have largely been thinking about people who come from beyond the region and who move through the region. We are not talking about the fact that there are, of course, thousands of displaced people in the Asia-Pacific region. This is very much around the people who have been seeking to come to Australia. It is about people moving in an irregular fashion from outside this part of the world—Afghanistan, the Middle East, Sri Lanka—and who are moving through this region primarily with the objective of seeking asylum in a developed Western country.

**Senator CASH**—The question arises, and it goes to what Senator Abetz was discussing with you before in relation to the Prime Minister's comment that she will cut the razor wire: how can you make an announcement that you are going to have a regional processing centre if you do not have any real definition of what the region actually is?

**Mr Metcalfe**—I have a pretty clear idea of what the region is; I think I have been describing it for the last half hour—I do not know what more I can say. We are talking about a process that involves the Bali process—a range of countries are involved in that—and we are talking about our part of the world.

#### **Proceedings suspended from 9.30 pm to 9.46 pm**

**Senator CASH**—Mr Metcalfe, if I could return to the establishment of the regional processing centre. Could I confirm with you that those within the region will not be sent to the regional processing centre, but if you travel through the region that is when the ability to send you to the regional processing centre arises.

**Mr Metcalfe**—That is certainly our starting position, but I am really reluctant to rule in or rule out. We are clearly in a negotiation that will occur over the coming months with a range of countries, and there will be a range of views expressed. We certainly see this as a means of breaking the business model for people smugglers while ensuring that people who are refugees are protected and building on other existing processes in the region, such as what you referred to earlier. No doubt the minister will be happy to talk in more detail as those discussions occur.

**Senator CASH**—I am glad you said that nothing is ruled in and nothing is ruled out, because I have to say: with the process as it stands, if you are from outside of the region and you come into the region, you are then taken about as close to Australia as you can possibly get. My analysis of that is that it is one of the biggest drawcards or magnets that you could possibly be giving to people who are not from within the region. The first thing that they will do is try to get a little foot into Mongolia, Iraq, Afghanistan, Palau or one of those 44 countries, because they will be guaranteed that they will end up much closer to Australia than when they first started their journey.

**Mr Metcalfe**—The government has made it clear, Senator, that this is about denying the opportunity for people to risk their lives undertaking the voyage to Australia. East Timor is a signatory to the refugee convention, and that is clearly an important consideration. Indeed, there are not too many countries in the region that are signatories to the convention, and Australia, East Timor, New Zealand and Papua New Guinea are notable in that respect.

Clearly in the design of this framework we will be paying attention to ensuring that the potential factors of people being attracted to come are resisted. This is very much an international framework to provide collective responsibility and to deal with what is a difficult international issue—in the same way it is in Europe and in the same way it is in the United States of America.

**Senator CASH**—In terms of not wanting people to be drawn into the region so they get automatically transferred to the processing centre, which is very close to Australia, what discussions have been had around how long they will be detained in the regional processing centre whilst a third country can be found for resettlement? Will there be a maximum detention period? Will there be a time limit on how long they will be detained before the department gives up trying to find them a third country to settle in and then resettles them in Australia?

**Mr Metcalfe**—There were some public comments made in East Timor last week about people not being in the region indefinitely and that there would need to be some sort of period associated with that. We are always reluctant to specify time periods for obvious reasons, but clearly that is a consideration as well. The fact is that we need to have a process that if a person is a refugee they are identified and assisted to move to a place that will offer them safety and security into the future. Resettlement countries around the world undertake that role, and if a person is not a refugee, they are assisted to return home. Four hundred people have gone back to Indonesia this year.

**Senator CASH**—Mr Metcalfe, I really do not have time for elaboration at this stage. If we had more time I would gladly sit here and listen to you. You said that the government does not like to actually set down time limits. Can you tell me what you did in relation to the Sri Lankans in Romania then?

**Mr Metcalfe**—That was a particular set of circumstances.

**Senator CASH**—A particular set of circumstances?

**Mr Metcalfe**—Yes. We had a group who were on an Australian vessel.

**Senator CASH**—Can you guarantee that a particular set of circumstances will not arise again in relation to the regional processing centre?

**Mr Metcalfe**—Senator, you know I do not get into hypotheticals.

**Senator CASH**—You have referred to the statement, reported in the *Australian* on 14 October, made by the minister in relation to the East Timor processing centre during his media conference regarding President Ramos Horta's concerns about people spending indefinite time in the centre. Minister Bowen stated:

He wouldn't want anybody in the centre for three years or more, and I would certainly agree with that ...

Can the department therefore advise what guarantees have been provided to the President of East Timor or any other official from East Timor regarding Australia taking ultimate responsibility for persons held in the processing centre if they are not going to be there for more than three years?

**Mr Metcalfe**—There have been no guarantees given about anything. We are about to go into much more detailed discussions.

**Senator CASH**—Has the government of East Timor made representations to Australia that any potential support for the establishment of a regional processing centre in East Timor will be conditional upon endorsement by the Bali process?

