



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

ESTIMATES

(Additional Estimates)

MONDAY, 21 FEBRUARY 2011

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS**LEGISLATION COMMITTEE****Monday, 21 February 2011**

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

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, 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, Ludlam, 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, Bernardi, Bilyk, Bishop, Boyce, Brandis, Cash, Crossin, Furner, Marshall, Parry, Pratt and Trood

Committee met at 9.00 am

IMMIGRATION AND CITIZENSHIP PORTFOLIO**In Attendance**

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

Senator Lundy, Parliamentary Secretary for Immigration and Multicultural Affairs

Department of Immigration and Citizenship**Executive**

Mr Andrew Metcalfe, Secretary

Dr Wendy Southern PSM, Deputy Secretary

Mr Bob Correll PSM, Deputy Secretary

Ms Jackie Wilson, Deputy Secretary

Mr Todd Frew, Acting Deputy Secretary

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

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

Ms Jenny Hardy, Chief Lawyer, Governance and Legal Division

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

Mr Christopher Callanan, Acting First Assistant Secretary, Visa and Offshore Services Division

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

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

Mr Sandi Logan, National Communications Manager

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

Ms Vicki Parker, Principal Adviser, Border and Humanitarian Strategies

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, Deputy Secretary

Program 4.3 Offshore asylum seeker management

Ms Jackie Wilson, Deputy Secretary

Ms Kate Pope, First Assistant Secretary, Community Detention Implementation

Program 4.4 Illegal foreign fishers

Ms Jackie Wilson, Deputy Secretary

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

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 Colin Plowman, Registrar, Migration Review Tribunal and Refugee Review Tribunal

Mr Rhys Jones, Deputy 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 MA

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 the proposed additional estimates in respect of the year ending 30 June 2011, the particulars of certain proposed additional expenditure in respect of the year ending 30 June 2011 and related documents for the Attorney-General's portfolio and the Department of Immigration and Citizenship's portfolio. The committee must report to the Senate on 22 March 2011, and we have set Friday, 8 April 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, and this includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. I particularly want to draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which will be incorporated into the *Hansard*.

The order read as follows—

Public interest immunity claims

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
 - (1) If:

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

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

CHAIR—We are going to begin today's proceedings with the Migration Review Tribunal and the Refugee Review Tribunal. At the request of the secretary, we will then go to the Office of the Migration Agents Registration Authority and then to the department. The committee has agreed to proceed to the outcomes as they have been set out in the program.

[9.02 am]

Migration Review Tribunal and Refugee Review Tribunal

CHAIR—I warmly welcome Senator Carr, the Minister for Industry, Science and Research, who is here today representing the Minister for Immigration and Citizenship. I also welcome officers from the Migration Review Tribunal, the Refugee Review Tribunal and the Department of Immigration and Citizenship. Minister, I understand that you do not have an

opening statement. We are going to go to the MRT first. Mr O'Brien, I understand you have an opening statement.

Mr O'Brien—Yes. The Migration Review Tribunal and the Refugee Review Tribunal last appeared before this committee in October. By way of opening, I would like to highlight some of the more significant developments that have occurred since then. First of all, our workload is increasing. Lodgements in both the MRT and RRT have increased significantly. Compared to last year, RRT decisions have increased, but MRT decisions have decreased. The details as at 31 January are as follows. First of all, for the RRT we have had 1,646 lodgements, which is an increase of 32 per cent, almost one-third, when compared with the same period in 2009-10. In the period to 31 January, we have made 1,555 decisions, which again is an increase of 31 per cent, or almost one-third, when compared with the same period in 2009-10. Of the cases we decided in the RRT during that period, 75 per cent were decided within 90 days, with the average time taken to decide reviews being 95 days. As at the end of January, we had 829 active cases, which is an increase of 20 per cent when compared with the same period in 2009-10.

Turning to the MRT, we have had 5,919 lodgements, which is an increase of 26 per cent when compared with the same period in 2009-10. We have made 3,237 decisions, which is a decrease of 28 per cent when compared with the same period in 2009-10. I will explain that decrease in a moment. As at 31 January, we had 9,731 active cases, which is an increase of 49 per cent when compared with the same period in 2009-10.

Whilst lodgements increased across a number of MRT case categories, including bridging visas, visitor visas, permanent business visa refusals and student cancellations, there has been a particular increase in applications to review decisions to refuse student visas. Student refusal lodgements are up by 129 per cent, with around 1,000 more student refusal applications lodged this financial year compared with the same period last year. The principal reason for this appears to be an increase in primary refusals following the introduction of legislative amendments aimed at strengthening the integrity of the student visa program.

I have mentioned the fact that we are down in our output on the MRT. The decrease in MRT decision output, despite the increase in lodgements, is principally due to the substantial increase in our RRT work, to which we must give priority. Our resource difficulties have been exacerbated by the recent loss of a number of experienced RRT members to the department's Independent Protection Assessment, formerly known as independent merits review, for irregular maritime arrivals. Leave of absence has been taken by eight tribunal members to undertake assessments for Independent Protection Assessment.

I want to mention briefly now the picture concerning judicial review applications. The number of new judicial review applications in relation to both the MRT and the RRT continues to decline, and application rates remain at much lower levels than in previous years. Court remittals also remain low for both tribunals, consistent with recent trends. Of the 3,238 MRT decisions made to 31 January, 89, or 2.7 per cent, were the subject of an application for judicial review. In the period to 31 January, 125 judicial review applications were finally determined, and the judicial review application was dismissed in 95, or 76 per cent, of these cases. In the same period, of the 1,555 RRT decisions made, 243, or 15.6 per cent, were the subject of an application for judicial review, and in the period 331 judicial reviews were

finally determined. The judicial review application was dismissed in 305, or 92.1 per cent, of those cases. I turn now to mention the strategies we have adopted to deal with our increased workload.

We are doing a range of things to seek to make inroads into the MRT case load. Included amongst those things are these. We have established a task force in Victoria which includes three members to deal exclusively with recently lodged student visa refusal applications. We may consider extending that task force to New South Wales. In New South Wales we have increased to seven the number of members who are focusing exclusively for a period of time on MRT cases. Action is also underway to recruit additional members and, subject to cabinet processes, I am hopeful that we will have additional members on board by the middle of this year. Could I finally mention that we have a new registrar of the tribunals—Colin Plowman, on my left. Colin joined us early in January and I am very pleased to welcome him as the new registrar of the tribunals. My colleagues and I are happy to elaborate on any of these matters or to answer any questions the committee may have.

CHAIR—Thanks, Mr O’Brien, and thanks for your opening statement.

Senator CASH—Thank you very much for your opening statement. Would you be kind enough to table the statement so we can review it whilst we are looking to ask questions? If I could turn briefly to your comments in relation to the resource difficulties that you are having, your statement was ‘Our resource difficulties have been exacerbated,’ and you said that you have a number of strategies that you are implementing to try and overcome those difficulties. The first one is that you have established a task force in Victoria of three people, in particular to look at the student visa issues. Where have those three people come from?

Mr O’Brien—The task force comprises three members, so they are three of my existing members in Victoria, but the task force also involves staff members. The idea of the task force is that the staff dedicated to those members will do a lot of preparatory work so that we can try and push the cases through much more quickly.

Senator CASH—So there are no additional staff who have been allocated. You have really taken from the current pool of staff.

Mr O’Brien—That is right, and from the current pool of members—three members.

Senator CASH—I find it difficult to understand how that is going to assist in reducing a workload when you actually have not allocated any additional staff and you are merely taking from another part of the organisation.

Mr O’Brien—We have a specialised group dealing with this confined range of cases, whereas members normally deal with a range of matters, including Refugee Review Tribunal matters. We have taken them off other matters and we have said to them, ‘We just want you to focus on student visa refusals,’ and of course if you are just doing the one type of case you can generally increase the throughput of those cases. That is our experience.

Senator CASH—You can generally increase the throughput. What performance measures have you put in place as a department to actually ensure that you increase the throughput of these cases?

Mr O'Brien—We are reviewing how it has gone. I think next month we have a review scheduled to see how many cases we have actually dealt with. We do need to appoint another member to that task force too, because I mentioned that I have lost a couple of members to Independent Merits Review, and one of those members that I have lost was on that task force.

Senator CASH—I will explore that shortly with you. In relation to the second strategy, you said you had increased to seven in New South Wales the team who focus on the MRT, was it?

Mr O'Brien—Yes.

Senator CASH—Are they additional staff members or staff members who have been taken from other parts of your department?

Mr O'Brien—Not staff members but members—tribunal members. They were tribunal members who were again doing a range of cases, including on the RRT. I have to confess it is a bit of risk management here, because I mentioned to you that our RRT caseload is also up. But we could see virtue, despite that, in saying to the other members, 'Look, you're going to have to pick up a few more RRT cases, but we really need to devote a group of members to dealing with the MRT work because our backlog is increasing and we just cannot afford to let that backlog continually increase without trying to address it.'

Senator CASH—Again, as these not additional tribunal members, they are merely existing tribunal members who have been given alternate duties, what strategies is the department putting in place to ensure that there is an output at the end of the day?

Mr O'Brien—We are keeping an eye on the numbers, seeing how many cases they are getting through. It has taken us a while to get that specialisation of this group operating the way we would want it to because the members we devoted to that specialist group also had at the time a range of other cases and they needed to dispose of those cases and, as they have disposed of those cases including RRT cases, we have been focusing them on the MRT including giving them batches of similar cases as far as possible so that through familiarity more decisions can be generated. We are just reviewing the stats, Senator, and that is basically our management, just to see that we are indeed getting through more cases, or as many cases as we hope they will get through.

Senator CASH—And in the event that they do not, where does that leave you?

Mr O'Brien—I would also mention that we do have—

Senator CASH—Strategy No. 3?

Mr O'Brien—We will have more members hopefully on board from the middle of the year, which will be very welcome because we are under strength at the moment. The difficulty with new members is of course that you get new members on board and it takes them a while to get up to speed. But from the middle of the year we hope to have more members and that should start to help us from then on.

Senator CASH—Unfortunately, you use the words 'we hope'. In the event that unfortunately the hope does not eventuate and you do not get the additional members, what is the impact going to be on your workload?

Mr O'Brien—We will get new members on board—

Senator CASH—I need to understand that. Has the government given you a commitment that you will have new members?

Mr O'Brien—Yes. The minister has agreed to us engaging in a recruitment campaign.

Senator CASH—Okay. How many new members will you have on board and, when you say by the 'middle of the year', are we talking 30 June?

Mr O'Brien—It does depend on cabinet processes and the Federal Executive Council making the appointment so, in a sense, towards the end of the process we are in the hands of the cabinet and the Executive Council. But I am very hopeful that we will have new members on board by at least 1 July, and hopefully a little earlier.

Senator CASH—How many new members do you anticipate having on board?

Mr O'Brien—My hope is that we will be able to recruit 20 new members or thereabouts. We have got quite a large field of applications but we need to make sure that at the end of the process we have got 20 people who, we are confident, will make good members.

Senator CASH—In terms of additional cost to the budget, what are the anticipated additional costs for these additional 20 tribunal members?

Mr O'Brien—I might have to take that one on notice. By way of a general comment about that, may I say that part of our funding arrangements through the Department of Finance is that there is a benefit to us in terms of funding in getting more cases decided. There is a component of our funding that relies on the number of cases we decide, so the more cases the better financially it is for us. But in terms of the detail, I would have to take it on notice.

Senator CASH—But if you bring on an additional 20 tribunal members, would it be fair to say that there will be an additional cost to the budget?

Mr Plowman—Of course there would be their salary costs in the first place and we would have to cover those, yes.

Senator CASH—You did mention that eight of your current tribunal you have unfortunately lost to the new Independent Protection Assessment—

Mr O'Brien—At the moment it is called Independent Merits Review but I understand from 1 March it will be called Independent Protection Assessment.

Senator CASH—Did those members merely apply to go over to the new body? Were they sent over to the new body? Was that a decision that they made—that they would leave your body and move to the other body?

Mr O'Brien—It was a decision that they made; exactly how the process worked, though, I am not aware.

Senator CASH—Are you aware of a comparison of contractual benefits for members of the MRT or the RRT and now that they have transferred over to what will be the Independent Protection Assessment?

Mr O'Brien—I think that might be more a matter for the department. I am not aware of the basis upon which they have been engaged by the department or through the department.

Senator CASH—Will you be replacing those eight tribunal members?

Mr O'Brien—As I said, we have got a member recruitment round going and, yes, the 20 additional members I was talking about—

Senator CASH—Eight of them are actually only to replace the eight that you have lost.

Mr O'Brien—Yes, that is right. We always lose members. We have lost another member for example in Perth who has joined the State Administrative Tribunal over there chaired by Justice John Chaney. We do occasionally lose members for various reasons.

Senator BARNETT—You indicated that they had leave of absence. Are you assuming they will be coming back?

Mr O'Brien—Yes. My understanding is that they will be away from us for two years and at the end of that time I expect them back.

Senator BARNETT—Two years? Not three months or six months. That is a long time for leave of absence?

Mr O'Brien—Yes.

Senator BARNETT—They are all taking leaving of absence for two years?

Mr O'Brien—For part-time members, they do not strictly take leave of absence. There are part-time and full-time members amongst that group. For the full-time members—yes they have taken leave of absence. For the part-time members—they are just not with us for that period of time.

Senator CASH—Do you replace those part-time members?

Mr O'Brien—No. As I say, we can only replace them through appointments by the Governor-General and that is that recruitment program that I have talked to you about.

Senator CASH—Where do you actually recruit from? Do you recruit from within government departments? Do you recruit across the board?

Mr O'Brien—We recruit across the board. We advertise nationally through the press—through all the major dailies—and we require people with high level skills, either legal skills or investigation skills or whatever it might be. We have had former diplomats, people of that ilk, and so it is people of high level skills who we think will be able to conduct hearings and write sound decisions.

Senator CASH—You did mention that one of the issues you always face when you are actually bringing on board members is that you need to get them up to speed and they need to be trained. How long does it actually take to train a new member of the tribunal?

Ms MacDonald—When we bring members on board we have a very detailed induction program. I can talk about last year's, which we will use elements of this year. We had about 4½ days of training in the first instance and that was to make people familiar with the processes of the tribunals. In the first instance we focus very much on the Migration Review Tribunal and once members have had a chance to conduct hearings in that tribunal and working with experienced members as both mentors and on multi-member panels, we then some months down the track bring them back to train for three or four days on the Refugee

Review Tribunal, focussing on the legal aspects of refugee determination as well as all the procedural requirements.

Then we have an ongoing training program to make sure that we get those members up to date on all the elements of decision-making on both tribunals. We anticipate that they would be up to full capacity after about a year, but it does take a long time for members to really get on top of the work of the tribunal. You can appreciate that working across the two tribunals is a really broad jurisdiction, with many subclasses and countries, particularly on the Migration Review Tribunal. It just takes a fair while for people to be fully operational. But the group of 17 members that we took on on 1 July last year were progressing really well as at 31 January.

Senator CASH—That is my concern, Mr O'Brien. Whilst you say the government has told you that you will have these additional 20 members by 30 June, effectively what we are saying is that there is up to a 12-month lag time in getting them properly up to speed and participating fully as members of the tribunal.

Mr O'Brien—Yes, but in those 12 months they are making decisions—

Senator CASH—Absolutely. I accept that. However, 12 months is a long training period to get someone properly up to speed considering the decisions they are looking at and the decisions they are making.

Mr O'Brien—Yes, it does take a while. You would probably find with a judge newly appointed to the Federal Court it probably takes some time before they feel fully comfortable in the jurisdiction. It is just that these things do take time. But pretty soon after day 1 they start to make some decisions and start to provide some assistance on the tribunals.

Senator CASH—I would hope so given the ever-increasing workload that you have alluded to today.

Mr O'Brien—Indeed.

Senator CASH—It has been raised that there is a potential difference in duties between those performed by the RRT and the MRT and those that will become part of what I would refer to as the new independent protection assessment panel. Are you aware of any differences in duties? For example, I have been told that there will be a demarcation between looking after those who come by sea and those who come by air in the new process. Are you able to shed any light on that?

Mr O'Brien—I would make a general comment about that. The Refugee Review Tribunal has no jurisdiction over irregular maritime arrivals. The cases we deal with are of people who arrive by air. They arrive on a student visa or a visitor visa and then, once they are in Australia, they make a claim of refugee status. That makes up the bulk of the decisions that we deal with.

Senator CASH—Are you aware then of what the independent protection assessment panel will be dealing with?

Mr O'Brien—They will deal with the irregular maritime arrivals. It is really a matter for the department to comment on and give you more details on.

Senator CASH—No, that is fine. I have a number of statistical questions that I would like to read out and if you have the information that would be appreciated. If not, I am obviously happy to receive it later. Some of them you will have already addressed in your opening statement, so if I repeat myself please direct me to the opening statement. They are very similar to what we canvassed at the last estimates hearing. I will start with this: what has been the set-aside rate for the Refugee Review Tribunal and the Migration Review Tribunal for 2010-11 by country of origin and visa category?

Mr O'Brien—I can give you set-aside rates generally, first of all, across both tribunals. On the MRT this year our set-aside rate is 42 per cent, which is broadly consistent with previous periods. Our set-aside rate on the RRT across all countries is 23 per cent, which is perhaps one per cent down on where we were last year. It is interesting. Last year on the RRT our set-aside rate was 24 per cent and our set-aside rate on the MRT was 45 per cent. So we are running this year on the MRT at 42 per cent and at 23 per cent on the RRT.

Now, as to—

Senator CASH—Country of origin and visa category. Do you want to take that on notice?

Mr O'Brien—I think we actually have that information.

Senator CASH—You provided us in your opening statement with the number of decisions that had been made to date, being 31 January 2011, by the RRT—

Senator Carr—Senator Cash, could you just hang on a minute. You did ask a question and the officers are seeking to get the information for you.

Senator CASH—They are? Okay.

Mr O'Brien—On the RRT set-aside rates, dealing with our biggest case load first: our set-aside rate for China is 21 per cent; our set-aside rate for Fiji is 14 per cent; our set-aside rate for Zimbabwe is 59 per cent—

Senator CASH—Which is similar to October estimates, within reason.

Mr O'Brien—Yes, that is right—and then a range of other countries. On the MRT set-aside rates: for partner refusals, which is always the highest, it is 64 per cent—I think I explained at the last Senate estimates why often we make a different decision there; for visitor refusals, it is 54 per cent; for skill linked refusals, it is 60 per cent. So there is quite a variation, depending on the particular—

Senator CASH—But they seem to be very consistent with the evidence that we have been given.

Mr O'Brien—Year on year it is pretty consistent. There can be slight variations, and that can depend on different conditions in the country, but generally we are pretty consistent.

Senator CASH—What is the current backlog in each tribunal?

Mr O'Brien—I think I mentioned in my opening statement that we have got active cases, if you call that a backlog. On the RRT, at 31 January, 829 active cases; on the MRT, 9,731 active cases. It is looking like, I have to say, that on the MRT we will have about 10,000 cases by the end of the year. That is why we are trying to do the things we are doing, to try and address that.

Senator CASH—Did you mention how many members are actually making decisions across both tribunals?

Mr O'Brien—Most members are across both tribunals, except I think I mentioned that I have increased to seven the members in New South Wales who are just concentrating on the MRT, and there are three or four members in Victoria who are just concentrating on the MRT work. For all other members, they operate across both tribunals, some to a greater or lesser extent. So there are some members, for example, who perhaps do 80 per cent of their cases on the RRT and 20 per cent on the RRT, there are others who about 50-50, and all sorts of variations in between.

Senator CASH—How many members do you have in total? It was 90 members in October.

Mr O'Brien—Yes. At the moment we have got 82 members.

Senator CASH—Which means the eight that have gone off to—

Mr O'Brien—Basically, that is it.

Senator CASH—The total cost of running the tribunals in 2009-10 and to date?

Mr O'Brien—I might defer to the Deputy Registrar to give those figures.

Mr Jones—Our total running cost last year, 2009-10, was \$40.2 million. Our running cost to 31 January is \$26.9 million.

Senator CASH—Is that a significant increase for the year to date compared to last year?

Mr Jones—It has increased on last year, yes.

Senator CASH—Can you tell me by how much it has increased?

Mr Jones—We would need to calculate that, because that is a year to date figure, to 31 January. This year we have had one staff pay increase and we have had two increases in member remuneration so far this year, so they have impacted on our operating cost this year.

Senator BARNETT—You have budgeted costs through to 30 June. What is your expected cost?

Mr Jones—To 30 June, \$46.4 million.

Senator CASH—So it is an increase of at least \$6.2 million.

Mr Jones—That is right.

Senator CASH—How many set aside decisions of the tribunal were challenged by the minister in 2009-10 and in the year to date?

Mr O'Brien—Very few. We might have to take that on notice. It is very rare for the minister to seek judicial review of one of our decisions.

Senator CASH—But you will take on notice to provide the correct figures?

Mr O'Brien—Yes, we can give you the numbers.

Mr Jones—Can I just qualify one of my earlier answers. The figure I gave you before of \$40.2 million was the appropriation in 2009-10. Expenses were \$44.8 million.

Senator CASH—Thank you very much. And what was the appropriation for 2010-11?

Mr Jones—That was \$41.314 million.

Senator BARNETT—And today you are saying it will be \$46.4 million?

Mr Jones—The appropriation is based on a model that is for funding for 8,300 cases and, as the principal member mentioned earlier, there is additional funding as we do additional cases, which effectively covers the cost of member salaries for doing those additional cases.

Senator BARNETT—What is the cost per case?

Mr Jones—It is about \$1,600.

Senator CASH—Sorry, Mr Jones, I missed the figure. What was the projected number of cases that the formula is based on?

Mr Jones—Eight thousand three hundred.

Senator CASH—And you are looking at basically 10,000 cases?

Mr O'Brien—We were hoping to make 10,000 cases this year. I think the way we are going we will clear 9,000 cases, we will make 9,000 decisions, but it might be a bit of a stretch for us to get up to 10,000. Although, as I said at my management board meeting during the week, it does look to me as if we are going to finish the year with a wet sail, as it were, and will make more decisions towards the end of this year.

Senator CASH—I want to confirm something for my own benefit. Is the independent protection assessment part of the Refugee Review Tribunal?

Mr O'Brien—No, it is not.

Senator CASH—They are completely separate?

Mr O'Brien—Yes.

Senator CASH—Thank you very much.

Senator BARNETT—What is the cost of a full-time equivalent tribunal member?

Mr Plowman—It is part of the Remuneration Tribunal determination. We would have to get that out to give that figure to you. I cannot remember exactly what it is.

Senator BARNETT—We will check that in a minute. You are planning on having 20 extra tribunal members come on board. I am trying to get a cost allocation for that. Have you done that?

Mr O'Brien—We have done some modelling around the numbers, but I would need to take that on notice I think.

Senator BARNETT—You are putting on 20 extra tribunal members. Will they all be full time or part time?

Mr O'Brien—There will be a mixture.

Senator BARNETT—Could you provide further and better particulars with a cost attached to that?

Mr O'Brien—I think we could, yes.