**Mr Metcalfe**—They have made it clear that the views of their two major regional neighbours, Australia and Indonesia, will be very important as far as their consideration is concerned. Indonesia and Australia agree that this matter is best progressed through the Bali process. In a related way, I think East Timor would regard the Bali process as being the appropriate way to take these issues forward; however, we will be directly advancing discussions about the regional processing centre with East Timor over the coming weeks.

**Senator CASH**—The issue now arises that if East Timor sees the Bali process as being the appropriate place for this to be fleshed out and worked upon, what role is Australia going to play at the end of the day if this is being referred to the Bali process? East Timor wants to see this work through the Bali process. Where is Australia left at the end of the day?

**Mr Metcalfe**—Australia is co-chair of the Bali process.

**Senator CASH**—Yes, however, if the agreement of the Bali process was to be required where does this leave us?

**Mr Metcalfe**—Australia will be working with Indonesia as co-chairs and will be seeking to bring forward some proposals that will enjoy the support of other partners in the Bali process.

**Senator CASH**—You would hope?

**Mr Metcalfe**—That is our objective.

**Senator CASH**—Does Indonesia have a veto right?

**Mr Metcalfe**—I would not regard anyone as having a veto right. This is a process that operates largely through discussion and consensus. That is very much the approach taken in our region.

**Senator CASH**—But does Indonesia have a veto right?

**Mr Metcalfe**—I think I have answered the question.

**Senator CASH**—Could you answer it with a yes or no?

**Mr Metcalfe**—This is an issue that will be taken forward through discussion and consensus.

**Senator CASH**—Okay. This is a bit like the regional issue. I am sorry, I am really having trouble—

**Senator Carr**—Senator Cash, during the election campaign you said your policy was to stick everyone in Nauru. For you to press the officers about what has been quite a complicated series of discussions with a multitude of countries I think is a little bit tendentious, to say the least. You are asking for yes or no answers. You are asking for guarantees on what is obviously a very—

**Senator CASH**—Fluffy idea.

**Senator Carr**—No, it is not a fluffy idea. It is an attempt to get a regional solution in place—not some sort of half baked proposal to dump everyone on a coral atoll. That is your proposal.

**Senator CASH**—Good. Well, perhaps you can give me some definition surrounding what the ‘region’ is.

**Senator Carr**—Your proposal is to take everyone out of the region and just shove them on an island and let them rot. That is not what this is about. You are being quite unfair to this officer, who is going through the ins and outs of quite a complicated series of discussions. I think Mr Metcalfe has been more than generous and more than tolerant with these sorts of questions.

**Senator CASH**—If Indonesia is opposed to the regional processing centre, would Australia proceed with it?

**Mr Metcalfe**—That is a hypothetical situation. You are asking me to speculate about hypothetical positions of countries which have not yet reached a position. I do not think it is helpful, in a diplomatic process, to speculate publicly about those matters.

**Senator CASH**—Have East Timor set any parameters around what would be a deal breaker in terms of going forward? Have they set something that must occur? For example, President Ramos-Horta has stated that he would not want to see anybody in the centre for more than three years.

**Mr Metcalfe**—The president clearly has some views. He made it clear that he was proceeding largely from a humanitarian basis and East Timor understands those issues very well. Australia has been very generous in that regard over the years. There are some other areas that the president indicated that he would need to consult widely on in civil society in East Timor, which is what you would expect.

**Senator CASH**—What were those areas?

**Mr Metcalfe**—No; that is something that will occur.

**Senator CASH**—That will occur; okay. Did the minister’s recent visit to East Timor result in a timetable for opening a regional processing centre?

**Mr Metcalfe**—As is well known, through the minister’s extensive public comments on this, there is agreement to more detailed discussions occurring over the coming weeks.

**Senator CASH**—Did it result in any kind of agreement to progress the construction of a centre?

**Mr Metcalfe**—There is agreement for further discussions.

**Senator CASH**—What, to date, has been agreed, other than that we will continue our talk fest?

**Mr Metcalfe**—There has been agreement that East Timor is certainly prepared to consider a detailed Australian proposal. Australia is now in the process of putting that together and will have further discussions. This is the way of the world. You do not just rock up to a country and present it with a fait accompli. You have discussion, dialogue and work through the issues in detail. That is exactly what is occurring.

**Senator CASH**—I put it to you that the Prime Minister, when she made this announcement, put it to the Australian as a fait accompli and what we are now finding out—

**Senator Carr**—That is not true. That is just not true.

**Senator CASH**—is that there is not substance to this proposal.

**Senator Carr**—That is just not right.

**CHAIR**—Do you want to further comment about that?

**Senator Carr**—I have made my point. Given the hour, there is no point in speculating or listening to the extraordinary opinions of Senator Cash.

**Mr Metcalfe**—I could go on and talk about the fact that there are clear precedents for this type of regional framework. The best known in this region was known as the ‘comprehensive plan of action’ initiated back in the late eighties, which dealt with North Vietnamese and which involved a range of countries—Hong Kong, the Philippines, Indonesia and others—in providing asylum and resettlement consideration, and Australia and other countries dealing with that. That has been referred to lately, as well.

**Senator CASH**—Sorry, due to the time—

**Mr Metcalfe**—While it is not a perfect model it is certainly something that is worth studying for anyone interested in the issue.

**Senator CASH**—How do you understand a regional processing centre will differ from a centre on Christmas Island?

**Mr Metcalfe**—Firstly, it is not in Australia. Secondly, it would be a place where people could be sent, thus denying people the opportunity to come to Australia. Thirdly, it is a place where we would hope a range of resettlement countries would assist in meeting the needs of refugees, rather than people simply being resettled in Australia, which is what happens for people who make it to Australia or what happened to people who went to Nauru.

**Senator CASH**—Can people be transferred to Christmas Island from the Philippines?

**Mr Metcalfe**—I do not understand—to Christmas Island from the Philippines? If they had a visa, yes.

**Senator CASH**—Has any consideration been given to whether or not people will be free to come and go from the centre as they please?

**Mr Metcalfe**—Certainly. The discussions that occurred in East Timor were that this would not be a detention centre per se, and I think I mentioned that earlier, but that it would be more



in the form of a community based facility. But you would not rule out perhaps the ability for the local authorities to place a person in detention if there were reasons for that to occur.

**Senator CASH**—Can I clarify the question I put to you before—I must have phrased it incorrectly: can asylum seekers be transferred to Christmas Island from the Philippines?

**Mr Metcalfe**—For a person to come to Australia, ordinarily they need a visa. Ordinarily, if a person was in the Philippines and was an asylum seeker, we would expect that they would be considered by the Philippine authorities in relation to those issues, and Australia's role might potentially be in resettlement. I do not quite understand the premise of your question in order to answer it fully.

**Senator CASH**—Given the time, I need to briefly turn to Northam, if that is at all possible, Madam Chair?

**CHAIR**—Yes, use your time as you like.

**Senator CASH**—Thank you. Was the Western Australian government consulted in relation to the minister's decision and recent announcement?

**Mr Correll**—Yes, there was contact by the minister with the Premier before the announcement and there were also some discussions at official level.

**Senator CASH**—Would you give me a time line as to when the discussions with the Premier before the announcement occurred.

**Mr Correll**—I am not sure I am able to do that with precision. That is information that the minister would have to provide.

**Senator CASH**—Just a general time frame. Were they consulted the day before, the week before or months before? I would just like a general idea of time frames.

**Mr Correll**—I will take that on notice.

**Senator CASH**—Is the minister aware of comments by Premier Colin Barnett that the Northam centre should be limited to 500 detainees, not 1,500 detainees? Does the government agree that 1,500 detainees could represent a threat to the local community?

**Mr Correll**—The Northam centre was initially given consideration because it was in fact raised as a possible suggestion by the Premier as a location for a centre. That is the background to its consideration. After it was raised by the Premier, we looked closely at the facility, as we were doing with a number of locations, and established that it was a very viable location.

**Senator CASH**—But are you aware of the Premier's comments—made yesterday, I understand, following the announcement—that, if there is to be a detention centre at Northam, it should be limited to 500 detainees, not 1,500, because 1,500 could represent a threat to the local community?

**Mr Correll**—I have not seen those comments specifically.

**Senator CASH**—You are not aware of the comments?

**Mr Correll**—No.

**Senator CASH**—Would you take it on notice and look at those comments. In particular, does the government agree that 1,500 detainees could represent a threat to the local community? What capital costs are anticipated to build the new centre in Northam?

**Mr Correll**—There is an estimated cost of \$164.5 million.

**Senator CASH**—What are the anticipated and budgeted running costs?

**Ms Wilson**—We have not agreed operational costs for the facility yet.

**Senator CASH**—Okay. Can you take me through where the discussions are actually at?

**Ms Wilson**—The will be considered as part of the additional estimates that Mr Sheehan talked about earlier.

**Senator CASH**—What are the anticipated costs of the new centre at Inverbrackie?

**Mr Correll**—There is a different cost structure for Inverbrackie because it is utilising existing, unused defence housing at Inverbrackie, near Woodside. The estimated cost there is \$9.65 million. That is the capital cost. Again, the operating costs would need to be considered in the same way that we referred to earlier.

**Senator BACK**—In the event that 500 or 1,500 people would be put there, what provision will be made under this plan for medical and related services? I ask the question because the Northam hospital is so badly able to service its community at this moment that, in the last month, there have been two tragic deaths in Northam—one of a 16-year-old boy and the other of a young child, both preventable, regrettably. What provision would you make in the plan? Would you be looking to create medical facilities at the Northam Army Camp?

**Mr Correll**—Yes. We would be looking as exists in other detention centres to establish an appropriate medical facility there. We contract IHMS to provide medical services. In a comment I gave earlier in responding to a question from Senator Cash I flagged that there are currently 18 medical staff located at Curtin. We would be looking at establishing the appropriate level of medical staff and support.

**Senator BACK**—On site?

**Mr Correll**—Correct; a medical facility on site. It would also be our strong intention to work very closely with the community—again, as we have done in Curtin—to ensure that the location of the centre at Northam is a positive contributing factor to the community and works well with the community.

**Senator BACK**—It has the potential to be, of course—Northam has a long history going back to the Second World War—but I am concerned about there being 1,500 men and the capacity to be able to actually confine them within the area of the Northam Army barracks. It is a much more populated area than it was in the postwar period.