Senator BARNETT—Thank you. I want to ask you about the trends behind the huge increases in the active cases—the 49 per cent increase in the MRT and the 20 per cent increase in the RRT. Can you go behind that and explain the reason for those trends.

Mr O'Brien—I think I highlighted in my opening statement that certainly one area has been student visa refusals. We have seen a huge increase there.

Senator BARNETT—I was going to go to that.

Senator BOYCE—How many of the active cases are student visas?

Mr O'Brien—We have 3,345 as at 31 January. I will give you the top five active categories on the MRT: student refusal, 3,345; partner refusal, 1,517; skill linked, 1,019; temporary business refusal, 831; and family refusal, 793.

Senator BARNETT—So you are saying that the main reason for that 49 per cent jump in active cases is the 129 per cent jump in student refusal lodgements, which are around 1,000 more than in the last financial year.

Mr O'Brien—Yes.

Senator BARNETT—And what you put it down to are the government changes last year?

Mr O'Brien—There have been changes to the student visa program and I think that, as a result of some of those changes, we are seeing greater refusals at the primary level, which, of course, come on to us.

Senator BARNETT—Is that the main reason for the 129 per cent jump?

Mr O'Brien—That is our belief. Again, it is something that the department can throw a bit more light on.

Senator BARNETT—Of course; we will come to the department shortly. When did you see the numbers starting to increase markedly?

Mr O'Brien—I think it was starting during the last financial year, but it has been a continuation of that increase.

Senator BARNETT—But it aligns with the change in the government's legislation?

Mr O'Brien—I believe so.

Senator BARNETT—That would make some sense, wouldn't it? Is there anything further you can add to the reasons for that significant increase in active cases?

Mr O'Brien—I think I mentioned that we have seen an increase in visitor visa refusals. There have been more refusals of visitor visas at the primary decision-making level, and they have come on to us. We have seen a greater number of refusals of bridging visas, and that is also contributing to the increase in our numbers. There has also been an increase in student visa cancellations. We were talking about refusals earlier, but there has also been some increase in student visa cancellations. Those are the main categories of increase that we have had.

Senator BARNETT—I want to ask about the new Independent Protection Assessment. I know that it is a departmental entity but what interaction do you have with them?

Mr O'Brien—With respect, Senator, that is a good question. We have entered into a memorandum of understanding with the Independent Protection Assessment—I keep calling them the Independent Merits Review because that is what I am used to. Under that MOU we provide them with country advice services and also with legal advice services, and that is on a fee-for-service basis. There may need to be a bit of tweaking of that MOU, and there are discussions between my officers and officers of IMR at the moment to try to get the arrangements properly sorted. Those are the services we provide.

Senator BARNETT—When was the MOU signed?

Mr O'Brien—It was signed some time in the last financial year. I should say that, when we signed it, there was not a great deal of activity in the sense that the refusal rate was fairly low and only a few independent merit reviewers had been appointed. There are now a large number of them appointed and the volume of activity has increased.

Senator BARNETT—Do you know how many?

Mr O'Brien—I could not tell you, but there are a large number. I am informed that the MOU was signed on 6 October last year.

Senator BARNETT—Can we have a copy please?

Mr O'Brien—It is not only our document; it is also a document of the department. We will take the question on notice.

Senator BARNETT—As far as you are concerned, you are happy but you need to check with the department and they will take it on notice? Are you happy to provide a copy?

Mr O'Brien—I think I will take it on notice. I will need to consult to see what is involved in it. I do not think there is anything, as far as I am concerned, that would prevent me from tabling it.

Senator BARNETT—Can you provide further and better particulars regarding the fee-for-service arrangements between the department and your tribunal?

Mr O'Brien—That MOU has what those arrangements are. As I say, we are looking at tweaking them at the moment and so there is some further discussion about that.

Senator BARNETT—So what impact has the establishment of this entity had on your tribunal? We have seen that you have lost at least eight, in terms of leave with absence, for two years. What other impact has it had on your operations?

Mr O'Brien—There was a potential impact upon the legal advice services that are available to members of the tribunal and also the country advice services that are available to members of the tribunal. However, the point of the MOU was to put in place fee arrangements that would enable us to cover the costs of the services we were providing to IMR, with the result that the services that are available to members of the tribunal would not be affected. In other words, if necessary, we could take on extra staff to assist with the IMR work.

Senator BARNETT—Clearly, we are seeing a huge, bordering on massive, increase in your workload, which flows through to an increase on your resources and on your budget. We have seen that increase of \$4 million last financial year, and now it is projected to be \$46.4 million, which is another \$5 million on top of what you budgeted for. Is that right?

Mr O'Brien—I think that is broadly correct.

Mr Jones—All over, the appropriation is set at the 8,300 level. That is the model, and there are additional funds per case for the additional cases we follow up.

Senator BARNETT—Mr O'Brien, you said there were 9,731 active cases—the 49 per cent increase.

Mr O'Brien—Yes, on the amount.

Senator BARNETT—And based on that model of \$1,600 per case it is obviously a very significant increase in cost.

Mr O'Brien—Yes, there are significant increases in costs.

Senator BARNETT—My other area of questioning relates to the decision by the government on 7 January for significant changes to the processing of offshore asylum seekers. Are you familiar with those changes?

Mr O'Brien—Yes, I am.

Senator BARNETT—Have you received legal advice with respect to the impact of the High Court case to which that government decision has responded?

Mr O'Brien—No. I have read the High Court case of course, but essentially the effect of that case was confined to refugee protection assessment at first instance in relation to irregular maritime arrivals and any review on the merits that the government put in place in relation to those decisions. But irregular maritime arrivals, as I said earlier, are not part of our jurisdiction.

Senator BARNETT—As far as you are concerned, what impact will the government changes announced in January have on your operations?

Mr O'Brien—None, apart from the fact that we are providing services to Independent Merits Review, and one would expect, I suppose, after the High Court decision that there may be a greater call on our legal services in terms of having a look at decisions that reviewers make, if Independent Merits Review want us to have a look at those decisions.

Senator BARNETT—So they may seek your legal advice on potential prospects for success or otherwise?

Mr O'Brien—Yes, I guess so.

Senator BARNETT—The type of advice—

Mr O'Brien—Yes, that is right. I suppose they are looking to make sure that the sort of defect that was identified by the High Court in that case does not occur.

Senator BARNETT—Is it your understanding of the Independent Protection Assessment—or Independent Merits Review, as you would like to refer to it—that that entity would play a very important role in responding to the changes that are required as a result of that High Court case?

Mr O'Brien—The High Court case had an impact upon Independent Merits Review; it does not have an impact on us. So, yes, it will be up to them to respond to it.

Senator BARNETT—Would you agree that the High Court's ruling that the offshore processing regime was invalid and that it opened the door to judicial review for offshore asylum seekers?

Mr O'Brien—Look, in a sense it is not up to me to comment on the decision. But, clearly, as I read the decision, it did have an impact because it basically said that decision making under that regime was subject to the ordinary principles of Australian administrative law.

Senator BARNETT—All right. Is there any other response you have to the High Court case, and your understanding of it?

Mr O'Brien—No. You may recall that the minister's press release referred to a review being conducted by Professor John McMillan. Professor McMillan has been doing some consultation in relation to the terms of reference he was given. One of the people he spoke to about his terms of reference was me.

Senator BARNETT—And you gave him that advice?

Mr O'Brien—Yes, I spoke to him. I had a general discussion with him in Sydney.

Senator BARNETT—What was your advice?

Mr O'Brien—I do not think it is appropriate for me to comment on the advice I gave him. Professor McMillan will make a report and it will be up to the government whether that report is released.

Senator BARNETT—All right; we will follow that through. Thank you, chair.

Senator CASH—Chair, may I seek a point of clarification?

CHAIR—You may.

Senator CASH—I have a number of questions regarding the independent merits review panel and the independent protection assessment. I have them under outcome 2.1, though.

CHAIR—Mr Metcalfe will probably be able to finetune your query.

Mr Metcalfe—Chair, I would have them under 4.3—offshore asylum seeker management.

Senator CASH—That is fine. I do not need to ask them now, then. It is under 4.3. Thank you, Mr Metcalfe.

CHAIR—Thank you. Senator Boyce, we will go to you now.

Senator BOYCE—I have a few follow-up questions on the student visa cases. There are 3,345 student visa cases currently on foot—is that correct?

Mr O'Brien—Yes.

Senator BOYCE—Are you able to give us a country-of-origin breakdown of those cases—on notice, if need be?

Mr O'Brien—I think we would need to take that one on notice. I am pretty sure that we do not have that information here with us.

Senator BOYCE—That is fine. There have been a number of media reports in recent months of students who have begun one course then found the rules had changed, and started

another course then found the rules had changed. Have you done any sort of analysis of what is going on behind the student visa cases that you are currently dealing with?

Mr O'Brien—I have to say, we have not really, as far as I am aware. I am looking along to my deputy registrar, and I see him also shaking his head. I do not think we have done an analysis of that.

Senator BOYCE—Do you know what I am talking about?

Mr O'Brien—Yes, I do.

Senator BOYCE—What would the tribunal perceive to be the primary cause for the increase in student visas? I know you have said 'legislative changes' here, but what is the practical effect of that? What is causing the greatest increase?

Ms MacDonald—I think we have had a variety of things. As Mr O'Brien said, it is mainly due to legislative change, but there have also been some court decisions in relation to when it is appropriate to take into account a new IELTS test in terms of looking at the English requirements. That has resulted in some increases. But, looking at the caseload, as I have fairly recently, it is a fairly diverse range. But they do mainly relate to some government change in relation to the student visa refusals. But we have not done any research in the terms that you talk about. We are really looking at the actual cases, what the issue is in dispute and—

Senator BOYCE—I guess that is what I meant: there are one or two issues that you are seeing as being the primary cause for this increase.

Ms MacDonald—I can say that it is generally around meeting the financial requirements to be granted a student visa, or the English language requirements. Those are the two main issues that we see in our student visa refusal caseload.

Senator BOYCE—Have they changed?

Ms MacDonald—There has been some tightening of the regulations in relation to that.

Senator BOYCE—Would those be the sorts of issues you had seen two years ago?

Ms MacDonald—They are, but not in the numbers that we are seeing now. There definitely has been a tightening of the regulations in relation to those two areas.

Senator BOYCE—I want to ask a few questions in relation to both tribunals about the arrival in Australia of people with disabilities. If we could look at migrants first—and skilled migrants—with disabilities. Are you able to go tell me, from your current caseload, which ones relate to people with disabilities, from an MRT perspective?

Mr O'Brien—Are you talking about people who have been unable to satisfy the health criterion?

Senator BOYCE—Exactly.

Mr O'Brien—We could take that on notice and I think we could give you some information on the cases where satisfaction of the health criterion is the issue, or is included amongst the issues, that is before us in an MRT case. We could give you something on that.

Senator BOYCE—And if you could also do that for the RRT, that would be good.

Mr O'Brien—I do not think we would see it on the RRT if there were a health issue.

Ms MacDonald—There is no health requirement in terms of looking at the Refugee Review Tribunal cases. There is no requirement, as there is with the Migration Review Tribunal—

Senator BOYCE—What about a refugee who had been granted citizenship here having a family member who is an amputee because of war being refused permission to come here? That would come under the Migration—

Ms MacDonald—Yes, and that would then be a matter we would identify as being in relation to the health criterion.

Senator BOYCE—Okay. Anecdotally, I am getting the sense from people that it is easier for skilled migrants with a family member with a disability, or a family member who does not meet the health criterion, to come to Australia. Has there been a policy change in this area?

Mr O'Brien—I really think that is a matter for the department. We only deal with appeals.

Senator BOYCE—Yes, I realise that.

Mr O'Brien—There is nothing in our statistics that would throw any light on that at all.

Mr Metcalfe—At program 1.1, when we get to the department, we will be happy to answer that.

Senator BOYCE—Thank you.

CHAIR—Senator Cash, you have something else you want to clarify?

Senator CASH—It may be that this question is actually for the department as opposed to the tribunals. It is in relation to the media release issued by the Commonwealth Ombudsman today, 'Visa refusal overturned', which states:

A refusal to grant a partner visa by the Department of Immigration and Citizenship has been overturned following an Ombudsman investigation.

Mr O'Brien, are you able to shed any light on this particular case?

Mr O'Brien—No, I am not. I do not know about it. By the sound of that, it may not even be one that has come to us.

Senator CASH—Basically the Ombudsman found:

... that a policy intended to benefit those in long term relationships had been misapplied and there'd been a protracted delay in implementing a Migration Review Tribunal decision ...

It relates to a 2008 application by a Ms B from Cairo 'for a provisional partner visa for herself ... to join her partner Mr A in Australia.' The statement says that the Migration Review Tribunal 'found that Ms B satisfied the definition of 'spouse' and overturned DIAC's decision in October 2008.' Is that better directed to the department?

Mr O'Brien—That clearly is a case that we did deal with, but the result of it is a matter for the department.

Senator CASH—Thank you. Mr Metcalfe, I will address that to you.

Mr Metcalfe—We are familiar with that, obviously, Senator. Again, that is in program 1.1.

Senator CASH—Thank you very much.

CHAIR—Do we have any other questions for the MRT and RRT? Senator Pratt.

Senator PRATT—I want to begin by asking about the decline in skilled cases. Your Principal Member's report says, 'There was a large growth in student refusal and student cancellation cases, which increased by 180 per cent and 75 per cent respectively, and a 37 per cent decline in skilled cases.' We have had some discussion about student cases being on the increase as a result of changes in legislation. Is it expected, therefore, that this will settle once those changes start to filter through the system, or are we expecting it to be a long-term issue?

Mr O'Brien—We do find over the years that we have a category that is up for a while and then it falls away. That could have to do with legislative change and, once those changes work their way through the system, the volume of appeals to us falls away. It may well be that these figures for student visa refusals that we are talking about today we are seeing the height of now, perhaps, and then they might fall away in terms of applications to us. Historically, that is what the pattern has been across changes to different visa subclasses.

Senator PRATT—With respect to the decline in skilled cases, is that precisely for the same kind of reason, that those changes have now settled in?

Mr O'Brien—I suspect that is right. The changes the government has made in the skilled area have probably led to a reduction in applications for those visas, which then has an effect through to us.

Senator PRATT—I note that your report outlines a large increase in Fijian lodgements. Why is that?

Mr O'Brien—I think I commented on that at our last appearance before this committee. We are now talking about the Refugee Review Tribunal. We did see a large number of applications. It was not large in comparison with our People's Republic of China applications but, nonetheless, there was a significant increase in the number of applications for protection visas by Fijian nationals. Our recent statistics are showing that those numbers are starting to decline. I think I mentioned to you that our set-aside rate—that is, effectively, the cases where we decide positively in favour of the applicant—has been pretty low, at about 13 or 14 per cent. Who knows, that may have an effect out there in the community too.

Senator PRATT—Is there a correlation between the increase that we have seen from Fiji and the situation of the non-democratic government there?

Mr O'Brien—Yes, certainly. Many of the claims that have been made to us—I have dealt with quite a number of them myself—have had to do with political claims based on the situation in Fiji.

Senator PRATT—I notice that you have had a significant decline in the number of tribunal decisions taken to judicial review, which is a good thing.

Mr O'Brien—Yes.

Senator PRATT—What is the secret of the success there?

Mr O'Brien—I would like to think that the quality of our decisions is much better than it has been in the past. I certainly get good feedback from members of the community, who are

not shy in telling me various things about the tribunals. I get good feedback from members of the community saying that we now have a quality set of members who are making quite sound decisions. So I am putting some of that decline in judicial review activity down to the fact that the quality of what we do has improved.

Senator PRATT—We have had some discussion this morning about part-time versus full-time members. What is the significance of having so many part-time members? I assume it is to give you a broad base of experience and some flexibility?

Mr O'Brien—Historically—this was before I became principal member—it was felt that having a large number of part-time members gave you greater flexibility, because if there was not the work around you did not have to call the members into work. Certainly, before I became principal member and continuing during my period as principal member, there has been no issue of a decline in work. We have needed all the part-time members' attention with us that we can get. Indeed, we have seen a significant change in the composition. I think my figures are a little bit out of date, but when we had a total membership of 86 as of 31 January—there has been a bit of change now with members going off to independent merits review—we had 35 full-time members and 51 part timers. We have changed the balance. We now have a greater proportion of full-time members, which I think is desirable. Hopefully, out of the recruitment round that I spoke about earlier we will end up with a larger proportion of full-time members than part time out of that group of new members that comes on board. The work is there and, looking into the future, I do not think it is going to decline.

Senator PRATT—Your report outlines engagement with stakeholders. In general terms, who do you define those stakeholders as?

Mr O'Brien—I defer to deputy principal member Amanda MacDonald on that. She has responsibility for our community liaison program.

Ms MacDonald—Our stakeholders include the department. We have community liaison meetings where we have representatives of the community and representatives of peak bodies, including OMARA and also those various organisations that represent migration agents and some of the legal representatives who appear before the tribunals. Twice a year I conduct community liaison meetings in Sydney and Melbourne, and we have also been conducting them twice a year in Perth, Adelaide and Brisbane, where we have significant presences as well.

Senator PRATT—It seems to me as a senator for Western Australia that it would be perfectly reasonable that you would hold those kinds of meetings in cities like Perth. Why does it not always seem to have been the case? In the main, historically those meetings have been held in Sydney and Melbourne.

Mr O'Brien—You are quite right. We used to just hold the meetings in Sydney and Melbourne. We saw the error of our ways. We realised that there were a number of lodgements and applicants in Perth, Brisbane and Adelaide, and it was desirable that we get out there to the community representatives in those places. We have embarked on that and we intend to continue with that.

Senator PRATT—Is the character of the issues that you pick up in different cities around the country different? I would imagine that there is a large level of overlap.

Mr O'Brien—No, there are differences in each city. There are different concerns from community representatives in each city. We try to deal with those issues when we have our discussions with them. In Perth, for example, we see on our statistics that out of Western Australia—no doubt this is due to the resources boom and what have you—a significant proportion of our caseload relates to 457 visas and that sort of temporary work visas.

Senator PRATT—So the character of the consultation, therefore, is different.

Mr O'Brien—It tends to be. There could be a range of things, but we do tend to see some discussion around those areas.

Senator PRATT—We have had some discussion about the increase in lodgements from Fiji. I have turned to page 29 of your performance report. It is an extraordinary increase, although I suppose from a fairly small base to begin with.

Mr O'Brien—Yes. It was a huge increase at that time. As I have said, since then there has been a decline and it is nowhere near. We reported last year an increase of 312 per cent in our Fiji applications. We are not running at anywhere near that level at the moment, although it is still, on our current stats, running second to China in terms of lodgements. Although on our current statistics, it is still running second to China in terms of lodgements. As at 31 January, 11 per cent of our lodgements were from Fiji; 29 per cent from China; and other countries below that.

Senator PRATT—I note an increase from Egypt. I suppose that is not surprising considering recent developments there.

Mr O'Brien—Those recent developments would not yet be reflected in our caseload, but one might expect that difficulties in the Middle East could possibly generate some future increases for us from some of the countries concerned.

Senator PRATT—Looking at the decisions of the Refugee Review Tribunal on page 34 of your report, there appears to be a significant variation in the set-aside rates according to location.

Mr O'Brien—Yes. I think I mentioned earlier that in our annual report Fiji, for example, was running at 12 per cent set-aside. We are now only running at about 13 per cent set-aside. So it is about the same. China has stayed consistently at about 20 per cent set-aside. Zimbabwe, for example, has 58 per cent set-aside. In a percentage sense, we are allowing more applications in relation to Zimbabwe than we do, say, in relation to Fiji.

Senator PRATT—You highlight a couple of cases in your report in relation to the various status of homosexuals persons around the world and the various forms of persecution to which they are subject. I note that some of those cases now also pick up community and family persecution—other than just legal discrimination and criminalisation. Can you outline how these kinds of cases are being dealt with?

Mr O'Brien—I can outline the legal framework. On the Refugee Review Tribunal, we are concerned with whether there is a real chance of persecution or serious harm of the particular applicant if they were to return to their country of origin. But the persecution that is feared must be for one of five possible reasons: race, religion, nationality, membership of a particular social group or political opinion. It is membership of a particular social group where the

homosexual claims are raised and it has long been recognised under refugee law that homosexuals constitute a particular social group. The issue for us in those cases is whether we believe the applicant's story that they are homosexual and then if they return to their country of origin whether they face persecution—persecution either by the authorities or persecution that is officially tolerated by the authorities against that group in that country. That is always the test.

Senator PRATT—I would assume that you would also pick up people based on their gender identity within similar kinds of boundaries.

Mr O'Brien—Yes, they can fall within that category as well.

CHAIR—Thank you, Mr O'Brien and your colleagues. Mr Plowman, this would be your first estimates under the MRT and RRT, so welcome. I should have said that earlier when Mr O'Brien introduced you. Thank you very much for your attendance today. We will see you after the budget is delivered.

Mr O'Brien—Thank you very much.

[10.15 am]

Office of the Migration Agents Registration Authority

CHAIR—Good morning, Ms Sykes and Mr Wood. Do you have an opening statement?

Ms Sykes—Yes I do.

CHAIR—I invite you to provide us with that now.

Ms Sykes—Thank you, Madam Chair, and members of the committee. The Office of the Migration Agent Registration Authority, MARA, has been operating since 1 July 2009 and I would like to provide you with an update. As indicated at the previous estimates meeting, in addition to reporting through the department's own annual report, the Office of the MARA did publish its first separate annual report in October 2010. The annual report outlines progress towards strengthening the migration agent profession and provides details of operations in the past year. This includes ensuring a smooth transition, maintaining responsive client service and implementing reforms.

As reported, at the end of June 2010 there were 4,482 registered migration agents compared to 4,097 on 1 July 2009. This was an increase of over nine per cent. When we look at the six months between July and December 2010 there was a slight decrease of 34 agents, or less than one per cent, in the total number of registered migration agents, bringing the total to 4,448 on 31 December 2010. Underlying this was a 58 per cent reduction in the number of initial registration applications received compared to the same period in the previous year—that is, 252 compared to 604. However, there was an increase in repeat registration of 10.5 per cent—2,017 compared to 1,825.

It is too early at this stage to tell if this reflects an ongoing trend. The change is also not consistent across the sector. For example, registrations by Australian legal practitioners continued to grow with 1,201 practitioners at 31 December compared to 1,185 at the end of June 2010, a growth of over two per cent. There has also been continued growth in the

number of non-commercial agents with an increase of 6.5 per cent since 30 June. By the end of 2010 there were 262 non-commercial migration agents.

In terms of complaints, in the 2009-10 program year there were a total of 499 complaints against registered migration agents and in the six months to the 31 December 2010 there were 236 complaints, which is close to pro rata. In 2009-10, disciplinary action was taken against eight agents: two were cautioned, three were suspended and three former agents were barred from reregistering for the maximum period of five years. Since June 2010, disciplinary action has been taken against three agents. The registration of two agents was cancelled for five years and one former agent was barred for a maximum period of five years.

At the end of June 2010 there were 626 approved continuing professional development, CPD, activities through 47 providers. The majority, 368, of the activities were seminars. At 31 December 2010 there were 498 approved activities provided through 49 providers. The reduction in activities from 626 to 498 was due to changes in the way that CPD activity approvals are reported. This was done in preparation for the introduction of continuing professional development reforms.