**Mr Correll**—Because it would be a facility designed for single, adult males, it would be designed with appropriate security in mind. The actual siting at Northam will not occupy the full space of the Northam training area, which is quite a large area.

**Senator BACK**—It is indeed, yes.

**Mr Correll**—It will occupy a relatively smaller component of that area that is no longer needed by defence. That component, as you flagged, has a very rich history, going back to post World War II. Indeed, even some of the drainage in the area was built by some of the people in post World War II.

**Senator CASH**—Senator Back, can I just interrupt, as we have got one minute left?

**Senator BACK**—I have finished.

**Senator CASH**—You said that the anticipated capital cost to build the new centre in Northam is \$164.5 million. Could you tell me what it would cost to actually bring stage 3 of Curtin up to operational capacity for another 600 people? We know what the estimates are for stage 1 and stage 2 and the preliminary groundworks have already been undertaken in stage 3.

**Mr Correll**—I do not think we have any costing or estimate.

**Senator CASH**—Would you anticipate that it would be less?

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

**Senator CASH**—Would you anticipate that it would be less than the \$164.5 million?

**Mr Metcalfe**—I just wonder whether that is a productive use of our time, because the government has made it clear that it is not planning to extend Curtin beyond 1,200. We can do some work, but it would be purely hypothetical.

[10.10 pm]

**CHAIR**—It is now 10 past 10 and we made a decision that we were going to move to outcomes 5 and 6 now. Minister Carr, thank you very much for your attendance today. I invite Senator Kate Lundy to join us.

**Senator CASH**—I understand this is outcome 5. A grant was provided to the Australian Nutrition Foundation under the grants program. What were the measures of financial accountability and outcomes for the Australian Nutrition Foundation when it expended the moneys?

**Mr Fox**—Can you give me a little more detail? I do not have, off the top of my head, the grant to the Australian Nutrition Foundation.

**Senator CASH**—Yes, absolutely. It is the Settlements Grants Program for 2009-10, 'Australian Nutrition Foundation (Queensland Division) Inc, Orientation to Australia and Integration services to humanitarian entrants in Brisbane SSD \$53,000'. But then there is nothing surrounding what outcomes this is meant to achieve for the \$53,000, what are the accountability measures the department has in place to ensure the \$53,000 is expended appropriately et cetera.

**Mr Fox**—If I can answer the second part of the question about the accountability measures first: we put in place funding agreements with every settlement grant recipient, which will include in it milestones that the project sponsors are required to meet. They are required to report against those and then each of those grants is acquitted to ensure that the moneys are indeed expended according to the details in the funding agreement. I do not have with me details of that particular grant, so I will have to take on notice the particular outcomes that we have ascribed to that project.

**Senator CASH**—It would be greatly appreciated if you could do that. This is a program that has been run over a number of years; it is certainly not just in 2009-10. The Australian Nutrition Foundation has previously received a settlement grant in 2008-09 and 2007-08. What is the outcome of the funding, because you have now provided it in subsequent years? Were there identified nutritional deficiencies in people who had arrived in the country?

**Mr Fox**—Again, I do not have the details with me, but just based on the description, as you read out from our entry on the grants table, it sounds like they are providing some training courses to new arrivals on nutrition. I will take that on notice to confirm, if I am not correct.

**Mr Metcalfe**—I think it is best if we take it on notice. We have many grants and it is best if we answer you properly.

**Senator CASH**—That is fine. What I might also do then is, in relation to the information that you will be providing, I will give you a list of grants that we require information for.

**Mr Fox**—Certainly, that would be best.

**Senator CASH**—What translation services are available to migrants and humanitarian entrants?

**Mr Fox**—Through the department we have a translating and interpreting service that is available for all people in Australia, whether they be newly arrived migrants or others. That is the telephone and interpreting service, so there are telephone services available. There is a telephone number that people can ring and be put in touch with interpreters. We also provide, through that, a number of services that are free of charge to the client, and those are generally provided to medical practitioners in hospital situations. We also have a pilot with some real estate agents, for example. So there is a range of those translating and interpreting services. I can go into more—

**Senator CASH**—What I might do, again because of time more than anything, is ask: are you able to provide to the committee a list of all of the translation services that are available to migrants and humanitarian entrants when they come here; also, how does the department ensure that the migrants and humanitarian entrants are made aware that those services are available?

**Mr Fox**—On the latter part, certainly as part of the settlement services that are provided under our humanitarian settlement strategy, documents are translated and clients are advised that those services are available. Of course, the Translating and Interpreting Service that we administer through the department is not the sole provider of translating and interpreting services. There are a number of private providers who are not government bodies.

**Senator CASH**—But entrants are made aware of those services should they wish to utilise those services?

**Mr Fox**—Yes, and there are other government services as well. For example, Centrelink has its own bilingual workforce that provides interpreting capacity as well.

**Senator CASH**—In terms of training of languages for interpreters, what languages are translators currently being trained in? Is there a top five?

**Mr Fox**—There are 170 languages. The top 10 languages most in demand for telephone services are: Mandarin, Arabic, Vietnamese, Cantonese, Korean, Persian, Turkish, Spanish, Greek and Serbian. The top 10 languages most in demand for on-site services, as opposed to telephone services, are: Arabic, Vietnamese, Mandarin, Persian, Cantonese, Dari, Serbian, Turkish, Spanish and Bosnian.

**Senator CASH**—Are you able to table the information that you have in front of you so that I have the complete list of the 170 languages? Alternatively—

**Mr Fox**—I do not have the complete list.

**Senator CASH**—Could you take it on notice to provide that complete list?

**Mr Fox**—Yes.

**Senator CASH**—Thank you very much. In terms of the demand or need for new languages and the training of translators, how does the department determine the need to train translators in, for example, Mandarin?

**Mr Fox**—The department does not provide training for translators.

**Senator CASH**—So how does it work?

**Mr Fox**—The Translating and Interpreting Service employs a panel of interpreters who are generally accredited by the National Accreditation Authority for Translators and Interpreters, NAATI, but the department does not provide training. Training is provided through registered training organisations and other organisations.

**Senator CASH**—How many translators are currently employed or contracted by the department?

**Mr Fox**—We have about 1,800 contracted interpreters through TIS.

**Senator CASH**—I understand you do not do the training, but how does the department determine the requirements for an interpreter in a particular language? How do you determine that?

**Mr Fox**—We are obviously aware of the nationalities of people arriving in the country. We have a database of people's needs, or we identify people through a settlement database, and then we can plan for when we might need new translators. Having said that, it is not a matter of turning on the tap and overnight there is a new stock of translators and interpreters, but, for example, we know that we have had many recent arrivals from African countries where we have not previously had the need for interpreters, so we draw on some of the nationals of those countries. We also have funded NAATI, the agency that accredits interpreters, for a new interpreters project, where we encourage them to seek accredited interpreters in new and emerging languages—for example, some of the African languages.

**Senator CASH**—When the department has a requirement for a translator speaking a particular language and there is no-one currently speaking the language, what is the lag time in a person being trained and coming to work for the department?

**Mr Fox**—Again, we do not actually recruit people as interpreters in the department; we source people who are already interpreters and have them on a panel through the Translating

and Interpreting Service. We would not have a lag time in terms of training to get them up to speed. There may be a supply lag.

**Senator CASH**—It is a supply issue then. What is the lag time or the supply issue? Is there one?

**Mr Fox**—It is almost impossible to answer—

**Senator CASH**—It depends on the language?

**Mr Fox**—Yes.

**Senator CASH**—Okay. I have got a number of other questions. I will read them out and hopefully you will be able to provide the statistical information I am looking for. How much of the budget goes to the Adult Migrant English Program?

**Mr Fox**—I can get that figure for you.

**Senator CASH**—That would be greatly appreciated. I will continue to read out the questions then because some of them are in relation to this particular issue. What is the uptake and completion rates of the Adult Migrant English Program?

**Mr Fox**—Sorry, I am going to have to take that on notice.

**Senator CASH**—How many humanitarian entrants are going into workplaces not having completed the English Language Skills Program?

**Mr Fox**—I am not sure that I can provide a direct answer to that question. Could you perhaps expand a little bit more on that?

**Senator CASH**—Absolutely. My understanding is that humanitarian entrants should complete an English Language Skills Program.

**Mr Fox**—They are entitled to receive 510 hours of English language training and then, if there is a need, they can have some additional hours under the Special Preparatory Program. But there is no obligation on them to complete those hours of training and if, for example, they have secured employment they may discontinue those language classes.

**Senator CASH**—Does the department track how many of these entrants are going into the workplace not having taken up that opportunity to undertake the 510 hours?

**Mr Fox**—We certainly track individuals and the number of hours they receive. We may not necessarily know whether they have gone into the workplace.

**Senator CASH**—Is it possible to actually provide information, say, in relation to the last financial year on those who have come here as humanitarian entrants and who have taken up the offer of the 510 hours and those who have not?

**Mr Fox**—Yes, we can certainly give you that.

**Senator CASH**—Does an employer receive additional funding to assist these people complete the English language course while on the job?

**Mr Fox**—There is an Employment Pathways program within the Adult Migrant English Program and that assists people with those costs.

**Senator CASH**—Is there any need to make this program more flexible or is the department satisfied that the program works well in its current form?

**Mr Fox**—We are tendering for new providers of the Adult Migrant English Program and within that program we are taking a much more flexible and client-centred approach. We are currently evaluating the responses to those tenders and will be announcing that in the near future. The details of the request for tender, which outline the business model, are on our website.

**Senator CASH**—Thank you very much. You anticipated my next question. What is the uptake rate of the AMEP by Muslim women? Do you have that?

**Mr Fox**—I would have to take that on notice.

**Senator CASH**—Okay, thank you very much. What is the full-time employment rate after three, four and five years of humanitarian settlement services persons?

**Mr Fox**—That is data we would not have in the immigration portfolio. You may have to get that from the employment portfolio.

**Senator CASH**—Thank you very much. I will take note to ask that. In terms of humanitarian entrants to Australia, what is the full-time employment rate by nationality? Would that question also go to DEEWR?