As part of a continued effort to improve consumer protection and lift the standard of the profession, the Office of the MARA has implemented changes to the continuing professional development requirements for re-registration. Following extensive consultations with registered migration agents and CPD providers, and on the advice of independent experts, the changes encompass more choices for agents to develop their skills and knowledge relating to the provision of migration advice. Changes introduced include offering new activities, such as mentoring. In addition, more CPD points will be awarded for some activities, such as workshops that include assessments or have a focus on advanced level or small group interactions. We are also working with providers to develop a practice-ready program for newly registered agents and, in addition, we are looking to develop a standard training kit for a refresher course on ethics and professional practice, which will be aimed at agents who are renewing their registration.

We have made significant progress on the implementation of the communication strategy. I mentioned at last Senate estimates that one of the products we developed was the consumer guide. I would like to report that it has been very well received by stakeholders, including electorate offices, migrant resource centres, education providers and the department's outreach officers. The translated brochures, which are based on the consumer guide, will be available in the next month to complement the guide and improve our communication to ethnic communities. We will be providing that in 17 community languages. We have also provided additional information for consumers on the Register of Migration Agents. Since 1 February 2011 online information is available on which registered migration agents are also Australian legal practitioners. In addition to displaying the information for each legal practitioner, it is possible to undertake searches on this criteria. So, you can find a list of all people registered as Australian practitioners. The change was requested by the Law Council of Australia and supported by the advisory board. I should add that it is voluntary. Australian legal practitioners who take part in it provide their latest legal practising certificate and that information is put into our system.

The Office of the MARA continues to work closely with the advisory board to implement recommendations from the *2007-08 Review of statutory self-regulation of the migration advice profession*. By the end of June 2010, of the 57 recommendations proposed by the review 21 were fully or substantially completed and 20 were in process. The remaining 16 were unable to be progressed due to the need for legislative change or further research. Since then a further four recommendations have been finalised, bringing the total to 25 recommendations being fully or substantially completed.

Once again I would like to extend my thanks to the members of the advisory board for their valuable insights, contributions and commitment since the establishment of the office. The chairman, Mr Robert Cornall AO, has ably led the advisory board in establishing a solid work program. I look forward to continuing our achievements in partnership with the advisory board. I am happy to answer any questions from members of the committee.

CHAIR—Thank you, Ms Sykes.

Senator BARNETT—Thank you for your opening statement. Can we have that tabled, please?

Ms Sykes—Yes, there are copies available.

Senator BARNETT—With regard to the reform agenda, was it 2007-08?

Ms Sykes—It was.

Senator BARNETT—You have had 57 recommendations and you have implemented 25. You have indicated there were 20 in progress and 16 or thereabouts were unable to be progressed, as they depended on legislative change. Are you or the government planning to make those legislative changes and implement the recommendations?

Ms Sykes—We have been working closely with our colleagues in the department who have the policy responsibility for getting legislative change or regulation change up. We have been working very closely on that and looking at how we might be making those changes.

Senator BARNETT—Will those changes be made? This might be a question for the minister or the department, but as far as you are concerned do you support the recommendations? Do you wish them to be implemented? Let me get that clear.

Ms Sykes—Yes, we do support the recommendations requiring legislative change. As I said, we have been working closely with the department looking at how they might be made. I would add that where there is a recommendation that requires legislative change to be put in place in total, if we can do anything under policy to meet the spirit of the recommendation, we are attempting to do that.

Senator BARNETT—It is over three years since the report was tabled; it is now 2011 and we still have not seen the legislative changes. Does that concern you?

Ms Sykes—That is a matter we hope will be progressed in the near future.

Mr Metcalfe—Senator, Ms Sykes has indicated that essentially the role of the officers are to administer the arrangements. The issue of policy lies with the department and we can cover that under program 1.1.

Senator BARNETT—We will certainly do that under that section. Specifically what did they relate to? They are set out in the report, aren't they?

Ms Sykes—They are.

Senator BARNETT—In terms of the legislative changes?

Ms Sykes—Yes.

Senator BARNETT—All right; we will go back to that. You talked about complaints about agents and how they have been dealt with, and that they are in about the same numbers as last year and about the disciplinary process, so thank you. What about complaints about the Office of the Migration Agents Registration Authority? I see in your annual report that there were quite a few complaints. When I say 'quite a few'—a number; I do not have it in front of me. There were some complaints about the Office of the MARA, relating to, in particular, your website.

Ms Sykes—That is correct. As reported in the annual report in 2009-10 there were 25 complaints received. The majority of those were about the website, and all of those were in the first six months of the year.

Senator BARNETT—As far as you are concerned, I understand the website cost \$165,000 in terms of a cost to fix, repair or upgrade.

Ms Sykes—That is correct.

Senator BARNETT—Is that the conclusion of that? Is that now sorted?

Ms Sykes—That is correct. As I mentioned last time, the cost to undertake the security work on the former MARA's website, so that we could utilise it, was around \$165,000—I think it was \$164,000 and something. That work was completed in December 2009 and the website has been operating ever since.

Senator BARNETT—Your report does not detail any types of complaints regarding the Office of the MARA. Is that something you could do on notice and let us know the types and the nature of those complaints and how they have been dealt with and whether and how they have been determined? Can you do that on notice please?

Ms Sykes—We can. For your information, the number of complaints through the global feedback unit in the first six months of this year has been five.

Senator BARNETT—If you could set that out in your response, that would be useful. I understand that the code of conduct has been updated. In terms of the code of conduct for agents, has that now been concluded? Or is that still being updated?

Ms Sykes—We are looking at some changes to the code of conduct.

Senator BARNETT—Can you be more specific?

Ms Sykes—We are hoping to get some minor changes made to the code of conduct under regulations, primarily to make some aspects of the code of conduct clearer. We are also looking at undertaking some further consultation, to look at whether there are some more substantive changes to the code of conduct that we might make further on.

Senator BARNETT—I have a final question, Madam Chair—I do not know if we can deal with this before the break—on the advisory board.

CHAIR—Probably not, because it is 10.30 now.

Senator BARNETT—It will only take one minute, I think.

CHAIR—Yes, but you might not be the only person who has questions. We will go to a break. There is something I need to deal with in five minutes, anyway.

Proceedings suspended from 10.30 am to 10.48 am

CHAIR—We will resume.

Senator BARNETT—The last area is the advisory board. Ms Sykes, you referred to that and the work of the board. I note Mr Cornall's chairmanship. I am sure he would be doing an excellent job. I certainly commend him on his past efforts and contribution in this arena. It was exemplary. I understand they have considered a forward work program. Can you tell us about that? Do you have a copy?

Ms Sykes—I apologise—I do not have a copy on me. I am sure I can make a copy of that available. The forward work program does focus on some of the key areas in the reform agenda. It includes things like taking forward the communications strategy, taking forward looking at how we manage complaints and setting up quality assurance processes for complaints, the English-language provision and entry-level requirements. Now that the continuing professional development changes are in place, they will be monitoring those changes and the impact of those changes. The advisory board is also looking at some other issues that members are interested in. We will be looking at taking—

Senator BARNETT—So you will forward a copy of the forward program to us?

Ms Sykes—Yes.

Senator BARNETT—Is it called a 'forward work' program or a 'reform' program?

Ms Sykes—The advisory board does have an item on its agenda called 'forward work program', and I do a summary of that.

Senator BARNETT—And you have to report?

Ms Sykes—Yes, I have a list of what the items are.

Senator BARNETT—If you can provide that, that would be good. How often do they meet?

Ms Sykes—They meet as needed. In their first year they met, I think, five or six times. They are currently meeting about four times a year.

Senator BARNETT—Thank you.

Senator FURNER—I would like to start with temporary business long-stay visas, the section 457 visas, in particular in relation to the flood recovery in Queensland. Is that your area?

Ms Sykes—No, that is the department.

Mr Metcalfe—We should come to that once we get to the department proper.

Senator FURNER—Thank you.

Senator PRATT—I want to ask about your program to uphold quality for overseas registered agents and how you approach that issue differently. Specifically, what kind of challenges might those registered migration agents be facing with a view to their income sustainability, because of the changes to the student visas? I want an overview from you about how you think those organisations are currently placed.

Ms Sykes—Currently, under the legislation, people can only be registered as a migration agent with us if they are either Australian or a permanent resident. While there are some people overseas who are Australians or permanent residents who are registered, that is only a small number. We do not register more broadly people who operate as agents overseas who are not citizens or permanent residents, so that is not our area of responsibility.

Senator PRATT—Is that the answer to the question? I have just done a web search on your own website, which says, for example, that you can search for an agent in India.

Ms Sykes—Yes, you can.

Senator PRATT—I would expect that the base of the work that an agent might be doing there may or may not be as broad as what an agent in Australia might be doing.

Ms Sykes—I will ask my colleague Mr Wood to answer.

Mr Wood—People who choose to be registered in Australia who actually operate offshore are subject to the same requirements of the legislation as an onshore registered agent and, therefore, they are required to do CPD in the same way that any other agent does. There are CPD activities available to those agents. In terms of your specific question about the challenges that an offshore agent might face, I guess largely that is a business question for the agent to answer. A lot of them, we observe, do have relationships with agents onshore, so they may have business premises, a presence, both in Australia and offshore. They may or may not, as you say, specialise in particular areas, but they are still required to have a professional library. They are still subject to the same complaints mechanism if a client is unhappy with their service. So, in that sense, they are not treated any differently.

Senator PRATT—That is good to know. What proportion of agents, over the lifetime of their practice or even a proportion of time, might be suspended at some point? I am trying to work out how common it is for something like that to occur with a particular agent and their practice.

Mr Wood—We can have a look at whether we have that specific answer to suspension. I can tell you that 76 per cent of agents have never had a complaint in their lifetime.

Senator PRATT—Never had a complaint at all? What proportion of agents who are suspended at some point in time would cease to practise or would normally overcome that suspension and move back into continuing to practise?

Mr Wood—I will have to get the exact percentage for you. When an agent is suspended the suspension is a suspension of their registration. It is associated with conditions. For example, we might require them to do certain things, fix certain things, do CPD, and perhaps be mentored by a senior agent. There are certain conditions we might impose for the lifting of the suspension. I am aware that some agents choose not to practise any more, but most agents

who are subject to suspension do meet the conditions. Once they satisfy us that they have met the conditions then their registration resumes.

Senator PRATT—I note just from looking at your website that you encourage people to check that their agent is registered—

Mr Wood—Yes.

Senator PRATT—but that you can also search to see if that registered agent has been suspended at any previous point in time. But you are not automatically drawn to doing that, so in a sense it is buyer beware. I suppose you can assume, because someone has met the requirements of registration, that, even though someone has been previously suspended, you should still be able to be confident in the service that you are receiving.

Mr Wood—The register is a public register and we do keep the register on the website up to date. If a person is not on that register then they either have not applied for registration or they have been suspended or cancelled. The first indication for a consumer that there might be a problem with a person they are approaching for services is if they do not appear on the register. Consumers can then ring our office if they are still not sure and we can provide confirmation over the phone. As you have indicated, some consumers do a search and look at the sanctions page which will then show if the agent has actually been suspended. It will actually have details of the decision record in relation to that sanction so they can see what that person had done and why they had been cancelled, sanctioned.

Senator PRATT—Thank you very much.

CHAIR—As there are no other questions for MARA, thank you very much Ms Sykes and Mr Wood for your attendance at estimates this morning. We appreciate your time and we will see you in a couple of months.

[10.58 am]

Department of Immigration and Citizenship

CHAIR—We will now move to questions of the Department of Immigration and Citizenship. These are more cross-area questions and I think internal product is what has probably been labelled as questions of the operation of the department.

Mr Metcalfe—I have an opening statement.

CHAIR—Thank you very much. I am waiting for Mr Correll. It would not seem right to start without Mr Correll up at the front. Thank you Mr Metcalfe for your opening statement.

Mr Metcalfe—Thank you, Chair, and thank you, Senators, for the opportunity to deliver an opening statement this morning. The department continues to experience a sustained high tempo of work across a range of policy and operational areas. Just one example is that some 13,000 people from 143 different countries were welcomed as Australian citizens on Australia Day. Our state and territory colleagues work with local government councils and community organisations who hosted over 325 citizenship ceremonies across the country on our national day of celebration.

Managing irregular maritime arrivals clearly forms a significant part of our work, but it is important to recognise that the department's tasks extend well beyond the administration of

policy and operational approaches to dealing with people smuggling and responding to people who arrive here through such means. Australia is, of course, not the only country experiencing such challenges. This has been highlighted in recent weeks through the arrival of several thousand Tunisian asylum seekers by boat on Italy's southern islands.

On 15 December 2010 Australians were horrified by the shocking scenes of the foundering of the vessel *Janga*, known as SIEV 221, at Rocky Point off the coast of Christmas Island. This tragic event saw the loss of many lives, including children and infants, as well as the rescue of 42 people from the sea. On behalf of the department I would like to formally place on the record my sympathy for the people involved in the tragedy and particularly to extend my and the department's sincere condolences to the families of those who drowned. I pay tribute to the heroism of the Customs and naval personnel who were involved in the dramatic rescue in such violent seas and to the very brave contributions of the Christmas Island community who so selflessly responded to the sinking vessel.

I also take this opportunity to recognise that my own staff who faced some very difficult and harrowing situations in response to this tragedy have done so with great professionalism and dignity. This bears out the frequent comments I receive about the strong humane values and approaches the department staff display in what is, as I have said many times before this committee, a particularly complex and sometimes very difficult area of public policy and administration.

There has naturally been strong public interest in the welfare of the survivors of the SIEV 221 tragedy. The department has played a significant role in their care, working closely with other agencies such as the Australian Customs and Border Protection Service and the Australian Federal Police as well as the Christmas Island community. Professional medical and psychological advice has been key to our decision making around these issues and to the discharge of our responsibilities.

As you would be aware, the first of the funerals for the deceased took place last Tuesday, 15 February. These were jointly organised by the department and the Australian Federal Police and in close consultation with the next of kin. In making such arrangements the department's approach has been, foremost, to respect the privacy and wishes of the families involved. Of course there are many logistical, legal and other issues, which must also be considered and managed along with the views of community advocates and others. The department has strived to achieve an appropriate balance of all such factors in dealing with this particularly sad and sensitive situation.

There have been a number of other incidents in the detention network since we last appeared before this committee. Very sadly two people died while in immigration detention on 16 November and 8 December last year. The circumstances of these deaths are currently the subject of police and coronial inquiries. I therefore do not intend to comment any further, other than to state that the department is fully and completely cooperating with those inquiries.

The department also continues to work on implementing the government's response to the recent High Court case known as M61 and M69, which led to changes to the refugee determination process for irregular maritime arrivals. The new procedures announced by the

minister on 7 January this year will commence operation on 1 March this year. The department's resourcing in this area, and the number of independent reviewers, continues to expand to ensure that resources are up to the task at hand. The department is now well advanced in implementing the government's decision to expand the community detention arrangements for unaccompanied children and vulnerable families. Of course, no children are held in detention centres, and they and family groups have been accommodated in a range of facilities such as motels, immigration transit centres and the like. We very much value the assistance of the Australian Red Cross and many community organisations in working with us to implement these new arrangements.

More broadly, the return to above trend economic growth following the global economic crisis has resulted in an increasing focus from the business and broader community on skills availability in Australia. Australia's permanent migration program plays an important role in contributing to Australia's skills base in the medium to long term. The shorter term needs for skilled labour, the 457 skilled temporary worker program, is uncapped and demand driven and therefore is very responsive to business requirements where Australians are unable to fill vacancies.

The importance of a responsive skilled temporary and permanent migration program has been particularly emphasised by two recent occurrences. The first is the concern that has been raised about the lack of skilled labour required to respond to rebounding economic growth. The second is the recovery and reconstruction effort required following the natural disasters over summer in Queensland, northern New South Wales, Victoria and Western Australia. I spent my childhood and youth in Toowoomba and was as shocked as anyone to see the devastation of parts of that city and the Lockyer Valley in such a short space of time. The department is in close contact with the reconstruction authorities to ensure we support the reconstruction effort as effectively as possible. This includes establishing dedicated processing offices in Sydney, amongst other offices, to guarantee that subclass 457 visa applications associated with flood reconstruction work will be processed within five days.

We have also been working with employers and local businesses to offer advice and assistance on potential sources of labour as they undergo the massive clean-up and rebuilding effort. I am delighted that the department, through our social clubs and fundraising activities, has raised many thousands of dollars to contribute to the victims of these disasters. I am ensuring that the department is doing all it can to support its own staff who have been directly affected in these difficult times.

I promised to keep the committee updated on our overall program to enhance our services to clients and to provide Australia with the best possible immigration and citizenship services. That work continues. As I have flagged previously, the department is now structured around four groups under four deputy secretaries. Dr Wendy Southern PSM, has been appointed to succeed Peter Hughes PSM, who retired in January. I welcome Wendy back to the department as the deputy secretary responsible for the policy and program management group. Jackie Wilson has been appointed deputy secretary in the immigration detention services group, and I congratulate Jackie on that promotion. Todd Frew is currently the acting deputy secretary for the client services group. I expect to make a permanent appointment to that position in the

weeks ahead. And, of course, Bob Correll PSM is the deputy secretary responsible for our client services group.

In conclusion I take this opportunity to formally express the department's congratulations to our principal migration officer in New Delhi, Kris Cala, who was awarded the Public Service Medal in the recent Australia Day honours list.

Senator CASH—I just confirm that I will limit my questions to internal product. A number of the issues go to other outcomes. Very briefly, then, how many staff from DIAC are presently involved in processing irregular maritime arrivals at various locations?

Mr Metcalfe—I will ask Mr Correll to assist with that.

Mr Correll—The total number of full-time equivalents involved in irregular maritime arrival activity is 848. In terms of that 848, they are divided into three broad categories. There are those who perform direct service delivery and support roles, and they totalled 708 full-time equivalents. There are those performing dedicated support roles, such as program management, financial management, reporting and evaluation, and they totalled 64 full-time equivalents. There was a further group performing indirect or overhead support type roles, totalling 76. In terms of the location of our staff—I should add that all of this data is at 31 January—those directly involved in the work of immigration detention centres and physically located at those detention centres, we had 105 full-time equivalents at Christmas Island, 68 at Northern IDC in Darwin and other alternative places of detention in Darwin, 35 at Curtin, 19 at Leonora, six at Port Augusta, five at the Brisbane Immigration Transit Accommodation and also supporting Virginia Palms, 10 at Villawood, nine at Maribyrnong, 14 at Scherger and six at Inverbrackie. That represents the full break-up of the group.

Senator CASH—How do those staff numbers compare with previous years?

Mr Correll—Staff numbers are up and have been growing through the course of the year. I will consult with my colleagues to see if we have a direct comparison of those figures with previous years. We can certainly get that information later today. We do not have it immediately with us.

Senator CASH—Thank you. Is there an expectation that the staffing numbers will be increasing?

Mr Correll—We have had a substantial recruitment program for staff working in the IMA area running for the past 12 months. At the present stage, in some of the key categories, we have pretty much got our core staffing requirements now, but we still have a requirement for additional staffing in areas like case management and detention operations. So we are continuing to be actively recruiting in those two areas in particular.

Senator CASH—Is the department working towards any particular target, say, by 30 June 2011?

Mr Correll—We have an overall broad recruitment plan which, simply, is driven by liaison with our various business areas on their operational needs. It is fair to say that they are broadly based numbers rather than precise numbers, because all of this is influenced by the boat arrivals. Broadly we would be looking at picking up some significant additional numbers of case managers up to 100-plus. The case managers are directly related to the number of

irregular maritime arrivals so the precise number will depend on those arrivals. In terms of detention operation staff we have an additional detention facility coming on stream in Northern and we would require additional operational staff in that location. The numbers in detention operations is more in the 20s to 30s given that it is predominantly related to contract management services there.

Senator CASH—Based on what you have said a fair summation would be that as long as the boats continue to arrive there will be a requirement to potentially increase the staff because the numbers of IMAs will be increasing.

Mr Correll—Subject to the rate of arrivals and the total numbers in immigration detention. Whilst the rate of arrivals is increasing the numbers in immigration detention, that would put pressure on additional staffing.

Senator CASH—Is it true that the department requires an additional 400 staff as stated in the red book in order to perform its core business?

Mr Metcalfe—The red book was written in September, Senator, and I think that would have been an accurate comment at the time. The figure that we provided you today would reflect that many of those additional people have now come on stream.

Senator CASH—At the time, in September, the projection was that the department would be looking at at least an extra 400 staff.

Mr Metcalfe—That is right. As Mr Correll said, it is a dynamic situation and depends on a whole range of factors such as the number of people arriving, decisions taken about them, whether they are identified as refugees or not, whether they appeal, returns. All of those issues are relevant to our staffing needs. The advice we would have provided to the incoming government would have been accurate at the time.

Senator CASH—In terms of case managers we are looking at an increase of no fewer than 100, which is the projection going forward?

Mr Correll—That is correct.

Senator CASH—In terms of the estimated additional 400 staff, as referred to in September of last year, Mr Correll, is there an ongoing recruitment process in place?

Mr Correll—Yes, there is for those two categories of staff, in particular case managers and detention operations staff. Our last significant advertisement was in mid December, as I recall, so we continue to be in an active recruitment process both directly and indirectly because we have staff from other areas of the department who will move into the IMA processing area, then we also recruit in a backfilling arrangement for those staff as well, so it is through both mechanisms.

Senator CASH—Who is conducting the recruitment on behalf of the department?

Ms Prothero—The agency, Hudson, is assisting in the recruitment process. Final decisions about selection are made by the department.

Senator CASH—Is this the normal recruitment agency that the department would utilise?

Ms Prothero—It is one of a number on the department's panels, yes.

Senator CASH—How many people have you recruited since the estimation was given that the department would require the additional 400 staff?

Ms Prothero—We have recruited from various processes. Specifically from the bulk recruitment processes—the ones directly related to irregular maritime arrivals—we have had 190 new people. Of those, 148 are new to the department.

Senator CASH—Have you had 190 through the process?

Ms Prothero—We have had 190 start in the department through the process, but that includes DIAC staff who have been promoted or moved into the dedicated workforce. Of those 190, 148 are new to the department and were not part of the department's workforce before.

Senator CASH—Has there been any feedback from applicants about the recruitment process that is underway?

Ms Prothero—Not that I am specifically aware of.

Senator CASH—Is the department happy with the recruitment process?

Ms Prothero—The department has been very happy with the recruitment process. The outcomes and performance of our training and learning programs have been very positive for the staff who have started. The quality has been very high and they have moved into the workforce very well.

Senator CASH—Are you able to provide me with figures of the number of people presently located in the staffing establishment for each of the departmental outcomes 1, 2, 3, 5 and 6? I am happy to have it later on today if that assists.

Ms Prothero—The physical locations of all staff against the—

Senator CASH—No, the actual number of staff employed?

Ms Prothero—I can provide the number in FTE equivalents rather than in headcounts by outcome. As at 31 January, in outcome 1 there were 3,669; in outcome 2 there were 488.9; in outcome 3 there were 841.4; in outcome 4 there were 1,965; in outcome 5 there were 434.4; in outcome 6 there were 525.7—a total for the department of 7,924.6.

Senator CASH—By how much does that represent an increase over this time last year?

Ms Prothero—I do not have the information for this time last year, but I can provide it since the start of the financial year. Since the start of the financial year, the growth in full-time equivalents was 565.

Senator CASH—Can you translate that into percentage terms?

Ms Prothero—That is a 7.7 per cent increase.

Senator CASH—There are a number of questions that I will place on notice. What was the highest number of departmental staff that were engaged in performing refugee status determinations and when was that?

Mr Correll—That is a hard one to answer.

Mr Metcalfe—Are you talking about any time in our 65-year history?

Senator CASH—Absolutely.

Mr Metcalfe—It will take us a while to check that. We will take it on notice.

Senator CASH—When was that? Has the number been reduced lately? Is it true that a large number of staff engaged to perform the refugee status determinations have been let go, have been released or have moved to other departments or other sections?

Ms Prothero—I do not believe that that is the case. I know at the moment the number of staff dedicated to that role is 170. It may have been slightly higher, but that is the number we currently have within the dedicated workforce.

Senator CASH—Of all the contracts issued by the department for capital works since 2009 to the current date, how many have included confidentiality provisions and what do the confidentiality provisions relate to?

Mr Sheehan—As far as I am aware, we abide by the standard Commonwealth terms for confidentiality. I think we mentioned this at the last Senate estimates. I think 102 have confidentiality clauses that have been reported for contracts greater than \$100,000.

Senator CASH—So that was 102?

Mr Sheehan—I can double-check. Off the top of my head I am 99 per cent certain it is 102, but I will check.

Senator CASH—Thank you.

Mr Correll—I would like to add at this point if I could that over the weekend we noticed there were a number of small errors in the additional estimates documentation booklet that we would like to correct. These are not major. They are reflecting ASL numbers in particular outcomes and are small typographical errors. I will ask my colleague to comment on those.

Mr Sheehan—On page 21 for outcome 1 the 2009-10 average staffing level is stated as 3,732. The actual number for the year was 3,760. In outcome 6 on page 38 the number stated for 2009-10 was 604 and the actual number was 549. It is a transcription error between the annual report and when the numbers were put in. On page 41 under the heading 'Budgeted Financial Statements' it states:

In 2010-11, total expenses are expected to increase to \$1.312 million.

That should state \$1,312—the full stop should be a comma. The next number—\$1.242 million—should be \$1,242 million. They are the only errors that we have picked up in the document in our review.

Senator BARNETT—You have to get the commas in the right place, Mr Sheehan.

Mr Sheehan—Yes, we probably should have checked that. I have just checked those confidentiality contract numbers. There are 107 contracts that require the parties to maintain confidentiality of any of the provisions and there are 135 contracts that contain other requirements of confidentiality around price or other commercial reasons.

Senator CASH—Thank you very much.

Mr Correll—I would point out that this is very much consistent with the discussions we had at the last hearings that our standard contractual clauses include a clause which allows for

the notion of confidentiality to be applied. But it has no effect unless the areas of confidentiality are then specified within the contract. When we looked at this at the last estimates hearing, virtually 100 per cent do not actually call up that clause, effectively. That is important to understand. In the sense that there is a confidentiality provision within those contracts, that figure is only in the sense of applying that broad clause.

Senator CASH—Thank you.

[11.26 am]

CHAIR—If there are no further questions for the department and internal products, we will move to outcome 1, managed migration through visas granted for permanent settlement, work, study, tourism, working holidays or other specialised activities in Australia; regulation, research and migration policy advice and program design. We will start with 1.1, visa and migration

Senator TROOD—Mr Metcalfe, under what program does the APEC business travel card scheme fall?

Mr Metcalfe—That is under 1.1.

CHAIR—Senator Furner.

Senator FURNER—I apologise for my eagerness, but there is some need in Queensland.

Mr Metcalfe—No problem.

Senator FURNER—In respect of the flood recovery package and the temporary business (long stay) subclass 457 visas, can you outline the details of what the government are doing to help employers access overseas workers to quickly assist in the recovery efforts in Queensland?

Mr Kukoc—I would first like to point out that the processing standards for 457 visas are extremely efficient. We now have the median processing time for a 457 visa application of around 18 days, which, quite frankly, is something that has not been seen around the globe. I do not know of any other country that can meet that standard. In addition to significant improvement in the client services processing of 457s over the last few years—which has dropped from 30 or 40 days in 2006-07 to only 18 days median time this year—the government have decided to implement a specific package around 457 processing that will help Queensland flood-affected businesses. In communication and consultation with, for example, the Queensland Department of Employment and Economic Development, when a flood-affected business has been identified and the labour skills needs identified and that business lodges a 457 application, and provided all that information is provided at that time, we have agreed to finalisation within five days. Again, that is world leading practice. So far we have worked well with the Queensland state government authorities in identifying these needs. The process has just started and the latest information I have from our client service processing area is that just last week we saw four visa applications lodged for some skilled occupations which we turned around in only 48 hours.

Senator BOYCE—Sorry, I missed that figure. How many applications?

Mr Kukoc—Last week, just at the end of the week, was the first round of these applications, and we had received four applications, which we processed within 48 hours.

Senator FURNER—Okay. Thank you for that.

Mr Kukoc—This process is of course open to other flood affected areas in New South Wales and Victoria, but we still have not been approached by the Victorian or New South Wales governments about that.

Senator FURNER—Who are the candidates that will be eligible for this assistance?

Mr Kukoc—The criteria largely sit with the state economic development department. They need to identify the business that was affected by floods, and the skill needs relate to flood affected issues. It could be business that needs quick construction work because of the damage done during the floods or anything like that. Any skilled occupations under the standard 457 occupations, including trades, will be considered.

Senator FURNER—So essentially any businesses in those areas that have been declared disaster zones.

Mr Kukoc—Yes.

Mr Metcalfe—Just to add to Mr Kukoc's answer, while this will largely be a process of industry and employers identifying the need and coming to us, we are obviously working closely with the state development people on the ground. We have also had some of our outreach officers and client service officers travel to the areas affected to provide not only direct advice in relation to the availability of the 457 visa but advice more generally. For example, some of the areas affected by Cyclone Yasi have working holiday makers and others who have permission to work, are in Australia and are available to assist in the clean-up and recovery. So we have been endeavouring to provide information so that people can make those connections.

Senator FURNER—I take it small businesses would be included in the program as well; there are no exclusions?

Mr Metcalfe—There is absolutely none. The requirements of the 457 visa remain the same. Essentially we need to be satisfied that there is not an Australian to do the job. Because of the huge demands for people in those areas we have offered to significantly fast track applications, and our checking is around ensuring that there is no Australian to fill the job and that appropriate employment and remuneration conditions are in place.

Senator FURNER—On that point, how will the government ascertain that local workers will not be displaced as a result of 457 applicants?

Mr Kukoc—As you may be aware, Australia does not have labour market testing within the standard 457 program, but what the recent reforms have achieved is that we make sure that foreign skilled workers are employed on terms and conditions of employment equal to those of Australian workers. This acts as a significant deterrent to any sort of exploitation but it also leads to the outcome that foreign skilled workers are only employed in situations where there are no domestic skilled workers available, for the simple reason that it is always easier for the employer to recruit locally, if they have to meet the same terms and conditions, than from overseas.

Senator FURNER—In the assessment process for applicants, what is the government doing in respect of skills assessment and the English language requirements?

Mr Kukoc—English language requirements have remained the same as were introduced during 2009. The level, I understand, is IELTS 5 across the competencies, and skills assessment still applies. The standards are subject, as I said, to full documentation and full criteria being met.

Senator FURNER—With regard to the 457 visa reforms, how do the 457 visa measures assist Australian employers to source the skills they require?

Mr Kukoc—Sorry, Senator, may I ask you to repeat the question?

Senator FURNER—How do the 457 visa reform measures assist Australian employers to source the skills they require?

Mr Kukoc—Most of the reforms were aimed at improving the integrity so that the public confidence in this important program is maintained. I think that has achieved that goal. The other thing is that we do have a measure which is measuring the responsiveness of the 457 visa applications to the business needs and there is actually a very high correlation between 457 applications and the ANZ job index and unemployment rates. Historically, that has shown that 457 application rates increase at the same time of reduced unemployment and increase the job vacancies and vice versa. That still continues after the reforms done in 2008-09. There were also a couple of things that had simplified the process for many employers; for example, in various onshore pathways. Previously, if there was another sponsor onshore who was willing to take on the existing 457 holder onshore, that 457 applicant would need to apply for a new visa. The reform has changed that so that all the existing visa holder requires is another nomination from another sponsor and his visa will just continue. So there is no need for another visa application if the person is just finishing his job with one employer and starting with another.

Senator FURNER—In terms of the government's reforms as to market salary and the temporary skills migration threshold, how does that ensure there is no exploitation of foreign workers?

Mr Kukoc—As I said before, the key element of the integrity reforms was so-called market rates, which is, very simply, a requirement that foreign skilled workers are employed on the same terms and conditions of employment as Australians, which was previously not the case. By the mere fact that we have this new requirement which was then strengthened and supported through the introduction of the new legislation, the Workers Protection Act, which has given us more powers to impose not only administrative sanctions but also civil penalties, this has led to the situation where it would be very difficult for employers to exploit foreign skilled workers or replace Australian workers with foreign skilled workers, noting that employers usually act very responsibly. A large majority of employers employ 457 holders responsibly and are paying them according to terms and conditions equal to those of Australian employees.

Senator FURNER—Were there any changes made to the health insurance requirements on 457 visas?

Mr Kukoc—Yes, previously the employers or sponsors were responsible and liable for any costs to the public health system. During the reforms that cost has largely been shifted to the 457 visa holders, so they now have to hold comprehensive private health insurance, which means that part of the cost has been reduced for employers.

Senator FURNER—Finally, on agreements and conditions: what are the situations that an employer needs to make to ensure agreement is arranged and how does that benefit foreign workers on those arrangements?

Mr Kukoc—Sorry, Senator, I am not sure I understood the question.

Senator FURNER—What is the process informing a contract of employment agreement for foreign workers and how does that advantage them in terms of those conditions?

Mr Kukoc—The process for informing the employee—the 457 visa holders?

Senator FURNER—That is right.

Mr Kukoc—We have a standard information pack available from our website. The application form also contains a range of information about their rights and responsibilities. Effectively, the information flow to both employers and employees under 457 visas was to ensure that they became part of the overall workplace relations system and not treated separately. They know that they have access to all standard forms of protection under the relevant act. This then brings into play a lot of domestic protection measures from the Fair Work Ombudsman. We have increased that information flow to both employers and employees.

Senator BOYCE—I wanted to follow up on the comment you made about the special provisions for flood affected businesses. You said the businesses had to be affected by floods or the employment had to be for flood affected issues. Could you just explain that a little bit more?

Mr Kukoc—I will say at the outset that there are no legislative requirements as such, or strict specifications, over the situation. We are really flexible and we are working in close consultation with state government authorities on that. If the need is identified and that need has arisen from recent floods, and the business was affected by these floods, we would be quite flexible in our acceptance of that proposal.

Senator BOYCE—I am not sure if you will be able to confirm this, but could a business that was not flood affected but needed extra staff to do flood work be eligible for this?

Mr Kukoc—I understand that that would come under this scope.

Mr Metcalfe—I think the example is a company based in Sydney that is providing engineering works for road repairs in Queensland. That is the type of business that would be clearly assisting in the recovery from the flood and we would seek to fast-track any applications for work as they might need.

Senator BOYCE—So these companies have to convince—for want of a better word—the state departments that these are flood related issues?

Mr Kukoc—Yes, we would be acting on advice and in close consultation with, for example, the Queensland Department of Employment, Economic Development and Innovation.

Senator BOYCE—And you would not check to see that? You would simply take the advice of the state department?

Mr Kukoc—Of course, we have integrity measures and monitoring. That always comes into fora. As I said, subject to that advice, we would apply all standard criteria for 457—apart from speeding up the application process quite significantly from an already low 18 days median time to five days.

Senator BOYCE—The other questions I have are being asked on behalf of a number of disability organisations. You will know that we had the joint standing committee report and the government response to that. There seems to be a level of confusion amongst disability organisations about the department's current policies regarding family reunion and skilled worker migration, in particular, where either the worker or a family member has a disability. Could someone give me the black and white answer?

Mr Kukoc—We do have a standard health requirement that applies across our visa categories and in that sense the department has never discriminated against any specific illness or disability. The health requirement contains three criteria. One is the risk to public health and only one disease comes under that definition—that is, tuberculosis. That is the only disease for which an applicant will be refused a visa—

Senator BOYCE—Because HIV-AIDS was excluded from it in the recent past.

Mr Kukoc—A person's visa application will not be rejected.

Senator BOYCE—No, not now.

Mr Kukoc—HIV is not a disease that is carried through airborne means. There are two other requirements for the health assessment. One is that the person will not impose undue health costs on the rest of the community and the budget and the second is that the access to health services of that person will not prejudice the access of Australians to services in short supply.

Senator BOYCE—That has meant that a lot of people with disabilities have not met the health criteria. Could you tell me where we are at now.

Mr Kukoc—I understand that the Joint Standing Committee on Migration made its recommendations just before the election last year. The government is still considering those recommendations. I cannot reveal the context of the advice from the department, but the government is considering its response to these recommendations.

Senator BOYCE—Are you saying that the department did provide advice?

Mr Kukoc—Yes. Normally we do provide advice to the government about those recommendations.

Senator BOYCE—I am just missing the odd word every now and then, Mr Kukoc.

Mr Kukoc—Sorry. I will be slower. So we are in consultation with the minister and the government and are providing advice on various recommendations. The government is

expected to respond to those recommendations sometime this year. I understand that the committee recommended a more flexible and individualised approach to applying the health requirements to persons with disability, a widening of the range of positive factors, including social and economic contributions that should be considered when determining whether visa applicants meet the health requirement, and increased transparency of the departmental processes. We have developed a number of options in response to these recommendations. I know that the cost threshold that was part of that—

Senator BOYCE—Has not been changed for many years.

Mr Kukoc—Yes. It has not been changed for many years and we are looking at that as well.

Senator BOYCE—Anecdotally I am being told that people have a sense that it is somewhat easier, particularly for skilled workers with a child with a disability, to be accepted. Could you give me any reason why people might think that?

Mr Kukoc—Following Dr Moeller's case last year and the joint standing committee review, the government has made some changes to expand the health waiver across more visa categories. Previously it was usually available to family visas and refugee and humanitarian visas, but now it has been expanded to some onshore skilled visa categories, particularly employee sponsored and regional skilled migration sponsored visas, so we do not face in future the situation we faced with Dr Moeller.

Mr Metcalfe—Beyond the conversation you have had with Mr Kukoc—and I am sure the minister would be happy with this—if there are any particular people that you think it would be worth us talking to to clear up any confusion then we would be very happy to do that. We will leave it to you to get in touch with our minister's office, but we are always open to informing people about the situation and to clearing up any concerns or issues that they may have if we can assist in that way.

Senator BOYCE—Thank you.

Senator CASH—Mr Kukoc, could I just go back to the questions from Senator Furner in relation to the five-day turnaround for the 457 visa applications. Can I just confirm that you said that four have been lodged to date.

Mr Kukoc—Approved.

Senator CASH—How many have been lodged to date?

Mr Kukoc—I understand the program started just last week and the latest information is that, in the first round, we had four applications and they were finalised and granted within 48 hours.

Senator CASH—So four were lodged and four were approved?

Mr Kukoc—Yes.

Senator CASH—What is the department doing to monitor the turnaround time of the 457 visas?

Mr Kukoc—We do have standard monitoring in place and we publish statistics quite extensively. The 457 visa is one of the economic categories in the migration program that is

closely monitored, Senator, as you know, not only by the public and interested parties but also by the department. Especially at a time of our economy picking up it is important that it is responsive and fast without undermining the integrity that we have implemented so far.

Mr Metcalfe—Senator, was your question specifically related to the floods?

Senator CASH—Yes, in relation to the five days.

Mr Metcalfe—As I mentioned in my opening statement, we have a dedicated unit in our Sydney CBD office, with a senior manager directly responsible for this program. The keeping of records and the provision of advice will be quite straightforward because we have some people working specifically on this.

Senator CASH—Thank you, Mr Metcalfe.

Mr Kukoc—We do have an departmental program leadership group that I chair, to which all global managers, including the skilled program global manager, report. That is information that will be submitted to that PLG.

Senator CASH—How many staff members in the department are involved in that program you just mentioned?

Mr Metcalfe—I was there a couple of weeks ago. The folk available to work on this, but who also work on 457 visas generally in Sydney, number, from memory, around 10 or so. I will take it on notice and come back to you. We have had four applications and four decisions and it did not take 10 people to do that, but there are many other applications they are dealing with as well. We will come back to you with advice.

Senator CASH—Once the 457 visas are approved, and you have had four that have been approved, how does the department ensure that these people are actually working in the flood affected areas? Is a monitoring system in place?

Mr Kukoc—There is a standard monitoring system in place, which has been boosted in the last two years following the integrity reforms. We have more monitoring officers on the ground and more sponsors on the ground and we have a risk management framework with a risk steering framework in place, so we do target sponsors of concern.

Senator CASH—I am sorry, Mr Kukoc, I am specifically referring to those in the flood affected areas.

Mr Kukoc—As I said before, this is still in development. It has just started. I would assume that we will have more monitoring if we consider—it all depends on how this evolves. If we consider that a risky situation is evolving quite rapidly for all sorts of intelligence reasons as we can gather, we may apply a specific monitoring system on this aspect of the program. But, normally, that would come under the standard monitoring practices.

Senator CASH—But if you have put in a program specifically to ensure that people are able to work in an area that is obviously in demand for skilled workers, why would you also not take steps to put in place an appropriate monitoring mechanism? Otherwise, are you not undermining the value of the five-day turnaround if you are not able to say, ‘Yes, these people are actually working where they said they would be working’?

Mr Metcalfe—As we described before, the accelerated processing time does not mean that there are any changes to the general program requirements. Essentially, an application for someone to work in a flood affected area or relating to the floods means that, instead of getting an average 18-day processing time to an approval, they all have a five-day guarantee and, as we have seen, we have actually turned some around in two days. Beyond that, all of the normal monitoring arrangements and quality control arrangements for 457 visas apply.

If it turns out down the track that someone works in a flood affected area for a while and then works somewhere else because that is the nature of the business or they are replacing someone who has gone to a flood affected area, or whatever the reason might happen to be, I would not see that being a huge concern. The whole issue is to ensure that, where companies have a specific need for overseas workers to come through the existing 457 program, and subject to all of the requirements and controls around that, we can get people here quickly. Once they are here, it is our expectation that they would work according to Australian conditions and according to the requirements that we have.

Senator CASH—In relation to the five-day turnaround application for 457 visas, that was not specifically for those people then to work in the flood affected areas?

Mr Metcalfe—No, the concession that has been provided was a guarantee from the department that if there is a business that needs workers to assist with the floods, instead of it taking three weeks for us to decide the application on average, it will take one week. We will get the people here quickly.

Senator CASH—Based on the evidence you have given for applications for visas issued within a 48-hour period, I am not going to dispute that. The hurdle I think that the department is failing to get over is that you do not have commensurate compliance in place to ensure that these people are doing exactly what this policy is meant to have them doing. I find that a fundamental flaw.

Mr Metcalfe—I can understand your point but I do not frankly think it is a big issue. The real issue is this: is there a need for this worker in Australia to support a business where the business forms the view that it cannot recruit Australians? How do we know that? Not only are they required to offer the same wages and conditions as they do for their Australian workers but also they have to pay for airfares and other costs associated with the worker. Since the reforms of a couple of years ago the 457 program has been quite specifically designed to ensure that skilled workers come where an Australian worker is not available.

The specific arrangement that has been made for the flights does not change any of that. There is no statutory requirement that the person who comes under the five-day turnaround must continue to work on flood affected issues for the entire time that they are in Australia. Over the course of time you can see the nature of the work may change; they may have a road contract here but then a road contract starts somewhere else or a power line contract or whatever. Providing the overall requirements of the 457 visa are being maintained by the employer we are quite comfortable about that. What we want to do is to ensure that, if a company on advice from the relevant state department actually needs people right now to get them here quickly to help with flood recovery, we are able to provide those people as quickly as we possibly can.

Mr Kukoc—May I just add that the assumption that speeding up the process means that we are undermining integrity does not necessarily correlate.

Senator CASH—That was not what I was saying. If you are saying that that is a comment from me, that is not what I was saying.

Mr Kukoc—I am trying to understand the angle that you are coming from. All applications must meet existing criteria. All we are doing is concentrating effort in speeding up the process for these flood affected areas.

Mr Metcalfe—This is not a flood visa.

Senator CASH—No, that is exactly right.

Mr Metcalfe—It is specifically designed only for the flood recovery and for no other purpose. It is a standard 457 visa. There are thousands of employers who believe that they cannot find people in Australia with the right skills, or enough of them, and therefore need to bring workers from overseas. We are saying, ‘You know your business. If you are prepared to pay the price and to comply with the conditions, that is terrific. What we will do is get them here quickly.’

Senator CASH—Okay, so that is a good point of clarification. This was not specifically for people who have been affected by the flood in Brisbane?

Mr Metcalfe—The 457 visa applies right across the economy. The quick processing time applies for the flood affected aspect. Instead of us taking a bit under three weeks, we will guarantee that it will take a week or less.

Senator CASH—My point is that you cannot guarantee that you then have monitoring in place to ensure that the person who has been given the visa is actually working in the flood affected area, which defeats entirely the purpose for which the government has made this announcement.

Mr Metcalfe—I do not agree.

Senator CASH—There is one thing—

Mr Metcalfe—We will just have a difference of opinion. We do not have any reason whatsoever to believe that, where a company goes to the trouble of identifying that it is seeking to respond in this particular way, it would seek to gain an advantage of 11 or 12 processing days by pretending that it had workers coming to work on the floods when it did not. We accept that in good faith, and the vast majority of Australian employers are entirely honest with us in relation to these things. I would not see it as necessary for us to set up a large monitoring program to see why someone had gained an 11 day advantage in relation to the very large costs of bringing someone to Australia.

Senator CASH—So, in terms of the 11 day advantage, what are you saying the current processing time for 457 visas is?

Mr Metcalfe—On average, about 18 days.

Mr Frew—Median time.

Mr Metcalfe—So we are not talking about approving applications we would not otherwise have approved. We are not talking about a special flood program. We are saying that if you, as an employer, with the support of the relevant state department, need someone quickly, and they meet all the requirements and continue to abide by all the requirements, we will get them here quicker.

Mr Kukoc—May I add: this does not mean that, if the need arises later down the track, we may not need to implement a special compliance program for this exercise. It sits broadly within our risk management framework and risk theory. We need to come across some solid evidence that something wrong is happening in this particular task force's work which would necessitate a special consideration.

Senator CASH—What monitoring has been undertaken by the department to ascertain a demand for low-skilled workers in Australia?