**Mr Fox**—Yes.

**Senator CASH**—Is there any correlation between the completion rates of the English language program and participation in full employment? Would that be better directed to DEEWR?

**Mr Fox**—Yes.

**Senator CASH**—What amount of funding went to each state for unaccompanied humanitarian minors programs in the 2008-09 and in 2010. My next series of questions, in case you need to find information, concern foster care arrangements.

**Mr Fox**—I have got the breakdown of where the unaccompanied minors have gone but I do not have the dollar amounts that I have paid to them, so I will have to take that part of the question on notice. Going back, Senator, to the question on the AMEP budget, your first in that series of questions, the budget for 2010-11 is \$212.2 million in aid administered expenses and \$3.2 million in departmental expenses. The total is about \$219 million.

**Senator CASH**—In terms of foster care arrangements, what are the foster care arrangements on a state-by-state basis and how much funding is actually given to the states for this purpose?

**Mr Fox**—The arrangement with unaccompanied humanitarian minors is that the minister in many cases is the guardian of those people under the Immigration (Guardianship of Children) Act, though a minister's responsibilities are delegated to state welfare agencies. Then we have arrangements with each of those states and territories whereby we share the costs of them taking responsibility for the care of the unaccompanied minors. Those arrangements vary from state to state. In answering the question on notice you asked earlier

about the state-by-state breakdown, I can try and give a bit of an explanation as to the services that are provided and the way in which those costs are attributed.

**Senator CASH**—That would be greatly appreciated, thank you. In terms of the delegation of the minister's status as the guardian of the children to the individual states, what monitoring systems has the department put in place to ensure the welfare of the children?

**Mr Fox**—We engage regularly with our state and territory colleagues. Staff in my division are engaged with the people in the relevant state agencies and we receive advice from them on the welfare of each of the children involved. We keep monitoring those children until they reach the age of 18 and the minister is no longer the guardian for them at that point.

**Senator CASH**—Are questions surrounding international student strategy appropriately directed to you at this department or should I direct them to DEEWR in the educational outcomes?

**Mr Fox**—We have some involvement in the International Student Strategy and DEEWR has some other. There are also some issues around the student visas that would be in outcome 1 that we would have dealt with earlier.

**Senator CASH**—In terms of your involvement with that, how would the International Student Strategy be implemented and what are the outcome measures and the guidelines for the COAG process?

**Mr Fox**—With the part of that which relates to our department, we have agreed with the states and territories that we will allocate \$750,000 of the Diversity and Social Cohesion Program towards international student initiatives. The Standing Committee on Immigration and Multicultural Affairs, which is a joint body of the states and the Commonwealth, will determine the priority areas in which those projects might be funded. Then we would work with our state and territory colleagues on a project-by-project basis to determine outcomes for individual projects that we would fund.

**Senator CASH**—In terms of the coverage, will it cover tertiary education or vocational based education or both?

**Mr Fox**—It will be both.

**Senator CASH**—Very briefly, I just turn to the Pacific Islander Seasonal Worker Program. How many Pacific Islanders are currently working in Australia under the program?

**Mr Fox**—That is actually dealt with under outcome 1. Within outcome 5 I have a small grants program of about \$400,000 that is to assist the communities in greeting and welcoming Pacific seasonal workers.

**Mr Metcalfe**—Senator, we would be happy to take that on notice. I would also note that the department of employment is the lead agency, but we clearly can answer the question about the number of people here on the programs.

**Senator CASH**—So I can also ask DEEWR tomorrow or on Thursday.

**Mr Metcalfe**—If you are talking to DEEWR tomorrow, they should have information on that, but if you like we are very happy to it on notice.



**Senator CASH**—I will leave it with you. Now that I have raised it here I would appreciate it if you could take it on notice.

**Mr Metcalfe**—Sure, we will take it on notice.

**Senator CASH**—That concludes my questioning.

**Senator ABETZ**—I think outcome 5 is the area I was told to ask about King Island. First of all, can I congratulate Senator Lundy on the first time I have appeared before her at an estimates hearing.

**Senator Lundy**—That is very nice of you.

**Senator ABETZ**—And I wish her well. It is a lot nicer sitting on that side of the table, isn't it, Senator Lundy? Who can tell us about the King Island feasibility study?

**Mr Fox**—I can tell you about some conversations that I understand have happened between the mayor of King Island council and some of the departmental staff.

**Senator ABETZ**—Whereabouts were those departmental staff? Were they Hobart-based staff, Canberra-based staff?

**Mr Fox**—In one sense there has been a series of discussions. There has been some email correspondence between staff in my area in Canberra and people from King Island. There have also been meetings between our Tasmanian office staff and the King Island council.

**Senator ABETZ**—So if there was email traffic with your department, the description that it was 'high level' would clearly be right.

**Mr Fox**—Not necessarily. I think the reference might be to a meeting that happened in September between the Tasmanian state director of our department, the mayor of King Island, some other staff from our department and the general manager of MRC South in Hobart. My understanding is that that discussion was around whether it would be feasible for us to settle refugees on King Island or, as an alternative, to see whether it would be feasible for people once they had already settled in Australia to move to King Island for employment opportunities. Those discussions are ongoing, as I understand it.

**Senator ABETZ**—Has it been agreed to fund a feasibility study into this?

**Mr Fox**—Not that I am aware of.

**Senator ABETZ**—So if we are told that in-principle agreement was reached for a feasibility study to be funded, that would not be with funds from your department?

**Mr Fox**—I do not have any detail that has come to me about a feasibility study or that we would fund it. There has been a discussion about how to facilitate the movement of people and there were to be further discussions at a regional settlement planning committee, a body that meets regularly in every state and territory and in this case the Tasmanian version of that which includes officers from the Tasmanian government and officers from our department. This body looks at exploring employment issues, barriers and opportunities for people in their settlement choices.

**Senator ABETZ**—The article to which I referred was dated Wednesday, 6 October 2010 and it appeared in the *King Island Courier*. It makes a lot of comment about the feasibility study.

**Mr Metcalfe**—We will double check that.

**Mr Fox**—I will double check that.

**Senator ABETZ**—If you could take on notice to ascertain that. Would it be normal for your department to fund such a feasibility study?

**Mr Metcalfe**—No, not normally.

**Senator ABETZ**—It would be more for a state government or a local council to fund it.

**Mr Metcalfe**—Yes, what Mr Fox has described would be our normal level of engagement and discussion, but we will double check.

**Senator ABETZ**—Of course you would be happy to cooperate and to provide whatever expertise the department has to such a study, but you are not actually funding the study.

**Mr Fox**—I am not aware that we are, yes.

**Senator ABETZ**—Thank you.

**Senator BARNETT**—Have Bibles been banned at citizenship ceremonies?

**Mr Fox**—No.

**Senator PRATT**—When I went to one just a few weeks ago Bibles were certainly there.

**Senator BARNETT**—That is good and I have been to many where there have been Bibles.

**Mr Metcalfe**—I am sure you are aware that there is an option for a person either to make an oath using a holy book or to make an affirmation. Obviously the Bible is a key holy book.

**Mr Fox**—The citizenship ceremonies code says it is not a requirement to swear the oath on a Bible or holy book, but people are welcome to do so.

**Senator BARNETT**—I have been given advice from the Bible Society of Tasmania. That has provided Bibles to various councils in Tasmania—but not all—and they are given as gifts to new citizens at citizenship ceremonies. Would that particular form of providing Bibles as gifts to new citizens be banned?

**Mr Fox**—I have not had any information along those lines. The provision of gifts at a ceremony would usually be within the scope of the organisation conducting that ceremony. We certainly discourage any commercial gifts; I would not think that a Bible would fall into that category. I can take on notice to look into whether there has been any advice to our department of the situation that you have described, but I have not heard of that situation.

**Senator BARNETT**—But you would normally encourage, would you not, community groups, charity groups and not-for-profit organisations to come to the citizenship ceremonies? In fact, you welcome politicians of all shapes, sizes and colours.

**Mr Fox**—We do.

**Senator BARNETT**—You welcome representatives of religious institutions and members of the public. You also welcome charities and community groups offering gifts of support and encouragement, gifts of welcome to our community. Is that the normal course that applies at a citizenship ceremony?

**Mr Fox**—I will need to take that on notice and check what the code says about the provision of gifts.

**Senator BARNETT**—To the best of your knowledge.

**Mr Fox**—To the best of my knowledge there is no restriction on that, but I would like to double-check the code.

**Senator BARNETT**—I am advised that the Clarence City Council, a very sizeable council in Hobart, recently contacted the Bible Society to arrange for the return of Bibles. They had been advised by the immigration department in Hobart that Bibles are no longer allowed to be given to new citizens. They have asked me to follow that up and see if it is accurate or not. If it is accurate then I am deeply concerned. Frankly, I would be amazed and upset on behalf of the local community if that were the case, if that were the policy of the department. Hopefully, there has been some misunderstanding in the department in Hobart. My and my office's relationship with the department in Hobart is excellent. They do a wonderful job. They assist and support in every way, shape and form. I have never had any issues with them at all. But this is evidence I have received and obviously we need clarity and confirmation that this is not government policy.

**Mr Fox**—I can certainly say that I have not had any feedback to that effect and I am not aware of any instruction having been issued along those lines. But I will certainly follow that up with both our Hobart office and the Clarence council.

**Mr Metcalfe**—We will get to the bottom of it, Senator.

**Senator BARNETT**—Mr Metcalfe, you would be aware if there was an instruction from the department to change a government policy such as this to ban Bibles at citizenship ceremonies.

**Mr Metcalfe**—I would expect to be. I am certainly not familiar with such a thing. We will find out what has happened in the circumstances and provide you with an answer. If an incorrect understanding has occurred we will obviously correct it quickly.

**Senator BARNETT**—Apparently the Canadian government banned the giving of Bibles at citizenship ceremonies in 2004. But in the last few months they have relaxed the ban and are preparing to make them available again. Were you aware of that at all?