Mr Metcalfe—Let me just make a broad comment. The department has done some work—you recall the scheme operated by the department of employment in relation to workers from a number of Pacific countries to enter—and clearly that work was based upon evidence and research. Through our compliance activities we continue to locate workers working in semiskilled or unskilled positions as well. Additionally, we saw clear evidence, prior to the changes to the 457 program, that some employers were seeking to use what was a skilled program for classifications of occupations that were semiskilled or unskilled. And of course we have an ongoing dialogue with industry, in the area of what we call labour agreements, to ascertain the particular level of work that is required. So there are a number of areas where we have some broad information in relation to the fact that employment in Australia for people below what you would regard as skilled labour does continue to be assessed as a need by some employers, either through the lawful use of visa programs or through the unlawful use of people's status in Australia.

Mr Kukoc—Also, we are certainly part of the broader interdepartmental consideration of that issue when it arises, but the right departments—the ones that actually can provide that advice—are Treasury and Department of Education, Employment and Workplace Relations. I would just note that we have a very large number of temporary visa holders, such as working holiday-makers and students, and we have hundreds of thousands of these visa holders in the country. They are predominantly working in unskilled and semiskilled occupations. So, for example—I would just add this for the record—during the peak of our levels of net overseas migration, in 2008-09, of 320,000, 70 per cent of those were actually temporary visa holders such as students and working holiday-makers, and, if working, they were mostly working in unskilled and semiskilled occupations, which means that there is a significant labour supply going on from offshore in that place.

Senator CASH—How many 457 visas were granted in 2009-10, and how many have been granted to date, and how many are subject to a labour agreement?

Mr Metcalfe—The annual report on page 2 has a table that refers to a number of areas of activity, and it reports that the number of subclass 457 visas in 2009-10 was 67,980. There maybe other parts of the annual report that provide further detail, but that is right up the front.

Senator CASH—And to date?

Mr Kukoc—We have just published the December report on 457, I think last week. It is on our website, and it contains very extensive statistics including trends. I can try to find the relevant statistic and come back to you later.

CHAIR—You can come back to us after lunch.

Senator CASH—That would be great. I can provide you with the details.

Mr Metcalfe—A lot of it is publicly available material.

Mr Kukoc—We have seen a significant increase in 457 applications in the last six months. There has been an increase of over 40 per cent compared to the previous year. When you compare the current rates to the trough of 2008-09, during the midst of the economic downturn, the applications have increased by 88 per cent. I think labour agreements cover only around 1,000 457 visa holders, and we have over 70,000 visa holders.

Senator BERNARDI—Where are partner visas processed now?

Mr Frew—Partner visas are processed largely in Australia. I will have to come back to you with the precise detail.

Senator BERNARDI—I understand they are processed in Brisbane. That is what I was seeking confirmation of—that that is the major processing centre.

Mr Frew—I do not believe that to be the case but I will come back to you.

Senator BERNARDI—How many officers of the department are involved in dealing with the partner visa program?

Mr Metcalfe—We will be able to check that and come back to you on it.

Senator BERNARDI—Mr Frew, are you able to tell me how long it takes to get a partner visa?

Mr Frew—The service standard for partner visas is that 75 per cent of visas will be granted within six months onshore, and offshore low-risk five months and high-risk 10 months. The service standard 2009-10 was 82.03 per cent for the first stage spouse visa.

Mr Metcalfe—I think it is fair to say that the processing time will vary depending on a number of factors, including where the applicant happens to be and their availability, if required, for interview with a departmental officer, and that may vary quite widely depending on the particular country.

Mr Frew also talked about high risk and low risk. There are some cohorts of applications where we have detected what we would regard as unacceptable levels of fraud—not that any fraud is acceptable—and where we would routinely apply greater integrity measures, which usually do involve interviews and other sorts of checking.

Senator BERNARDI—I will be specific about this. This has been raised by a constituent, and I will not mention his name on the record, who has a pregnant partner offshore seeking a visa. He has a migration agent and he was told in October that it would be four months or thereabouts for the granting of that visa. Now he has been told it is going to be eight or nine months. There is no suggestion that this is a high-risk applicant, albeit that it is offshore, but

there is a suggestion that the case load is so great that the department is having trouble processing it in a timely manner.

Mr Kukoc—In 2009-10, 75 per cent of partner cases stage 1 were approved within 175 days and partner cases stage 2 were approved within 171 days. In terms of the processing time, may I say at the outset that we are working within the planning range that the government of the day set for the family program. You would probably be aware that for a number of years successive governments have endorsed this ratio principle of two-thirds skilled and one-third family within the migration program. We have to work within the planning levels. The planning levels may be lower than the demand in the family part of the migration program and that could then reflect on the client services standards.

Senator BERNARDI—If I understand you correctly, you are suggesting there may have been a redeployment of resources from the family partner visas to other aspects of the program.

Mr Kukoc—That is not what I was saying. I was saying that we have a planning range—for example, for 2009-10 it was around 50,000 to 55,000 for the family program; for partners it was maybe less. We have a planning range within the migration program. We have to operate within that planning range. We cannot grant more visas than the government of the day accepts will be in the migration program as part of the family program.

Senator BERNARDI—There is a cap on it?

Mr Kukoc—There is no cap, and that is another issue. Successive governments have not introduced any legal powers for the department to cap visas, especially in the partner category.

Senator BERNARDI—If there is a planning range, that has to put a cap on it, doesn't it?

Mr Metcalfe—Perhaps I could assist. The word 'cap' is a term within the Migration Act. It means a formal legal number, and once that number is reached the department is prohibited from granting a visa. Our use of the word 'cap' is slightly different to the word that you are using. There is a planning range and the department, by requirement of government policy, is unable to grant more visas than exist within the planning range, but there is no formal legal cap in place.

You mentioned that your constituent's wife is pregnant. We are obviously sympathetic to particular compassionate circumstances and seek to work with our clients in relation to those. I suggest that the department get in touch with your office following estimates today and get some details from you. I will undertake that we will look at the case to see how we might be able to assist.

Senator BERNARDI—I appreciate that, but I am still struggling with the sophistry: there is no cap but there is a planning range which you are unable to go over.

Mr Metcalfe—There is no cap within the legal definition of the Migration Act. But, in terms of normal language, there is a planning limit, which you might call a cap.

Senator BERNARDI—There is bureaucratic doublespeak.

Mr Metcalfe—It is very, very bureaucratic, and I am sorry, Senator.

Senator BERNARDI—Okay, thank you for that.

Senator TROOD—I have two issues I want to raise. They are unrelated. The second one I will raise after lunch. Mr Metcalfe, my first group of questions relate to individuals who come to Australia, not necessarily asylum seekers but individuals who come for tourism or business reasons—general visitors to Australia—who in some way or other raise security issues for the Australian government. Do you have any statistics on the number of occasions security issues are raised in applications for visas in the tourist category or any other general category, independent of those who come for asylum?

Mr Metcalfe—I will check. Perhaps after lunch, I will be able to let you know whether we keep or publish those statistics. The number would be very small. Of course, those are based on a decision by the Australian Security Intelligence Organisation that the person should not be granted a visa for reasons of security. I do not have the officers at the table, but I will check during lunch and respond after.

Senator TROOD—Is this an area where you may need another officer? I have some further questions.

Mr Metcalfe—I will ask McCairns and Mr Allen to come to the table. Between us we should be able to respond to the questions. Could you repeat the question?

Senator TROOD—Do you keep statistics on when an applicant for a visa to Australia needs to undergo some kind of security check?

Mr McCairns—I do not have the global figure with me. I will endeavour to get that to you either today or on notice. In terms of the number of visas granted and the number of security checks that would be of an adverse nature, it would be an incredibly small number in the day-to-day applications for visas.

Senator TROOD—You do keep statistics on the frequency with which visa applicants raise security issues.

Mr McCairns—I do not have them with me.

Senator TROOD—I understand that. I presume you also have statistics on the frequency with which a visa might be rejected for security reasons. I presume you keep those statistics as well.

Mr Metcalfe—They are effectively the same thing, or are you drawing a distinction?

Senator TROOD—I assume there are occasions when a security issue is flagged but the person may pass the security concerned.

Mr Metcalfe—Let me describe the process.

Senator TROOD—I was going to ask you to do that. I would like to understand how this operates.

Mr Metcalfe—I am sure you are aware that Australia operates a movement alert list, which contains a person based database, a biographical database as well as a database of passports that are known to be lost or stolen, or fraudulently issued to the best of our knowledge. One of the contributors to that database is ASIO and there are a number of other contributors, including ourselves. The movement alert list contains the details of some

persons who might be of a security concern or where there is an alias or other known name that might be of relevance.

The movement alert list is checked in relation to every visa that is granted for Australia. If there is a match or a possible match and it is flagged as a security issue then the matter is referred to ASIO for further advice. In addition to that procedure, and without going into significant detail on an issue of security, applicants from certain parts of the world are not only required to be checked against the movement alert list but are required to be checked in more detail by ASIO. In those particular situations the department, again, relies on advice from ASIO as to whether there is a security concern.

If an adverse security assessment is provided in relation to a person then there is an inability to grant a visa for that particular individual, therefore, there is no issue of the visa or the security concern being overridden, the visa just is not granted in those circumstances. The numbers of those, as I have said, I would expect to be very small given the many hundreds of thousands or millions of people who come here on visas each year, but we will endeavour to give you some statistics later today.

Senator TROOD—Mr Metcalfe, if a person is not on the movement list or is not from a country about which we might have some concerns would they not necessarily come to attention for security clearance?

Mr Metcalfe—That is correct and that is according to the procedures prescribed in the security checking manual, which is the document that governs these arrangements.

Senator TROOD—Could you tell me, are members of Hizb ut-Tahrir in the UK, generally speaking, on the clearance list?

Mr Metcalfe—I would have to check. That would be an issue for ASIO. I am not sure whether ASIO would be prepared to disclose which organisations or which members may or may not be subject to their concerns.

Senator TROOD—Perhaps you cannot answer this, but I am interested in the arrival in Australia for a conference last year of members of Hizb ut-Tahrir in the UK. The conference was entitled ‘The struggle for Islam in the West’ and was held in Sydney in July 2010. My understanding is that two sheikhs, who are members of Hizb ut-Tahrir in the United Kingdom, Burnham Hanif and Salim Atchia, came to Australia to participate in that conference and they were, I assume, given visas for that purpose. Are you familiar with those cases?

Mr Metcalfe—I am not familiar with them, Senator. I will need to inquire into that. As I indicated earlier we rely upon ASIO for advice and activity in this area.

Senator TROOD—So you cannot tell us whether or not there is any general alert in relation to members of this organisation.

Mr Metcalfe—I would have to check with ASIO and, Senator, as I just flagged, I am not sure whether they would be prepared to disclose that information. They may be or they may not. It would go to an issue of their own security arrangements.

Senator TROOD—These gentlemen attended the conference and, from the accounts that I have received, sprouted what I would regard as fairly ugly remarks, which might be seen on one view to be inciting violence and certainly acted in ways which were inconsistent with

what I understand to be the Australian government's policy on a range of foreign policy issues. I would be a bit surprised if they had not come to your attention and to the attention of ASIO. I am concerned that ASIO may not have been advised of their attendance at the conference.

Mr Metcalfe—I will check on all of this, Senator. I think it is safest if I do not make any remarks. There is always the possibility that, even though someone is not seen as a security threat by ASIO, their visit may be seen as controversial on the basis that it may incite discord or disharmony in the Australian community. The provisions of section 501 of the Migration Act, which relate to the character provision and controversial visitors, may be relevant as well. I will check on the circumstances and I will endeavour to give you as full an answer as I can.

Senator TROOD—Could you tell me whether an individual who may advocate the military destruction of Israel and regards it as illegitimate and who endorses militant campaigns against foreign troops in Afghanistan and Iraq would necessarily be, or would be likely to be, people whom we would not want to have in the country?

Mr Metcalfe—I just do not think it is safe, given that I and my officers are in decision-making roles in relation to this issue, to proffer an opinion without having the full facts of the circumstances. Long experience has shown me that there may well be different perspectives on these issues. I hear what you say and I am happy to come back to you on notice.

Senator TROOD—I hope you agree with me that these are very unattractive remarks to be making. They are not positions, I think, that many Australians would agree with.

Mr Metcalfe—They are certainly not remarks that we would endorse.

Senator TROOD—And they are rather provocative, in fact. Having people come to Australia to espouse these kind of views I would have thought was not necessarily something that the Australia government should be supporting. If you would look at those matters for me and come back to me after lunch, I would be very grateful.

Mr Metcalfe—You have now taken this into a level of detail that may require further checking. If I can come back to you today I will, otherwise I will take it on notice.

Senator TROOD—I realise I have asked some very specific questions about a very particular meeting, but if you could provide me with the statistical information I asked for earlier—that may be easier to come by—I would be grateful for that.

Mr Metcalfe—I think there are probably two or three levels to the question: one is the statistical information; the second relates to whether those particular individuals or that organisation were somehow identified as being of persons who would be regarded as adverse to Australia's security interests; or, thirdly, whether there may be some other ground under the migration legislation for consideration as to whether a visa should be withheld.

Senator TROOD—Among those questions, can you ensure that you advise me whether or not ASIO undertook a check of these individuals prior to them being granted a visa.

Mr Metcalfe—I will take that on notice as well.

Senator TROOD—I have just one last question, which is very general. If an individual's appearance in Australia or arrival in Australia creates a security question but they are nevertheless permitted to come, does the department ever impose restrictions on their activities or is it a case that if they are here they are here for all purposes?

Mr Metcalfe—It is open to seek to place restrictions or to ask the person to give undertakings in relation to their activity in Australia. That has occurred in the past as well.

Senator TROOD—Thank you.

Mr Metcalfe—As we are approaching lunchtime, with the chair's agreement I might just ask if one of the officers could get the precise details of the names from you so we can ensure our checking is done as quickly as possible. I am happy for Mr Allen to approach Senator Trood during the lunchbreak and just get the precise details of the names.

Senator TROOD—That is fine. I will come back with my other issue later on, if I may.

Proceedings suspended from 12.29 pm to 1.30 pm

CHAIR—We are on outcome 1.1. Senator Cash, I think you were the senator asking questions.

Senator TROOD—I have another issue, but I am happy for Senator Cash to proceed with some questions.

Mr Metcalfe—I can help in relation to one aspect of what we were discussing with Senator Trood. I have some information on it.

CHAIR—Let us have your response.

Mr Metcalfe—I can deal with that.

CHAIR—Then we might finish Senator Trood's questioning and then go to Senator Cash.

Mr Metcalfe—Thank you, Chair. Before lunch Senator Trood asked me for details of the numbers of non-boat arrival cases that may have been subject to an adverse security assessment. I am advised that just under 40,000 visa security assessments were undertaken by ASIO in the 2009-10 financial year. That resulted in 14 adverse security assessments being provided for non-IMA cases.

Senator TROOD—Can I ask a question or two about that information.

CHAIR—Sure; you finish your questioning. When you are totally finished we will go to Senator Cash.

Senator TROOD—Thank you. Mr Metcalfe, were those adverse assessments the result of ASIO taking up these issues without necessarily having them referred by your department?

Mr Metcalfe—No. As I mentioned before, the process is that—

Senator TROOD—I think I understand the process.

Mr Metcalfe—For certain countries ASIO are a routine part of the visa assessment process. For nationals of certain countries, as part of the visa decision-making process the application is referred to ASIO to see if they have a view. That occurred in just under 40,000 cases in 2009-10, and that resulted in ASIO saying to us that 14 were of concern to them.

Senator TROOD—If they say that, is that the end of the matter?

Mr Metcalfe—The visa will not be issued.

Senator TROOD—Then no visa is issued.

Mr Metcalfe—There is a public interest criterion in the migration regulations that essentially means that a person cannot be granted a visa if there is an adverse security assessment.

Senator TROOD—Is the list of countries a confidential list?

Mr Metcalfe—It would be included in the security checking handbook. I will have to check whether those countries are public or whether they are confidential.

Senator TROOD—If they are not—if the list is not confidential—I would be grateful if you could tell me whether or not the United Kingdom is on that list.

Mr Metcalfe—I think it would sort out a lot of work if I confirm that the United Kingdom is not on that list of countries where there is an automatic check.

Senator TROOD—My instinct is that it would be passing strange were it to be so, but strange things happen these days.

Mr Metcalfe—It is worth checking and someone will tell me if I am wrong, but last time I checked the UK does not have an additional security checking requirement.

Senator TROOD—Generally the citizens from the United Kingdom are reliable.

Mr Metcalfe—They are from most countries.

Senator TROOD—I have another matter. I just need to find my notes. I did not expect to be given the opportunity so quickly. I need to find the relevant piece of paper. Perhaps while I am doing that, Mr Metcalfe, I will say that this relates to the APEC Business Travel Card scheme. Can you confirm for me that your department manages this.

Mr Metcalfe—Yes we do. The APEC business travel card is essentially a pre-approved visa facility for the vast majority of APEC countries. It is a scheme that Australia has championed through APEC councils over several years now. Essentially the card contains a photo identity and personal details, including a passport number of the holder. On the back of the card it provides details of which countries have given visa pre-approval for that particular traveller. It means that, instead of having to apply for a visa for that country, it actually has that pre-approval provided.

Senator TROOD—From an Australian perspective, can you tell me how many cards have been issued?

Mr Metcalfe—I will have to see if we have that knowledge here.

Senator TROOD—While you are checking on that, I would also like to know what percentage of the overall cards issued are Australian cards? If you could provide that information please.

Mr Metcalfe—Mr Frew might be able to provide some assistance here.

Mr Frew—I do not believe I have the total number of cards, but I will get that shortly. I can tell you that the Australian cards are about 30 per cent of the total APEC card complement.

Senator TROOD—Thirty per cent?

Mr Frew—Correct.

Senator TROOD—My understanding is that the criteria for the issue of the cards were changed last year. Is that correct?

Mr Frew—There is still some discussion to occur regarding the changes to the criteria before the eligibility is absolutely settled.

Senator TROOD—I understand there was a review taking place, Mr Frew.

Mr Frew—I am sorry; they were introduced in June and it is now under review.

Senator TROOD—Yes, so there were changes of criteria in June 2010? Is that correct?

Mr Frew—Yes.

Senator TROOD—Why was that review undertaken? Why were the criteria changed?

Mr Frew—As Mr Metcalfe just explained, the card is used by each of the APEC economies. All of the economies are looking at the value of the card to their own national interest, as you would imagine. Some of the countries choose to keep the threshold by which people are eligible for the card at a very high level. There was a view in some quarters that the Australian threshold was not as high as was appropriate, given the way that some of the other countries were dealing with it. Perhaps for this reason the number of Australian cards was disproportionately large across the entire group. It is worth mentioning that although the card is granted to an Australian citizen, there is then a process by which all of the subscribing countries in the APEC economic group either do checks or grant visas to that card. Each card is checked by I think 18 or 19 economies. Take for example Papua New Guinea, which has a very small number of card holders itself but is doing an enormous number of checks for other countries. There was discussion about a better balancing arrangement, hence the change to the criteria.

Senator TROOD—So your department decided that the criteria should be adjusted in light of these concerns. Is that right?

Mr Frew—It was not a decision of our department so much as a decision reached at the APEC meeting by the business mobility group, which is the representative of the agencies of each government that control the card.

Senator TROOD—I want to understand why the review took place or why the criteria were changed. Did the APEC group essentially say to Australia, ‘You have too many cards on issue and you have to tighten up your criteria.’?

Mr Frew—As I understand it there were discussions in the APEC group that noted that we were dominating the scheme with 30 per cent of the cardholders. There was discussion about what our threshold criteria were as compared to the other countries’ threshold criteria.

Senator TROOD—There are some standard criteria, aren't there? It is open to other countries to add criteria if they choose to do so.

Mr Frew—Yes it is.

Senator TROOD—My understanding is that we did not have additional criteria. Is that correct? We do now have additional criteria?

Mr Frew—There were criteria—I am sorry I do not have the original arrangements in front of me but there were criteria determining that people in Australian business of a certain level in the business could have an APEC business travel card. In June it was changed to make it a smaller number of people within the business. Your question before about the number of cards; there are 90,000 APEC cards in circulation.

Senator TROOD—So we have 30,000—one-third approximately?

Mr Frew—I am doing quick maths. It might be closer to 25 per cent.

Senator TROOD—Are these cards which are current? They are only for three-year terms, aren't they?

Mr Frew—Yes, correct.

Senator TROOD—So are these approximately 30,000 cards that have been issued or that are now current? Can you tell me?

Mr Frew—I cannot tell you. I am imagining that it is 30 per cent of the total cohort currently. Sorry; 20,000 Australian cards exist out of a total of 90,000.

Senator TROOD—So they are current cards, are they?

Mr Frew—Correct.

Senator TROOD—Do some of these relate to the new criteria?

Mr Frew—I cannot confirm that, but I would imagine so.

Mr Metcalfe—Yes.

Senator TROOD—Those who were issued with a card for a three-year period under the old rule and which have not expired have continued—is that right?

Mr Frew—That would be the case.

Senator TROOD—So they would only be denied a card if they applied again, their original card having expired, and you decided that they did not meet the rules? You would deny them a card—is that right?

Mr Frew—I believe so, but I might have to take some advice on that one.

Senator TROOD—Please do that. Where in the department was the decision taken about the new rules that were to apply?

Mr Frew—The department is represented on the APEC Business Mobility Group—indeed, we are the chair of that group—and it would have been a decision that came out at the APEC section, following discussions at the mobility group discussion.

Senator TROOD—The APEC mobility group is part of your—

Mr Frew—The Business Mobility Group is a group made up of all of the APEC economies. It contains, if you like, border and related agencies from each of the economies that, amongst other things, talk about the governance of the card arrangement and a range of other, broader matters.

Senator TROOD—Were these new criteria and these new rules established by the Business Mobility Group? Is that right?

Mr Frew—Correct.

Senator TROOD—We were advised of the results of these deliberations and we were told. I presume we had some contribution to make, but the group said, ‘This should be the criterion,’ and we accepted that. Is that right?

Mr Frew—That is my understanding.

Senator TROOD—Did you speak to any of the business councils or the business groups? Did you speak to anybody in Australia who had an interest in these matters before that decision was taken?

Mr Frew—I would have to take advice on that. I am sorry; I do not know the answer.

Senator TROOD—I would be grateful if you would, because my understanding is that this decision was made without consultation. None of the usual groups that one might have expected to have been consulted, the Australian commerce and business groups—for example, the Australia China Business Council, the Australia Indonesia Business Council and all of those councils that are bilateral councils—were consulted in relation to these changes. Would you know whether that is true, Mr Frew?

Mr Frew—I understand that there is a review going on at the moment. I am not sure to what extent the—

Senator TROOD—That may be, and I am hoping that you will tell me in relation to that view that in fact you are consulting widely with those who have business interests in this matter—which is a large section of the Australian business community. What I am interested in at the moment is the extent to which you consulted with business interests with regard to the original decision.

Mr Fleming—My understanding is that at the time the changes were made there was not consultation. We are about to move into consultation.

Senator TROOD—Why was there not consultation?

Mr Fleming—I am not sure. I would have to take that on notice and get back to you.

Senator TROOD—Do you think it might have been prudent to have consultation?

Mr Fleming—We are just about to undertake consultation to review it.

Senator TROOD—Mr Fleming, as I understand it, there are 20,000 cards now. I am told there were about 30,000. You changed the criteria. The reason why so many of these cards are issued to Australians is that they use that. They are valued and they are used actively in the region. I would have thought it would have been at least a threshold question that you might

have consulted with business interests before you changed the criteria. You have actually changed them quite significantly, haven't you?

Mr Fleming—They are reasonably significant in terms of the level in the company that the applicant has to be at and the sort of volume that the business does. Ideally, yes it would be good to be able to have these consultations ahead of making changes. It was complicated in this case by the fact that it is not Australia's decision alone. As Mr Frew has explained, the APEC Business Travel Card requires decisions and participation by a number of countries.

Senator TROOD—I understand that and I think it is important to maintain the integrity of the scheme, and consultation is a critical part of that. But I cannot see why it was beyond our capacity to accept the advice that we received and then say, 'We will undertake some inquiries amongst our own business people and then make a decision.'

Mr Fleming—As I said, I am not sure why that did not happen ahead of the decision being taken. I will take that on notice.

Senator TROOD—Was it beyond our capacity to be able to say to the business mobility group: 'Look, we understand your point. We are prepared to consider typing the criteria. We will consult about it.' Was it beyond our ability to delay the decision by a couple of months before a consultation process was undertaken?

Mr Fleming—I am not sure of that level of detail or discussion—

Senator TROOD—Perhaps you would look into that for me Mr Fleming.

Mr Fleming—I will take that on notice.

Senator TROOD—My understanding is that the business community is very exercised about this. I think the point to be made is that the criteria were perhaps, on one view, generous. They have been tightened to such a point where there has been something in the vicinity of a third of applications rejected. They have been tightened to such a degree that a third of the people who previously held the cards are now not entitled to receive those cards—something in that vicinity.

Mr Metcalfe—Those are all good questions. To be fair to Mr Fleming, he was not with the department at the time this occurred last year. He was with the Prime Minister's department. So he is operating on the basis of a broad knowledge, I suspect, in the lead-up to the review. But we can certainly undertake to look at the reasons for the decision and the change to the criteria.

As we have explained the card is not the sole gift of Australia; it is a sort of board comprising all of the APEC economies. As Mr Frew explained, there clearly was sensitivity that Australia was dominating the use of the card. Having said that, of course the whole idea of the card is to promote travel within the APEC economies and to assist business, so our starting point—and in fact it was an Australian idea to establish the card—is to ensure that business people are able to travel simply and to use fast lanes at airports and that sort of thing.

The review that is now underway does provide an opportunity, albeit after the fact, to see whether we can go back with substantive information to the other economies. I am interested to hear that there is a lot of disquiet in the business community. I do not recall having received a single phone call or representation about this matter myself, and people are usually very

ready to get in touch with me if they have an issue with something. I certainly know the heads of the major lobby groups and business groups. Having said that, I accept that there is concern, and clearly the tightening up of the criteria has impacted on people who previously would have had access to the card. We will investigate those matters and provide advice to you.

Senator TROOD—Thank you. On just one other matter: did you, having changed the rules, seek to advertise the fact that you had changed the rules?

Mr Metcalfe—We will have to check on that as well.

Mr Fleming—As business cards come up to expiring, we contact the holders and advise them that they are going to expire and ask if they want to apply for a new one. At that point we were advising applicants of the changes to the criteria before they lodged a fresh application.

Senator TROOD—I would hope you would do that, but did it not occur to somebody in the department perhaps to have a general advertising campaign or a note to the business councils or key peak bodies saying: ‘The rules have changed. These are the rules and you might like to tell your members about this.’ Did you think about doing that?

Mr Fleming—I will have to take on notice whether anything beyond those individual cases was done.

Senator TROOD—Perhaps you can take it on notice. My understanding is that you did not do that either.

Mr Metcalfe—We will include that in our response.

Senator TROOD—It seems to me to be, frankly, a failure of communication with an important part of your constituency. You have a large advertising budget. You advertise all sorts of things in relation to the activities of the department, which I do not have any particular objection to. But I would have thought when you change the rules quite significantly, tighten them up so that something in the vicinity of 20 or 30 per cent of those who are recipients are now ineligible, it would have been not an unreasonable proposition for you to advise at least the peak councils of the fact that the rules had changed. If that did not happen, I would like an explanation as to why it did not happen.

Mr Metcalfe—We will include that in our response.

Senator TROOD—A review is taking place, Mr. Fleming. Is that correct?

Mr Fleming—We are just about to launch interconsultation with business that will inform us more broadly about APEC Business Travel Card and also focus on the particular issue of the impact of the changes.

Senator TROOD—Who is undertaking that review?

Mr Fleming—It will be done outside of the APEC section which now sits in my division.

Senator TROOD—Will it be done by your department? By an individual or a group of people within the department?

Mr Fleming—We will settle a list of peak bodies and others to consult, and you have mentioned several of them, and write to and discuss with them. It is just a couple of people.

Senator TROOD—Does the group within the department that is taking the review intend to consult with the business community?

Mr Fleming—That is correct.

Senator TROOD—Have any steps been taken to do that?

Mr Fleming—Not yet. We are just settling a list of people and the correspondence we will write to them and then contact them. It is just about to begin.

Senator TROOD—When do you expect that to happen?

Mr Fleming—I expect letters to probably go out later this week.

Senator TROOD—Mr Fleming, when do you expect the review to be completed?

Mr Fleming—I am not sure. I will have to take that on notice.

Senator TROOD—Can we talk generalities? Middle of the year or the end of the year?

Mr Fleming—A matter of a few months.

Mr Metcalfe—One thing I do think we will also have to consider through this process is that I understand from some financial monitoring that the actual cost of the card is being substantially subsidised by the department. In other words, normally we provide this sort of facility on a fee for service. What it costs us to provide is what the application fee is. We have recently undertaken a review of those areas in the department where we provide those services. My understanding is that the APEC Business Travel Card scheme is substantially underfunded in meeting its own costs, and that is another aspect, I suspect, that the review will need to take account of.

Senator TROOD—I do not have any difficulty with that being part of it.

Mr Metcalfe—I thought I would put it on the record.

Senator TROOD—The point is that with whatever changes you are making, they are changes that should be made in conjunction with the business community, and consultation is highly desirable.

Mr Metcalfe—That is our normal modus operandi. I have agreed that we would come back to you on notice.

Senator CASH—I would like to move to the Commonwealth Ombudsman's report entitled Department of Immigration and Citizenship *Proper process for challenging a tribunal decision 2011*. I will read a paragraph from page 2 of the report entitled 'failure to follow the appeal process':

Agencies are bound by the decisions of courts and tribunals in cases like this, and must follow an established process to challenge them through the courts if they think they are wrong. This allows for independent review of decisions in a forum that allows each party to know the case they must make and to argue in support of the decision they are seeking.

... ..

DIAC's request to the Tribunal that it reconsider its own decision was contrary to the established system of review decision and was inappropriate in the circumstances.

Mr Metcalfe, you are aware of the report?

Mr Metcalfe—I certainly am. I must say that I was disappointed when I read about this particular case. It is not our practice, and to my knowledge this is the only case out of the many hundreds, if not thousands, where such a thing has occurred. In making an opening comment I certainly welcome the report. I note the department has accepted the Ombudsman's recommendations and indeed a significant amount of work has been undertaken to implement the recommendations to make sure that this does not happen again.

Senator CASH—Thank you for that, Mr Metcalfe. Upon what basis did the department determine that it would not apply for a review of the decision but would instead go back to the tribunal and ask the tribunal to reconsider its decision in light of the fact that this is completely contrary to what is a longstanding established process?

Ms Hardy—As I understand it, the reason the department did not go back and lodge a judicial review of the application was that it was simply out of time, and that was partly as a result of the decision not making it back to the original decision maker in Cairo until just before the expiry period for the appeal period.

Senator CASH—Ms Hardy, do you agree with the findings of the Ombudsman, because I have to just say that what I heard from you was an excuse—

CHAIR—Senator Cash, you cannot ask witnesses at the table for their opinion on matters of policy or decisions. You can only ask them to provide you with factual information.

Senator CASH—Thank you, Madam Chair.

Mr Metcalfe—You asked a specific question about why we did not appeal it to the courts and the answer Ms Hardy gave was that consideration as to that effect was not really relevant because there is a statutory time limit on when an appeal can be lodged and it had already gone past that statutory time limit.

Senator CASH—Why did the statutory time limit expire—what went on or did not go on?

Ms Hardy—As I said, part of the problem was that by the time it took the decision to actually reach the decision-making office, which was in Cairo, the appeal period had almost expired. Having said that, the department has acknowledged the wrongdoing by the department and has accepted all the recommendations. In fact, we have already done quite a lot of work towards redressing the situation that arose to try to make sure this does not happen again.

Senator CASH—The Ombudsman, Mr Asher, states in the report:

It is concerning that this action may have been an attempt to avoid a Tribunal decision that DIAC disagreed with but had not challenged appropriately.

Do you have any response to that comment by the Ombudsman?

Ms Hardy—Not at all. As I said, part of the problem was that what the department should have done was appealed the decision in the appropriate way. Because the appeal period had expired, the department did have concerns about the validity of some of the evidence and

sought to inappropriately, as the Ombudsman pointed out, approach the tribunal to have that decision reconsidered. As I said, steps have now been taken to make sure that that does not occur again, to clarify the circumstances where it is appropriate to approach the tribunal—this is not one of them—and to make sure that departmental staff are well aware of the time limits and their obligation to lodge appeals in the appropriate time.

Senator CASH—Can you advise me as to what steps have been taken by the department in response to the Ombudsman’s findings?

Ms Hardy—In relation to the first recommendation, we have updated policy guidance on judicial review of tribunal decisions. That occurred as at 1 January 2011. A MOU between the department and the MRT and RRT is being prepared. It is due to be signed in March. It will include guidelines on how to approach the tribunal and a systemic approach for bringing tribunal decisions to the early attention of decision makers, exploring the practicality of electronic communication of tribunal decisions and implementing a monitoring mechanism to oversee the implementation of tribunal decisions. We have developed a quality assurance tool to sample MRT remitted applications to be rolled out to the offshore network by late 2011 and advised regional directors of their responsibility to monitor and ensure timely processing of MRT remits within their jurisdiction. That is just in relation to recommendation 1. I can continue. There has been a lot of work done. Would you like me to continue?

Senator CASH—Perhaps you could provide on notice the steps the department has actually taken. That would be greatly appreciated. At the end of the day the department does accept the Ombudsman’s findings that the established process was not followed in this case.

Mr Metcalfe—Our office in Cairo just got it wrong. It was a case that related to a spousal relationship. Clearly the officer was of the view that the tribunal perhaps did not have certain facts at its disposal or had erroneously made the decision and sought to argue the point. That is simply not on. We have made that clear. As I have said, there are thousands of decisions every year that are taken in the situations and this is the first that I can recall where this particular event occurred. I am not trying to make an excuse that we make thousands of decisions and we have got hundreds of officers in dozens of countries around the world, but when this matter came to notice, it was promptly dealt with. The lady and the children involved are now in Australia—they have come here on a partner visa—and department has undertaken extensive work and is working closely with the Ombudsman. We welcome the report. We are disappointed that the department in this particular decision made this mistake and we are doing everything we can to ensure that sort of thing does not happen again.

Senator CASH—Thank you very much, Mr Metcalfe.

Ms Hardy—Can I just add that we also instigated our own inquiry internally, with my colleague, Mr Vardos, at the head of that. There were two additional recommendations that came out of that. So we have responded, I think, very well.

Senator CASH—Is that an internal document? Can the findings be made available to the Senate committee?

Mr Metcalfe—I would be happy for Mr Vardos or Ms Hardy to explain what those couple of additional recommendations were.

Ms Hardy—The department's response, including Mr Vardos's inquiry and the two recommendations, is actually attached to the Ombudsman's report, which has now been published on their website. That is all included in that.

Senator CASH—Thank you very much. I am going to turn to a different set of questions now in relation to Indian students. It is recognised that there was a significant drop in the number of Indian student visas that had been issued. To what does the department attribute the significant drop in the number of student visas for Indians being issued?

Mr Metcalfe—Mr Kukoc is the expert on this area, so I will get him to help you.

Mr Kukoc—There has been a range of reasons for the drop in student visa applications for the Indian cohort. First of all we need to understand that there has been a huge increase in the value of the Australian dollar. In the last few years the increase is over 50 per cent. That has increased the price denominated in American dollars for education courses. That was one factor. The second factor was, obviously, the improvement in the integrity regime that the department has applied in certain markets, including India. That has included more interviews and more in-depth assessment of the genuineness of students. That has also contributed to discovering more cases where we concluded that the students are not genuinely coming to Australia to study but are coming for different reasons, including to stay here permanently or to work predominantly. There was also an increase in competition from other countries.

So a range of factors have contributed to the drop, particularly in the Indian market. I would say that this range of factors has also contributed to an average drop in student visa applications across the board—which was, we know, in 2009, around 18 per cent. It appears that this decline trend in student visa applications has stabilised and has flattened out. It is still too early to tell, but we have seen some indicators that shows that this may have stabilised and may pick up in the next financial year, particularly after the government's changes to the assessment levels of some key markets, including India and China.

For example, in the December quarter last year we saw an increase in student visa applications of 42 per cent compared to the third quarter, the September quarter. Normally every year we see a strong increase in the fourth quarter, which is the key quarter, compared to the third quarter of the financial year. But we have not seen this significant increase of 42 per cent for a number of years now. The other important information is that applications showed a small increase in student visa applications in January this year compared to January last year. So it is still too early to tell, but I would suspect that we have stabilised the situation and the situation may pick up. In terms of the Indian cohort, I would say, apart from the general factors that have affected all student visa applications across the globe, there were some serious integrity issues in the Indian market. The department has addressed this.

The other issue I need to outline is that that link between education and permanent migration that many intermediaries overseas have promoted seems to have influenced the Indian cohort of students a lot, particularly in the vocational education sector. India has a very high percentage of the vocational education student applications in the total applications. So there are a range of factors.

Senator CASH—I appreciate that. I have given you some questions in relation to student visa numbers during the break. Can you possibly take it on notice to provide, over the past five years to date, the number of students specifically from India that have applied for visas?

Mr Kukoc—I am happy to take this question on notice but I will just point out that we have recently published a very comprehensive student visa report. It is on our website. It contains detailed statistics on the last five years' trends across visa categories and subcategories, with grants, refusals and practically all the information there is. But I am happy to take this request on notice.

Senator CASH—I appreciate that, thank you. In terms of what was a significant drop in the number of Indian students coming to Australia, did the department conduct any analysis to determine the cost to Australia as a consequence of the drop in the number of Indian students?

Mr Kukoc—I do not think the department has done anything like that. I understand some private studies contracted by some stakeholders in the international education sector have outlined the possible economic costs of the drop in student visa applications. I would refer this question to our colleagues in the Department of Education, Employment and Workplace Relations. I would note that 2009-10 is still one of the highest years on record for overall visa applications. I think 2009-10 is similar to 2007-08, so we need to consider the fact that we are still on the long-term average growth trend line with student visa applications and that is clearly shown in our statistical publication. We have seen a huge increase, actually a spike, in visa applications particularly in India and particularly from the vocational education sector, happening only in the last two years to 2009-10. If there has been a decline it was a decline off the cliff which I suspect was a bubble created by a number of factors that did not lead to good integrity in either in the international education sector or in the skilled migration program.

Senator CASH—Could I briefly turn to the International English Language Testing System. The current English requirement for a 457 visa is that all primary sub-class 457 visa applicants who are sponsored by a standard business sponsor must demonstrate that they have English language proficiency that is equivalent to an IELTS test score of at least 5 in each of the four test components. Is that correct?

Mr Kukoc—That is correct.

Senator CASH—I have received numerous complaints, as I have travelled around Australia talking to stakeholders, in relation to those changes. They were the changes that were made on 14 September 2009. Obviously, prior to that applicants only needed to receive the average test score of at least five. Could you explain to the committee what was the policy rationale behind changing the test requirements and actually increasing them and making them harder for that particular group of people?

Mr Kukoc—I can only speak about what the government has announced as a policy rationale and just explain. That is mostly around the integrity and the exploitation of workers in the 457 category. The incidence of exploitation usually occurs at the lower skill level and with people who have a lower level of English. A lower level of English implies also that it would be more difficult for that person to understand a range of obligations and rights that that person has under the Workplace Relations Act and in the overall industrial relations

context in Australia. They would have a lower level of understanding and knowledge of Australia's occupational health standards. So there are a range of issues that may lead to that person being vulnerable to exploitation. As we know, those cases have undermined public confidence in the integrity of the overall 457 scheme.

Senator CASH—My understanding is that a score of at least five in each of the four test components of speaking, reading, writing and listening is actually a test that is suitable for students and educated professionals but not necessarily trade workers who come here to carry out a particular trade. Is the department aware of concerns in relation to the changes that were made on 14 September 2009?

Mr Kukoc—We have been aware of concerns that have been raised by some employers and some 457 applicants, but there is not a widespread concern. Overall, the system is working well. We are not hearing a huge number of complaints. I would just point out that for professionals and for students we quite often ask for IELTS level 6. For some professional categories, such as accountants, even the industry standards in that occupation are level 7. For level 5 we are talking about a vocational level. It is really basic. It is for a vocational level of English. We are not even asking for them to be competent; we are asking for a basic understanding. As I said before, the rationale for that is that, while we take the point that some tradespeople may not need English in their day-to-day work, the fact is that they work within Australia and they need to understand a broader legislative environment and understand the broader civic rights and polity to be able to protect their rights and access services in a range of areas. It also may have an impact on the rest of the community if they do not understand, for example, occupational health and safety standards. They do not work isolated. Even if the particular workplace is dominated by their own native language speakers, still they work within the broader context of the Australian labour market and workplace, with a range of standard that are in place, and they need to understand that.

Senator CASH—I do not disagree that they need to understand it, but it has been put to me that the changes that were put forward on 14 September 2009 have had the effect of knocking out people from certain countries who are quite capable of coming here under the previous English language testing requirements and carrying out their work quite safely and that this additional impost on them is not necessary and is having an adverse effect in that they are no longer able to come here. It is almost a way of keeping labour out of Australia by upping the English standard.

Mr Kukoc—We have not seen that impact under 457 application rates. As I said, these application rates are picking up quite strongly and from all the standard sourced countries that we have seen in the past.

Senator CASH—Some of the information that I have been given on the speaking test is that—this is the exact same test being used for academic purpose—the examinee must be able to speak fluently although they are not familiar with the topic, they must be able to give a two-minute presentation on the topic assigned after only one minute preparation and their knowledge of English grammar is tested. Is that part of the speaking test?

Mr Kukoc—I am not able to talk about the specific requirements under different levels of IELTS. I might ask my colleague Peter Speldewinde. He is the Assistant Secretary of the Labour Market Branch.

Mr Speldewinde—To assist the discussion, it might be useful just to outline how IELTS classifies somebody who is an IELTS 5 as opposed to an IELTS 6 and an IELTS 7. IELTS itself defines someone with IELTS 5 as a modest user who has partial command of the language, coping with overall meaning in most situations, though is likely to make many mistakes, and who should be able to handle basic communication in their own field. That is at the 5. As Mr Kukoc said, an IELTS 6 is a competent user who has generally effective command of the language despite some inaccuracies, inappropriacies and misunderstandings and can use and understand fairly complex language, particularly in familiar situations. An IELTS 7, which for our purposes we define as somebody who has superior English, is defined as a good user who has operational command of the language, though with occasional inaccuracies, inappropriacies and misunderstandings in some situations, generally handles complex language well and understands detailed reasoning.

Against that background, one of the things that we were very mindful of—and certainly the government was—was that at the time the changes were made we had gone through quite a dramatic change in the business cycle. Consequently, we were finding that the rate of transferral of people from a temporary 457 visa to the permanent employer sponsored visa was getting up very high. We were looking at around 80 per cent of the ENS, which is the permanent program, being people who were coming from the 457. As you know, once somebody becomes a permanent resident of Australia, they are free to pick up any occupation they like and they can live where they want. One of the concerns was to make sure that at least these people, particularly in a softening labour market, would have the best possible chance if they went on to PR to be able to compete for jobs in their fields.

Mr Kukoc—But the most important fact that Mr Speldewinde outlined was that IELTS itself describes level 5 as modest.

Senator CASH—On the decision to change the requirements, what evidence did the department have that the language testing prior to the 14 September 2009, where applicants required an average test score of at least five across the four test components, was not sufficient? What analysis had you conducted?

Mr Kukoc—Most of the incidents of exploitation that we came across during the investigation of sponsor monitoring and compliance were in the cohort of people who were on 457 visas in semi-skilled occupations and were from non-English-speaking backgrounds with a low level of English.

Senator CASH—You said in the course of the investigation.

Mr Kukoc—That was the investigation done a couple of years ago in terms of the risky cohorts of 457 visas where the exploitation occurs.

Senator CASH—Is there a document that you can provide to the committee that we can review?

Mr Kukoc—I would like to take this question on notice. There has been some analysis, particularly in 2008 and 2009. We need to dig up the information for you.

Senator CASH—That would be greatly appreciated. In terms of the business skills visa program, my understanding is that there is a review into this program. Who is actually conducting the review of the program?

Mr Kukoc—Again, I would like to refer this question to Peter Speldewinde.

Mr Speldewinde—The review is being conducted by the department as advised by the Commonwealth-State Working Party on Skilled Migration. The review process is similar to one that we have used a number of times in the last couple of years around a number of initiatives like the review of the migration occupations and demands list and the review of the points test. A public discussion paper was circulated. At the time of the expiry of the period for comment, which was I think about seven weeks long, we had 26 written applications from a number of bodies, including the Migration Institute of Australia. We will take those findings to the Commonwealth-state working party and then have another discussion because the bulk of the business skills program, in fact almost 97 per cent of it, is actually migrants sponsored by the individual states and territories.

The Commonwealth-state working party informed the discussion paper. We will take the findings back to the Commonwealth-state working party in the next few weeks and then a series of recommendations will be made regarding possible improvements to the program. We are still analysing the submissions themselves but the anecdotal evidence was that the program probably had drifted away from its initial intent. It was not delivering the sorts of high-value skills, technology transfers and export income which it was initially intended to do. It is on that basis that we will make recommendations to government. We have had an IDC of Commonwealth agencies with a stake in this to look at the paper. We will take those recommendations through the IDC and then back to government and the government can then decide which way it wants to play it.

Senator CASH—Was there any reason that the department was chosen to undertake the review as opposed to an independent reviewer, as has been done on previous occasions?

Mr Speldewinde—The program has been reviewed independently a couple of times in the last decade or so. What we were looking for basically was to try to get a handle on whether there were some serious integrity issues with it. It was an option to take it out to an independent reviewer, but the minister at the time elected to go—

Senator CASH—It has been put to me that it is Caesar judging Caesar. Why would you have the department reviewing a program that it itself—

Mr Speldewinde—I can understand that point of view being put forward. The department has simply sought to highlight a range of issues and we will look at what the comment is. A wide range of stakeholders have offered a view.