**Mr Fox**—I was not aware of it.

**Senator BARNETT**—Are you aware of whether the UK allows Bibles for the swearing of the oath or welcomes the giving of Bibles as gifts? Are you aware of the situation in the UK?

**Mr Fox**—I am not aware of it.

**Mr Metcalfe**—No. We are obviously broadly aware of the citizenship laws and customs of other countries but not to that level of detail.

**Senator BARNETT**—Can I ask you about the Australian Citizenship Ceremonies Code. I want to read to you the second last paragraph on page 8. I understand that this document was updated in 2008. That may or may not be the case, but we have obviously had the review with former Ambassador Woolcott et cetera. It says:

Citizenship ceremonies are apolitical, bipartisan and secular. They must not be used as forums for political, partisan or religious expression or for the distribution of material which could be perceived to be of a political or religious nature.

It goes on to say:

Invitation letters to candidates should include the following advice:

- That candidates who wish to make the pledge of commitment on a holy book or scripture of their choice should bring it to the ceremony.

What is the normal course? Do they normally bring it to the ceremony or is it made available to them by the local council or local authority?

**Mr Fox**—Of the ones I have seen, it is normal for people to bring such a book along if they choose to rather than for it to be provided by the council. That would be because they have been following the code. That sounds consistent with the version of the code that I read last night.

**Senator BARNETT**—Page 16 talks about holy books and scriptures. It says:

It is not a requirement for candidates to use a holy book or scripture or hold up their hand/s when making the pledge, However, candidates should be permitted to do so if they wish.

**Mr Fox**—That is consistent with what I said earlier.

**Senator BARNETT**—That second-last paragraph is the only area that I would see whereby a departmental official could perhaps misinterpret that, to suggest that a Bible should not be given or granted or offered as a gift. If that is the case and if there is any doubt in the minds of those of us sitting around these tables, I would really appreciate it if it could be clarified. So some directive or advice could perhaps go from the secretary or from the department to your officers at that level who communicate with the councils to confirm the fact that it is not banned and that it is quite proper and appropriate and welcome to be granting and offering Bibles as a gift at a citizenship ceremony and, secondly and obviously, to be using Bibles for the pledging of an oath at that ceremony. Is that something that you could review and undertake to advise the committee on?

**Mr Metcalfe**—We have taken that on notice and so we will follow that up.

**Senator BARNETT**—Mr Fox, did you have anything else to add?

**Mr Fox**—No.

**Senator BARNETT**—Thanks very much, Mr Metcalfe.

**Senator CASH**—And thank you, Mr Fox. I have a clarification to seek. In relation to the Pacific Seasonal Worker Pilot Scheme establishment, can you take me through the program expenses at outcome 6 in the budget statements? Is that what you were referring to? Is that the \$400,000?

**Mr Fox**—That is correct.

**Senator CASH**—Would you take me through exactly what that one was, being a pilot scheme?

**Mr Fox**—It is a grant program that is associated with the broader Pacific seasonal worker pilot. That is a grant program that is designed to make payments to the communities where the Pacific seasonal workers would go, to ensure there is community harmony. For example, we funded, as I recall, a welcome ceremony for some seasonal workers who were arriving in the town of Mundubbera.

**Senator CASH**—Where is Mundubbera?

**Mr Fox**—I knew you would ask me that! It is in Queensland. For example, I recall—I do not have it in my papers—that we funded a welcome ceremony which was very well received by both the members of the communities and the workers who were going to be there as part of that program.

**Senator CASH**—Are there any guidelines surrounding what the \$400,000 can actually be used for? I notice it is going to be provided in the 2011 period as well.

**Mr Fox**—I will take that on notice and provide those to you.

**Senator CASH**—Thank you very much. And the pilot scheme is only for two years? It is due to expire on completion of the pilot at the end of 2011-12?

**Mr Metcalfe**—Yes, it is my recollection that we would need to evaluate the pilot as part of this next budget process and obviously the government will then decide how it goes from there.

**Senator CASH**—But this is part of the bigger Pacific Islanders working scheme?

**Mr Fox**—That is right.

**Senator CASH**—I may have some further questions that I may give you on notice in relation to this particular item.

**Mr Fox**—Certainly.

**Senator CASH**—Thank you very much. Thank you, Chair, and that was my point of clarification.

**CHAIR**—As we do not have any other questions before us, that is it and we have wrapped it up for the night. Mr Hughes, we have wrapped up early perhaps thanks to your presence here. We might need you back in February as you have such a good influence over the outcomes for the day. Again, on behalf of everybody on this committee and, I am sure, the other many senators that you have worked with over the years at estimates, I record recognition of your outstanding contribution to the public sector. We place on record our gratitude and thanks for the work that you have done over those years. Let *Hansard* record that we have just thanked you with clapping as an acclamation.

**Mr Hughes**—Thank you, Chair. Senate estimates has been a very important accountability mechanism over the years and I have learnt something from every estimates, but I will leave the bonanza of questions coming out of this estimates to my colleagues to answer.

**CHAIR**—All the best. And thanks, Mr Metcalfe, and your staff in the department as well, for your assistance today.

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

**CHAIR**—Thank you very much.

**Committee adjourned at 10.44 pm**