Senator CASH—At this point in time, how long is it taking to provide a skills assessment?

Mr Speldewinde—It varies from occupation to occupation. There are some occupations where the standard is a 21-day turnaround; there are others where it is now two or three months. It varies.

Senator CASH—Are you able to take it on notice to provide some additional information on the various skills categories and the time frames taken to provide the assessments?

Mr Speldewinde—Would the top 10 occupations do?

Senator CASH—That would be fantastic, thank you very much. The previous minister for immigration, Senator Chris Evans, referred to the Labor government's skilled migration policy as:

... a demand driven program designed to supplement—not replace—the local workforce when there are serious skills shortages.

He made the comment on 7 September 2009. Is the department able to provide statistical data showing the anticipated category of skill shortages and the number of skilled workers required for each category on an individual state and territory basis for the next five years, given the minister's comments?

Mr Kukoc—Senator, it would be difficult to provide a very detailed forecast of labour market shortages by occupations and skills over the next five years. If you asked an independent professional body, Skills Australia, that question they would probably tell you the same. That sort of planning or forecasting approach has not worked in the past. If, at any stage, that sort of approach was tried in the past, we tend to go overboard and produce occupations in larger numbers. That happened in the past with health professionals and IT. The best approach is to leave this matter to the labour market itself.

The government has shifted the emphasis of the skilled migration program onto the demand driven categories where, effectively, the employers themselves elect the occupations and numbers that they need for their business in the short to medium term. The number of employer sponsored skilled migration has actually doubled in the last two or three years from previously around 20,000 skilled employer sponsored places in the skilled migration program to over 44,000 last year. That was topped up with additional state migration plans where, effectively, states were asked to do some labour market analysis, talk to employers in regional needs and come up with a state migration plan with the overall size and occupations that they would need over the short to medium term. All state migration plans are now implemented except for New South Wales but we expect that plan to be implemented in February. We have allocated 24,000 places in the skilled migration program for state sponsored migrants according to the state plans. That, together with 44,000 places in employer sponsored category, makes the skilled migration dominantly directed or influenced by the real need from employers and states and regions. That is demand driven skilled migration.

In the smaller part that is left in the skilled migration, which is independent skilled migration, the department is governed by the medium- to long-term analysis from the independent professional body, Skills Australia, which broadly defines some occupations where there may be market failure in creating those occupations from domestic sources in the medium to long term. They are usually skilled occupations which require long lead times in gaining those occupations, lots of effort, occupations that are deployed in the actual job for the actual use and also occupations where any failure of the market will have significant social, community and economic costs for the country.

The third part of the skilled migration program, independent skilled migration, is governed by that analysis by Skills Australia, which is then translated to the new skills occupation list. The occupation list contains now only 183 occupations compared to a previous 400-something occupations that were on the old list. Note that employer sponsored categories and state sponsored categories have access to a wide range of occupations. The list of occupations for employer sponsored and state sponsored is over 400.

Senator CASH—Thank you for that. Chair, in the interests of time I am going to put the rest of my questions for this outcome on notice.

Senator PRATT—The WA state migration plan, I understand, was released on 14 December. Are you able to direct me to where I would find a copy of that plan?

Mr Speldewinde—The list of the occupations and the requirements are on the WA government's website. We can certainly get you the exact web address. In fact I think there is a link from our website also to that particular one. We are happy to take it on notice or provide you with the information later on this afternoon.

Senator PRATT—Okay. A number of links in the state government's website say that that part of the website will be updated once the plan is released. I understood that it had already been released.

Mr Speldewinde—Certainly the plan is in effect and has been in effect since about the middle of December, from memory.

Senator PRATT—It was 14 December.

Mr Speldewinde—We can certainly try and run that down for you.

Senator PRATT—So the plan takes the form of, in essence, occupations on that list that the state is prepared to sponsor?

Mr Kukoc—It is the memorandum of understanding between the Commonwealth minister and the relevant state and territory government minister, where the state outlines within the quota allocated—it could be a couple of thousand for Western Australia—a range of occupations that will be required over the next year. They can pick those occupations from a wide-ranging state occupational list, which combines the SMOL and also employer-sponsored occupations. I think there are more than 400 occupations. They can pick occupations that they believe there will be a shortage of over the next year, and within that allocation these applications will be prioritised.

Senator PRATT—Is the MOU a public document?

Mr Speldewinde—As I understand it, the MOU has not been put up on websites for public viewing. It is simply a standard agreement. The schedules to the MOU that detail the occupations and the numbers and the conditions for sponsorship are certainly up there.

Senator PRATT—Currently the state government's website refers, under 'Pathways to migrate', to employer sponsored visas and skilled workers, and under 'International Students and Holiday Makers' it is stated that more information will become available with the release of the State Migration Plan. As I understand it that has been released, so what information would people be expecting, according to that plan, to have been released?

Mr Speldewinde—Each of the state governments has its own style of describing the occupations. What somebody who is interested in state sponsorship could be expected to find on all of the plans is the range of occupations that are available for sponsorship. In the case of a number of states, they will also say how many people against the broader occupational groups they are interested in looking at and they will also say whether there are specific conditions attached to a sponsorship of someone in a particular occupation. For argument's sake, a state like Victoria might say they are happy to sponsor some cooks but they only need 20 and you must have IELTS7 and you must have five years experience for us to sponsor you. The states are at liberty to impose those sorts of conditions on sponsorship.

Senator PRATT—So the state can impose extra conditions. It says here:

Additionally, applicants will be required to have at least 18 months work experience in their nominated occupation after gaining their qualification. Work experience will need to be gained in Western Australia on a full time, continuous basis.

Is that an example of an additional requirement?

Mr Speldewinde—It is an example of one of the conditions.

Senator PRATT—How was the WASMOL constructed and who was consulted?

Mr Speldewinde—The list of occupations was developed by the WA state government using its own research. I think in the case of WA a large part of that research was based on work done by the Western Australian Chamber of Commerce and Industry. It varies from state to state. The process was that each of the jurisdictions provided their proposed research base to the department, we had a look at it and where we had some doubts we sought additional opinions from other expert areas like DEEWR. Once the methodology was agreed, the states sat down and applied that methodology to their various labour markets to come up with a proposal. WA for 2010-11 has been allocated 6,240 places, which is an increase on the grants under state sponsorship of WA in 2009-10 of 5,470. So they got a slight increase. The plans themselves were coming up for the midyear review. We will have a look at the performance of each of the jurisdictions, including WA. We will have conversations around what changes might need to be made for 2011-12, and then we will reach an agreement and those agreements will be put to respective ministers for sign-off. They will then form the basis of the next year's plan.

Senator PRATT—It was my understanding that there is an expected skills shortage in fabrication due to large projects such as Gorgon but that now the local industry is finding that most of that work is going offshore and is not being done locally, in local fabrication workshops. Is that the kind of information you would need to update and take account of, if that is actually true?

Mr Speldewinde—Certainly the state government would use information like that in coming back to us with a proposal for any variation on the plan for next year.

Senator PRATT—If the local industry is concerned about that, that is the kind of thing—

Mr Speldewinde—They should feed into the process—correct.

[2.38 pm]

CHAIR—Thank you, officers. We are now going to move on to outcome 2.1, refugee and humanitarian assistance.

Senator CASH—I will commence with the memorandum of understanding between the government of Australia, the government of the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees on migration and humanitarian cooperation. Could someone just take me through the part in the document that refers to the forced or involuntary return of unsuccessful Afghan asylum seekers?

Mr Metcalfe—Paragraph 9 of the memorandum of understanding states under ‘Areas of Cooperation’:

The Government of the Islamic Republic of Afghanistan, noting that voluntary return is always preferable, will readmit its nationals who are in Australia, as well as foreigners who are immediate family members of such nationals, who:

- (a) elect, on the basis of their freely expressed wish, to return to Afghanistan; or
- (b) are found not to be in need of international protection and not entitled to remain in Australia.

Senator CASH—Can I confirm that the words forced or involuntary return are actually not used in that particular clause of the document.

Mr Metcalfe—That is quite correct.

Senator CASH—However, the Australian government’s position in relation to clause 9 is that it does allow for the forced or involuntary return of unsuccessful Afghani asylum seekers.

Mr Metcalfe—It quite clearly allows for the return to Afghanistan of Afghans and immediate family members not to be owed protection by Australia. It talks about people wishing to do so and it talks about people who do not wish to do so.

Senator CASH—What is the department’s response, then, to the statement by Afghanistan’s Minister of Refugees, Jamaher Anwary, who says that the memorandum of understanding does not include anything about deportation. He says that reports of unsuccessful Afghan asylum seekers being forced to return home are ‘poisonous propaganda’.

Mr Metcalfe—I am aware of those media reports. I think, although I was not there, that the minister may well have been asked about whether thousands of Afghans were to be deported back home and he was saying that is not the case. As I have explained, paragraph 9 of the MOU, signed by the government of Australia, the government of the Islamic Republic of Afghanistan and by the United Nations High Commissioner for Refugees, does provide for people found not to be in need of international protection and not entitled to remain in Australia to be readmitted to Afghanistan. Certainly statements made following the media reports to the Australian government both in Kabul and in Australia, by the minister and by representatives of the Afghan government, have reiterated their support for the signed MOU in its entirety.

Senator CASH—Does that include, though, an acceptance that clause 9 absolutely provides for the forced or involuntary return of failed Afghani asylum seekers?

Mr Metcalfe—It is our understanding that the Afghan government agrees that the MoU provides for that to occur.

Senator CASH—As at February 2011, what numbers of failed Afghani asylum seekers have been turned to Afghanistan either voluntarily or involuntarily?

Mr Fleming—To date there have been three voluntary returns to Afghanistan and no involuntaries.

Senator CASH—No involuntary returns.

CHAIR—Mr Metcalfe, can you clarify for me that an involuntary return would be somebody who has been on a negative pathway and has failed to meet the refugee criteria and therefore under our policy and I think the previous government's policy they are returned. Therefore someone would be going back involuntarily essentially. They would not want to go but have not met the criteria, so they have got to go.

Mr Metcalfe—I think there are gradations of the issue. As we have often discussed here, very little is black and white; there are many shades of grey across this issue. It is certainly our strong preference that if a person is not owed protection by Australia, in other words that we have found them not to be a refugee, that has been confirmed by the merits review process that I am sure we will talk about later on wrong and if there are no court or other proceedings preventing their removal, it is our expectation that they will go home. Our normal preference, in fact always our preference, is to work with the person and have them accept that their interests lie in returning home. We never return a person if in our view that could be not done in conditions of safety and dignity for the individual concerned. On occasion, and indeed we have seen this in the past, there is provision for reintegration assistance or some form of assistance to be provided to people so that they would not be destitute when they return home but they can resume some form of normal life. If a person refuses to accept that their future lies in agreeing to go home, then it would be what you would regard as an involuntary return, where the person would be required to leave Australia. That is, clearly, where they are not willing to do that, so we put in place measures to effect their departure and their return home, pursuant to Australian law.

CHAIR—Does that also include, say, visa overstayers and people who have come here by aeroplane seeking asylum?

Mr Metcalfe—It certainly does. It is very—

CHAIR—Very broad.

Mr Metcalfe—Every immigration service in the world has to be involved in these sorts of issues. In our case, a large number of people come to Australia who are not entitled to stay here. Some overstay their visas. Some breach the visa conditions by working, for example, when they do not have permission to work. Overwhelmingly, we are able to work with the people and have them accept that their future lies elsewhere and not in Australia, after due process has occurred. That is the situation that applies to people who arrive here, regardless of their method of transport.

CHAIR—All right. Thanks.

Senator CASH—Mr Metcalfe, I just want to read from an article in the *Australian* newspaper on 2 February entitled ‘Afghan asylum pact in chaos’:

THE Gillard government’s much-trumpeted agreement to return failed asylum-seekers to Afghanistan was in disarray last night, with Canberra and Kabul directly at odds over whether or not the agreement covered forced returns.

I just wanted to ensure that your evidence is, basically, that that paragraph is incorrect—that Canberra and Kabul are not at odds and that Canberra and Kabul are on the same page in relation to the meaning of clause 9 of the MOU, which is that this agreement allows Australia to force the involuntary return of a failed Afghani asylum seeker.

Mr Metcalfe—The agreement does a lot of things, but both governments agree in relation to that aspect. That was confirmed in meetings subsequent to that media report. It just shows that you should not trust everything you read in the newspaper.

Senator CASH—No!

Mr Metcalfe—Which is exactly why you asked me the question!

Senator CASH—Absolutely. I am glad you said that it was confirmed in meetings subsequent to that article, because my next line of questioning is about exactly what occurred in the lead-up to this document and what occurred subsequent to it. Before I turn to that, though, there is an annex to the document entitled ‘Annex’. What is the total value of the initiatives to be funded by Australia, as mentioned by the annex in the memorandum of understanding, during the year 2010-11 and each year of the forward estimates?

Mr Metcalfe—I might ask Mr Fleming if he can take us through the detail of some of those measures. He may just need to check his papers first.

Mr Fleming—Yes. I do not have that level of detail to hand but I can take that on notice.

Senator CASH—That would be greatly appreciated. Has the Afghan government initiated any dispute resolution under clause 15 of the memorandum of understanding?

Mr Metcalfe—No.

Senator CASH—No. Under ‘Amendment’, clause 16 states:

This MoU may be amended by mutual consent in writing between the Participants.

Have any of the participants indicated that they will be initiating an amendment under clause 16?

Mr Metcalfe—No.

Senator CASH—Okay. Has the UNHCR referred any appropriate cases of Afghan refugees abroad for consideration under Australia’s refugee settlement program?

Mr Fleming—Yes, that happens on an ongoing basis.

Senator CASH—Okay. Can you tell me how many?

Mr Fleming—Since the signing of the MOU in particular?

Senator CASH—Yes.

Mr Fleming—I do not have that to hand. I will have to take that on notice.

Mr Metcalfe—But, certainly, we have been taking Afghan refugees for quite a few years from—

Senator CASH—Is it possible then to get an analysis of, say, the last five years?

Mr Fleming—Yes, we can go back that far. That is fine.

Senator CASH—Thank you very much. In relation to the MOU, what consultations and negotiations took place between the parties to secure this document?

Mr Metcalfe—There are extensive consultations, primarily in Kabul, between the Australian Embassy in Kabul and the Afghan government—particularly the Afghan Ministry of Refugees and Repatriation but other senior officials there as well. There are also some discussions in Geneva because, of course, the United Nations High Commissioner for Refugees is a party to the agreement. Indeed, on the issue of the media reports that we were talking about before, I note that the UNHCR representative in Kabul was in the media confirming that the agreement does provide for other than voluntary returns. The discussions that occurred in Canberra were more confirmatory or indicating an awareness that the majority of the discussions took place at senior levels in Kabul.

Senator CASH—Thank you very much. Who undertook the negotiations on behalf of the Australian government?

Mr Metcalfe—Much of the discussion was by the Australian Ambassador to Afghanistan, Mr Foley, supported by an officer who we have in the mission in Kabul, but our former deputy secretary Peter Hughes and the Ambassador for People Smuggling Issues were also involved in the discussions both in Kabul and in Geneva.

Senator CASH—Was there anybody from the department involved?

Mr Metcalfe—Yes, Mr Hughes.

Senator CASH—That was the departmental representative. You have explained to me where the meetings were held. How long did it take? When was the first meeting held and how long did it take before the MOU was finally signed by all of the parties?

Mr Metcalfe—Can you help us on that?

Mr Fleming—Discussions commenced in early April.

Senator CASH—Of 2010?

Mr Fleming—Of 2010, and it was signed in January.

Senator CASH—Obviously of 2011.

Mr Fleming—Yes.

Senator CASH—In relation to the discussions that took place and the signing of the memorandum of understanding, and then the media reports subsequent to that—that there was a dispute over the interpretation of clause 9 between Kabul and Canberra—how did it come about that there was that dispute? Why weren't the words 'forced or involuntary' actually used in the agreement? Wouldn't that have made it far more obvious that that is exactly what Australia intended to do?

Mr Metcalfe—Firstly, there is no doubt as to Australia's intentions, and that has been quite clear. The wording, as with any international agreement, was essentially agreed between, in this case, three parties, and that was the wording that was preferred. There was certainly a strong intention, and that was very much our view as well as that of the Afghan government and the UNHCR, that essentially the starting point with any situation of returns was that they should be done voluntarily. But, as you would be aware, while it does not mention the words 'deportation' or 'forced' or other words like that, it certainly does contemplate the other than voluntary return of people. As I said to the chair earlier, just because it is not voluntary does not mean that it is forced. It may involve simply a person saying, 'Look, I don't want to go home but I accept that I am going home—I am not volunteering.' So there are many gradations of a mental state associated with other than a completely voluntary return. Australia is not unique in this regard. A number of European countries have both voluntary and involuntary removals to Afghanistan occurring, but this agreement is important for Australia because we have never before had such an agreement.

Senator CASH—Has the Australian government—or even the Kabul government or the UNHCR—given any consideration to putting forward an amendment under clause 16 to more properly clarify the actual meaning of clause 9?

Mr Metcalfe—No, we do not think it is necessary and we have received no information from the other parties that they do either.

Senator CASH—What are Australia's specific obligations under the memorandum of understanding?

Mr Fleming—The key elements of the cooperation include some capacity building arrangements that Australia will undertake, and they are largely the projects in the annex that you were referring to.

Senator CASH—And you will get me the costs associated with that, on notice.

Mr Fleming—Yes.

Senator CASH—Thank you very much.

Mr Fleming—So that includes funding them to assist with the upgrade of Afghanistan's passport and visa issuance system, to assist in ensuring that Afghan passports are brought into line with international standards; further funding for the AliceGhan project to see that the settlement reaches its full potential; funding of the secondment of an International Organisation for Migration officer to provide expert management advice to the Afghan Ministry of Refugees and Repatriation; and tailored individual reintegration assistance to repatriated Afghans to help rebuild their lives.

Senator CASH—So our obligations are largely as set out in the annex. What are Afghanistan's specific obligations under the memorandum of understanding?

Mr Fleming—They relate to cooperating with Australia on those measures and I should have mentioned an overall obligation to ongoing dialogue, possibly initiation of additional measures and also, as we have just talked about them, accepting to readmit their nationals being returned from Australia.

Senator CASH—Was any consideration given to the Afghan government providing funding to assist in, for example, upgrading their Afghan passport issuance system et cetera or is Australia the only country that will be providing any funds under the agreement?

Mr Fleming—Things like the upgrade to the passport and visa issuance system are work that the Afghan authorities will be doing but with our assistance.

Senator CASH—Are we completely paying for it? Are they putting any money towards it?

Mr Fleming—I am not sure about that.

Senator CASH—Could you please take that on notice—to find out specifically in relation to Afghan's obligations under the memorandum of understanding, when it comes to funding a specific objective, what is that objective and the amount of the funding?

Mr Fleming—Okay.

Senator CASH—What are the UNHCR's specific obligations under the MOU?

Mr Fleming—The role of the UNHCR is basically that it allows it to choose to monitor returns and what happens with returnees afterwards should they choose to do so.

Senator CASH—Can you confirm whether anybody has been removed under this specific agreement?

Mr Fleming—No, not yet.

Senator CASH—Have any failed asylum seekers taken advantage of what is known as the reintegration package?

Mr Fleming—Not as yet.

Senator CASH—Was the reintegration package on offer prior to the MOU being signed?

Mr Fleming—IOM had been involved in discussions so it has been an option available more broadly, not just on Afghan returnees.

Senator CASH—Has anybody taken advantage of a reintegration package?

Dr Southern—Yes, they have.

Senator CASH—Am I able to get further details on that from you?

Dr Southern—I am not sure whether I have those details here today but we can certainly take it on notice. The reintegration work is available, as my colleague said, across a broad range of nationalities not just Afghans.

Senator CASH—How did the department determine that it was safe to return failed asylum seekers to Afghanistan? What was the process you went through to establish that fact?

Mr Metcalfe—I am glad you asked this question because a lot of things have been said by quite a few people, suggesting that we involuntarily returned people if it was not safe. We would never do that. I want to re-emphasise—any suggestion that the MOU will provide for the return, voluntary or involuntary, of people if it is unsafe is completely fallacious. Some people probably have the view that no-one should ever be returned to Afghanistan. That is clearly not the view of the United Kingdom government or of governments of a number of other European countries who are regularly returning people to Afghanistan. Australia goes

about satisfying itself on this matter through the refugee determination process undertaken by the department with access to independent review and no doubt today will talk about that process and the new protection determination processes which go exhaustively to the testing of refugee claims. If a person following that process is found not to be owed protection obligations by Australia and thus is available for return home—in fact, Australian law requires their return home—there is, of course, open to people the ability to challenge the lawfulness of the decision through the court process and the High Court has recently ruled on that fact.

On the basis that there is no legal impediment to a person's return home and they are found not to be owed protection obligations, prior to undertaking a person's removal the department goes through a further assessment process to ensure that there are no aspects that go to our international obligations, whether those arise from the Convention Relating to the Status of Refugees, the Convention Against Torture, the Convention on the Rights of the Child or the International Covenant on Civil and Political Rights. Of course we would be working closely with the person, with the International Organisation for Migration, with the government of Afghanistan and with the UNHCR. I do not think a person could devise a safer process to apply to a person being returned. No-one has yet come to that stage of the process.

We had advanced well in relation to aspects of the caseload, but the High Court decision has required that we re-examine some elements of the caseload, largely because of procedural matters. That is now, obviously, well underway. It is our expectation that, in the months ahead, we will in fact be going through those final processes to ensure that people, if returned, do so in conditions of safety and dignity. That is the interest of Australia, of Afghanistan and of UNHCR.

Senator CASH—How many Afghan asylum seekers are there currently in Australia?

Mr Metcalfe—I will ask Mr Fleming to get his folder out.

Senator CASH—Following on from that, how many have had their applications rejected after going through the legal process?

Mr Fleming—I do not have the total readily available at the moment—

Senator CASH—Are you able to obtain it? There might be more questions about that?

Mr Fleming—Yes, I should be able to get that.

Mr Metcalfe—Senator, if you have a series of statistical questions, it might help if you read them out and we can undertake to try and get back to you.

Senator CASH—I do not, but I will look through and see whether or not I have some others. If I do, I will provide you with more of them. I appreciate that offer. That is all I have at this stage on the memorandum of understanding. What I would like to turn to now is a discussion that we had, Mr Metcalfe, at the October estimates hearing. It was in relation to those asylum seekers from the *Oceanic Viking* who had transited to Romania. We were awaiting some form of outcome. Are you able to update me on what has occurred with those people?

Mr Metcalfe—Mr Fleming is the world expert on this, so I will ask him to refer to his folder.

Mr Fleming—My apologies, Senator, I was a bit distracted when you were asking that question.

Senator CASH—I had a discussion at the October estimates hearing—it was actually Mr Hughes, I believe, who gave the information.

Mr Fleming—Yes.

Mr Metcalfe—We miss him a great deal. We are very happy Dr Southern is here, but we miss Mr Hughes.

Dr Southern—I particularly miss him.

Senator CASH—I will put the question I put at the last estimates hearing so you can have it in context:

The Australian government is currently considering resettling these 17 individuals—these were the ones who were transiting through the Romanian centre—

These 17 individuals have been refused resettlement in the United States and in Canada ...

Basically my understanding was that the Australian government had given an assurance to the Romanian government that these people would be gone by 31 December 2010. Can you now update the committee on the status of each of those individuals?

Mr Fleming—Of that group of 17, seven met all visa requirements for Australia and have been resettled in Australia. The remaining 10 did not. They remain in the emergency transit centre in Romania while UNHCR continues to pursue other possible resettlement options.

Senator CASH—Have they been provided with opportunities to apply to a third country for resettlement?

Mr Fleming—That is, effectively, what UNHCR is pursuing for those 10.

Senator CASH—In relation to the seven that have been resettled in Australia, on what date was each of them resettled?

Dr Southern—They arrived in Australia on 20 December.

Senator CASH—Can I also confirm, based on the testimony given at the October Senate estimates hearing, that the 17 individuals, which we are discussing, had been refused resettlement in United States and Canada?

Mr Fleming—Yes.

Senator CASH—So seven of the 17, which we have now taken into Australia, were refused resettlement in the United States and Canada?

Mr Fleming—That is correct.

Senator CASH—Did the department undertake an analysis of why they had been refused resettlement in the United States and Canada?

Mr Fleming—We do not have full details about why they were refused. As I recall Mr Hughes mentioning at the last hearing, we understood that some of it had to do with things like the United States provision on material assistance. They were subject to security

assessment by ASIO. As for any further liaison between countries by the security agencies we would not have visibility of that.

Senator CASH—In relation to these seven individuals who had been refused resettlement in the United States and Canada you said that they have met all visa requirements for Australia. Does that mean they have all received a positive security assessment?

Mr Fleming—That is correct. They have all had non-prejudicial security assessments.

Senator CASH—Although some of them, I understand, had an adverse security assessment in relation to resettlement in United States or Canada?

Mr Fleming—They are different requirements. As I said the US, for example, has a material assistance provision that is not equivalent to an Australian security assessment.

Senator CASH—Is it possible—and I do want to explore this—for you to provide to the committee the differing requirements Australia has to get a positive security assessment or, alternatively, a negative security assessment compared to Canada and the United States. You can understand that, clearly,—and we explored this at the last estimates—you have individuals that, because of negative security assessments, have been refused resettlement in the United States and Canada.

Mr Fleming—We do not know if it is correct to say that the US or Canada have actually issued adverse security assessments or their equivalent.

Senator CASH—We did not determine that in the end. All you determined as a department was that they had been refused resettlement.

Mr Fleming—That is correct.

Senator CASH—I think one of the lines of questioning we pursued at the last estimates hearing was: in the event that these individuals had been refused resettlement what steps does the department actually take to ensure that it is satisfied that there is not going to be an adverse security implication for Australia. I know you say that all seven of them have passed, but what steps do you take to actually ascertain why the United States and Canada have refused these people resettlement?

Mr Fleming—On the security issues we refer the matter to ASIO for a security assessment and then it is a matter for them.

Senator CASH—Okay, so the department refers it to ASIO, ASIO undertakes the security assessment and then provides the department with an answer. Is it just practice regardless of who is in government for the department to actually accept?

Mr Metcalfe—This is quite normal, Senator. As I was discussing with Senator Trood in relation to security checking more generally, the competent authority is ASIO. The department does not have particular expertise in this area and the arrangements in place have been in place for decades, probably. On this particular occasion ASIO looked at the 17 persons and decided that seven were not of any security concern or, being very precise, ASIO did not issue an adverse security assessment in relation to the persons.

Senator CASH—I would like to explore that shortly. I will let you continue, but I would like to explore that.

Mr Metcalfe—I do not know what ASIO thought. All I know is that they said, ‘We are not issuing an adverse security assessment.’ As Mr Fleming has explained, different countries may have different threshold requirements in relation to that aspect, and that is a matter that ASIO can discuss. If we can provide any information on notice about the US Patriot Act and the material assistance, we will help out as we can.

Senator CASH—Accepted. Mr Metcalfe, this may be a question for ASIO, but is there a difference between ASIO saying that they will not issue an adverse security assessment and saying that a person gets a tick in the box? Is there a difference between those two scenarios?

Mr Metcalfe—That is a question for ASIO. That is their business.

Senator CASH—Okay. Mr Metcalfe, you will recall that at the last estimates hearing you and I had a conversation about the undertakings that I understand the Australian government had given to the Romanian government in relation to the 17 individuals. That undertaking had been that individuals would only remain in transit in Romania until the end of 2010. One of the questions that I put to you was: if these individuals are not accepted by Australia because they fail our assessment process, what does their status become, given our undertakings to the Romanian government? We have now passed 31 December 2010 and seven have been resettled here, but there are still 10 in Romania. What is the Romanian government’s opinion of that?

Mr Metcalfe—I must formally place on the record my appreciation to the Romanian government. They have been extremely positive in the way they have assisted us and UNHCR in this matter. The Romanian government has agreed that the group can remain there while resettlement efforts continue. That is an effort that is continuing.

Senator CASH—Have any issues been raised by the Romanian government that the Australian government gave an undertaking that these people would only remain in Romania, at the transit centre, until 31 December 2010? Clearly, that time has expired and these people are still there.

Mr Metcalfe—Clearly, we have moved past the time and the people are still there. The Romanian government is satisfied about those arrangements. I understand that there were some good, sensible discussions involving us and UNHCR and Romania and a sensible solution was reached.

Senator CASH—Mr Metcalfe, in October last year I think your language to me was that I was asking a series of hypothetical questions because—

Mr Metcalfe—It was future tense then and past tense now.

Senator CASH—That is right. So perhaps I can now canvass the issue.

Mr Metcalfe—It is not hypothetical anymore, Senator.

Senator CASH—That is exactly right. One of the questions that I put to you was: 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? It was hypothetical at that stage. That was your response to me. Can you update me on what discussions were had in relation to what Australia could do with those remaining 10?

Mr Metcalfe—It is quite clear that the Australian government's position has been that, were there to be a circumstance where people with an adverse security situation were required to come to Australia because there was no other country to which they could go, they would come to a situation of detention. The placement of those people will take into account their circumstances, but ordinarily that would be on Christmas Island, which has occurred in a couple of other cases.

Senator CASH—Is there any move to bring these 10 people to Christmas Island?

Mr Metcalfe—Not at this stage. We are continuing to work with UNHCR in relation to possible resettlement.

Senator CASH—But is that a potential scenario if you cannot get these people resettled?

Mr Metcalfe—That remains a possible scenario, but it is one of a couple of scenarios.

Senator CASH—Has the Romanian government given the Australian government any particular deadline that they would like us to resolve this issue by?

Mr Metcalfe—The answer is no. Obviously, everyone is anxious to see it resolved, including the individuals, who are concerned about their future. But there is no deadline applicable at the moment.

Senator CASH—Mr Metcalfe, you said that bringing them to Christmas Island was but one of a number of scenarios. Would you outline to the committee what those scenarios actually are?

Mr Metcalfe—The other obvious scenario was that they would be resettled in another country.

Senator CASH—In the event that they are not settled in another country would the Christmas Island option become the option?

Mr Metcalfe—Yes, it is a possibility, but I do not want to get drawn into speculation—

Senator CASH—No, I understand.

Mr Metcalfe—In terms of the range of options, were there to be no other country that would take them, there is a view—and this has been confirmed—that they are in fact in need of protection by the international community and Australia would give effect to it consistent with our own national interest associated with their security assessment.

Senator CASH—You said that these 10 have received an adverse security assessment.

Mr Metcalfe—That is correct. That is why they have not come to Australia at this stage.

Senator CASH—For my own benefit, in the event that the Christmas Island option does become the option because we cannot find them resettlement in a third country and they have received an adverse security assessment, what then does their status become if they are brought to Christmas Island? Is it indefinite detention?

Mr Metcalfe—Yes, it would be detention.

Mr Fleming—Anticipating that you might be asking ASIO, I should clarify that with the 10 cases in Romania there are eight adults with adverse security assessments and that also affects two children.

Senator CASH—And the two children are—

Mr Fleming—They are dependants of one of the adults who have received an adverse security assessment.

Senator CASH—So they are automatically affected by—

Mr Metcalfe—There is no suggestion that these very young children are themselves a security threat but that derives from their parent.

Senator CASH—So the media report which claimed that the 10 have been given an adverse security assessment by ASIO is correct. Is the department aware of what those security concerns actually are?

Mr Metcalfe—No, it is a matter for ASIO.

Senator CASH—I am happy to ask ASIO, but is the department aware of what they are? Is that something that ASIO does—

Mr Metcalfe—I am broadly aware but I do not think it is appropriate for me to go into specifics. It is a matter for ASIO as to what their views are and it is a matter for ASIO as to whether they feel it appropriate to canvass that in a public place.

Senator CASH—I accept that. But they do make the department aware that there is an issue?

Mr Metcalfe—We are broadly aware of the reasons but, as I said, I do not think it is appropriate for us to comment on that.

Mr Fleming—All we require for our decision making is whether they have an adverse security assessment or not. The content does not come into our consideration.

Senator CASH—That is ASIO's responsibility. Is one of the families that received an adverse security clearance actually on the Australian mainland?

Mr Fleming—Not coming from Romania. These were part of the *Oceanic Viking* group that went directly from Indonesia to Christmas Island.

Senator CASH—Is that particular family still on the Australian mainland?

Mr Metcalfe—Yes, they are. It was associated with a lady having to give birth when there were no facilities available on the island. They are currently on the mainland pending their return when mother and child are fit to travel back.

Senator CASH—What is their current status?

Mr Metcalfe—They are in detention.

Senator CASH—Where are they being housed?

Mr Metcalfe—At Villawood.

Senator CASH—Are you able to determine at what cost to the taxpayer? What is the actual cost for these people?

Mr Metcalfe—There is a cost for detaining them wherever they are detained.

Senator CASH—Are you able to separate that cost?

Mr Metcalfe—We possibly could but I am not exactly sure what the question is.

Senator CASH—Are they receiving, for example, a 24-hour guard because—

Mr Metcalfe—I see. So you want to know what costs are associated with their detention. I will have to take that on notice.

Senator CASH—Do the people kept in mainland detention who have received an adverse security assessment require security above and beyond what is normally provided?

Mr Metcalfe—Because of where they are physically present there is additional security compared to what would normally be in that place. I do not want to go into more detail about the placement of individuals within the system.

Senator CASH—Is the security specifically for those people?

Mr Metcalfe—It is a combination. Because of the particular place where they are being kept there is additional security to that we would normally have in that place.

Senator CASH—My understanding is that they have been there since October.

Mr Metcalfe—I will have to check on that.

Senator CASH—It is either August or October 2010.

Mr Metcalfe—I will have to check on the details.

Senator CASH—In terms of the process, how long will it be before she is actually transferred back to Christmas Island?

Mr Metcalfe—The baby has been born, so it will be a question of medical advice as to when the family is able to return.

Senator CASH—This is an ongoing monitoring process by the government?

Mr Metcalfe—Yes, that is the intention. We would only ever have someone travel if they were safe to travel and if it was appropriate, but that is the current expectation.

Senator CASH—When was the baby born?

Mr Metcalfe—We are moving a bit out of 2.1 into 4.2 and 4.3.

Senator CASH—That is fine, I can continue to ask those questions in another outcome.

Mr Metcalfe—If you would like. I will have other officers here later who, because of their situation, would be better able to answer.

Senator CASH—That is not a problem at all. Is it just the woman and her child or are there others?

Mr Metcalfe—No, I think her husband is here as well.

Senator CASH—But there are no other school-age children associated with her?

Mr Metcalfe—Again, could we deal with that later when I have the appropriate people here?

Senator CASH—Absolutely, I am more than happy to do that. I will turn to some very general process questions in relation to when there is the death of a detainee.

Mr Metcalfe—That takes us right across into 4.2 and 4.3.

Senator CASH—That is 4.2, is it?

Mr Metcalfe—Yes. Essentially, 4.2 is the onshore detention network—the mainland centres—and 4.3 relates to offshore detention and irregular maritime arrivals issues. So the two deaths in custody that I referred to that have occurred since the last hearings—there have been a total of three in the last year at Villawood—would be dealt with under 4.2.

Senator CASH—In relation to SIEV 221: the deaths that occurred as a result?

Mr Metcalfe—I would cover SIEV 221 under 4.3 because it deals with offshore asylum seekers and their management.

Senator CASH—I will turn to some news reports relating to 16 Burmese asylum seekers who were granted refugee status in May 2010 by the immigration department but who are still waiting for ASIO to complete their security checks. Are you able to update the committee in relation to the status of those 16 individuals?

Mr Fleming—I will have to confirm whether they have had security assessments come through or not.

Senator CASH—Are you able to provide us with that information, perhaps, later on this evening, if that is at all possible?

Mr Fleming—I will see if I can get that.

Senator CASH—Thank you, very much. Mr Metcalfe, has the government changed its policy in relation to taking SIEVs to Christmas Island and, alternatively, bringing them to the mainland?

Mr Metcalfe—Not that I am aware of.

Senator CASH—Have there been any events of late whereby a SIEV has been taken to the mainland instead of Christmas Island?

Mr Metcalfe—I think I am aware of one vessel where, for operational reasons, the Customs and Border Protection Service decided it was logistically safer and more convenient for the people who were excised offshore persons to be transferred directly to the mainland, but that brings us back into 4.3. We are still in 2.1, refugee and humanitarian issues, generally, I think.

Senator CASH—That is fine, I can bring that up under 4.3. Australian citizen people smugglers in Indonesia and Dandenong?

Mr Metcalfe—That is 4.3

Senator CASH—The independent merits review tribunal and the new refugee status determination process?

Mr Metcalfe—They are 4.3.

Senator CASH—How many IMAs has the department budgeted for in 2010-11?

Mr Metcalfe—That is also 4.3.

Senator CASH—We will move through this outcome a little faster than I thought. The majority of mine will be coming under 4.2 and 4.3. How many offshore applications for visas were made under our refugee and humanitarian program in 2010-11 by post and by nationality group?

Mr Metcalfe—We are in the right place.

Mr Fleming—That is similar to a question that you asked last time. We will take that on notice and get those numbers to you.

Senator CASH—That is fine. There are a number that can then go on notice because they are all statistical questions. I might provide them to you during the dinner break.

Mr Metcalfe—Okay. Particularly once you start getting into detail on posts and that sort of thing, there is a bit of research involved in that.

Senator CASH—Is the department negotiating any new return agreements to countries for failed asylum seekers? You have got the MOU for Afghanistan. Are any others on foot?

Mr Metcalfe—No.

Senator CASH—Are any being contemplated?

Mr Fleming—We are certainly in discussion with some other countries about how we set ourselves up to accommodate returns and involuntary returns. Sometimes that ends up requiring some form of formal agreement; other times it does not.

Senator CASH—Are you able to advise the committee as to which countries the government is in discussion with?

Mr Fleming—Yes. We have ongoing discussions with Sri Lanka. That is one, for example, where we have not found an agreement necessary and we have been able to successfully effect returns. There is also Iran and Iraq. Basically it is wherever we have an asylum seeker population that might require returns at some point.

Senator CASH—In terms of the status of the discussions, how far progressed are they in relation to each of those three countries?

Mr Fleming—They are at varying stages. It is not normal to go into detail in relation to diplomatic discussions or country-to-country discussions while they are occurring. I think it is fair to say they are early discussions.

Senator CASH—Are they positive discussions?

Mr Metcalfe—Diplomacy is always positive! With Sri Lanka we do not think that there is any need for a formal agreement. With the other countries we are in discussions as to whether there may need to be or not need to be formality. Some people ask, ‘Why do you need to have a formal agreement with a country about taking its own people back?’ One of the threshold questions is: does the person come from that country in the first place? What processes are there about the provision of identity documents and recognition and that sort of thing? We have got constructive working relations with Sri Lanka and with a number of countries to which people are returned. Once more unusual circumstances start applying, in some cases an MOU might be appropriate. But we are in a pretty early stage in those discussions.

Senator CASH—Chair, that would appear to be the extent of my questions in relation to this outcome, given the direction that Mr Metcalfe has kindly given me. I might defer to Senator Abetz, who I know has some very short questions, if that is at all possible.

CHAIR—It might be. I think we will go to Senator Pratt. We have had some opposition time. Do not forget that we are going to afternoon tea at 3.30.

Senator PRATT—You might note I asked the tribunal about applications from Fiji that they have had a look at. I wanted to ask, with respect to refugee applications from Fiji, about the extent to which they have been on the increase and how many of them have been processed over the last few years here, offshore and in Fiji itself. Are we exchanging any information with New Zealand and other locations about whether they might have had similar questions?

Dr Southern—I think that level of detail and the breakdown you are looking for we would certainly need to take on notice. In terms of the trends that you are talking about, I do not believe that we have got a great deal in front of us today, although Mr Fleming may.

Mr Fleming—I can give you some headline statistics around protection visas. In 2009-10 we had 559 protection visa applications from Fijians. For 2010-11 up to 31 December we had had 179 applications, which is looking slightly down.

Senator PRATT—What proportion of those have been granted in the first instance without needing to be appealed before the tribunal?

Mr Fleming—I thought I would have it stacked for you, but I have only got the finally determined figures. So that is the post primary and review figures rolled up.

Senator PRATT—So that is the number of applications. I am interested in the changing perception of the level of risk attached to—

Mr Metcalfe—We will have to come back to you on notice on the last couple of years. We can see over the course of the afternoon whether we might have those figures established.

Mr Fleming—In terms of the finally determined rates, the 2009-10 approval rate was 16 per cent. For 2010-11, again to 31 December 2010, it was 17 per cent.

Mr Metcalfe—So that means that the inverse of those numbers—84 per cent, for example—would be refused and proceeding therefore to feed those increasing numbers before the RRT that we were talking about this morning.

Senator PRATT—Do you know what proportion the RRT have found?

Mr Fleming—I will see if I can get how that is broken down between primary grants and review applications.

Proceedings suspended from 3.31 pm to 3.53 pm

Senator ABETZ—My first lot of questions relates to King Island. There was a proposal by King Island to house some asylum seekers. I got a response.

Mr Metcalfe—Sorry, Senator. Chair, this takes us back into a later subprogram. A lot of our activity these days is really in 4.2 or 4.3, Senator, relating to detention facilities and those sorts of issues. If the question was about a possible detention centre on King Island.

Senator ABETZ—I understand that that is in fact not the case and I just wanted confirmation that the department in fact has not committed any funding or done any work in relation to this alleged proposal.

Mr Metcalfe—We had a proposal that came to us. We have not pursued it.

Senator ABETZ—That came to you from the Migrant Resource Centre?

Mr Metcalfe—I would have to check on that point of detail, Senator, but to my knowledge there has been no effort or expenditure associated with that issue.

Senator ABETZ—There is no active file on that in the department?

Mr Metcalfe—No, there is not.

Senator ABETZ—That is all I needed to know on that. We might now get into a more controversial area, but let us see how we go.

CHAIR—Is it outcome 2.1?

Senator ABETZ—Yes. They are questions on notice that have been asked.

Mr Metcalfe—Something I could suggest here is that Mr Frew has a couple of matters to come back on from this morning, so we could deal with those.

CHAIR—Yes. Sorry, you did raise that with me. Mr Frew, did you have some answers to questions from Senator Bernardi?

Mr Frew—Correct, and a question from Senator Furner. He asked how many staff we have working on the processing area of 457s in Sydney. The answer is that we have 77 in total: 35 in the Sydney office and 42 at the Parramatta office. In connection to the questions from Senator Bernardi, we were talking about where the partner caseload is processed. The partner temporary caseload—the first stage of the processing—is processed offshore, primarily in posts where DIAC has Australian based officers and in each capital city DIAC office in Australia. The partner permanent caseload is primarily processed at two centralised processing centres in Australia: Melbourne and Brisbane. Applications may also be processed offshore, for example, where the applicant is outside Australia two years after the lodgement.

I was asked what staffing numbers are involved in partner processing. In 2010-11 to date, the department is funded for 110 FTE offshore and 152 FTE onshore. Finally, with regard to the specific case that Senator Bernardi raised, some of our staff have been in touch with his office to get some details of that case so that we can understand what we may be able to do.

Senator HANSON-YOUNG—My first question is to seek an update to a question that I ask in this forum every estimates—that is, what is the number of people who currently either are in detention or have applications for protection who have already been assessed by the UNHCR in some type of offshore or third-country facility?

Mr Metcalfe—Sorry, Senator. I will just get you to repeat the question. I am still trying to work out which program number or output we are in. The last few words made me think it was probably in 2.1, which is where we are.

Senator HANSON-YOUNG—It is in 2.1. That is my understanding and that is that advice I have been given. So it is in relation to how many people are currently awaiting the outcome of their application process for a protection visa who have already been assessed by the UNHCR somewhere else.

Mr Fleming—It is really not possible for us to have comprehensive statistics on that, because we do not always know whether the person has been mandated. For example, the clients themselves are sometimes not clear whether they have only been registered with UNHCR versus being mandated successfully and, in some of the transit countries, there is no refugee status determination that goes on. So it can come out at various points in the process. A lot of the time, by the time anybody raises UNHCR-mandated status, we are going to grant them protection anyway, so it becomes irrelevant.

Senator HANSON-YOUNG—But it is not irrelevant to my question. I have asked this question several times during this committee and you are the first person who has said that that information is not necessarily important. I have always been told that, as part of the application and assessment process, that is one of the things that you ask so, therefore, you would have that information. What I am asking is: how many people who are currently on the books having their applications processed do we know have either been mandated or simply registered? I take the point that there are two different stages.

Mr Fleming—My point is that we do not have comprehensive material on it. My intention was not to say that whether or not they have been mandated is unimportant. It is just that, if we are independently recognising them as refugees and granting them protection, we then do not need to go and follow up to find out whether they had in fact been mandated. We do have a process with UNHCR whereby we check with them and their records and often no answer has come back by the time we grant a protection visa.

Senator HANSON-YOUNG—Why is it that the department does not keep a log of that type of information? It would seem logical for us to be able to assess how successful our support and programs are for bodies like the UNHCR or the IOM in places like Indonesia to ascertain how many people are going through those processes versus how many people arrive in Australia through another means who have already been through that process only to be assessed all over again. In the context of the number of people currently held in detention and the time it is taking to process people's claims at the moment, surely that would be one thing you would be taking into consideration, if you want to streamline your processes better. It staggers me that you do not have that information or that you do not even have the ability to come up with that information.

Mr Fleming—Certainly in each individual case it is possible for the client to raise that they have been mandated and it may well be that, in the exchange of information we do with UNHCR, we find out that people are mandated, so there are cases where we find that out but we do not hold up finalising a case until we have an answer of whether they are mandated or not, which comes back to my point that we do not have comprehensive data.

Senator HANSON-YOUNG—I am not asking about how many individual cases are being held up because you are waiting for confirmation; I am asking how many people currently in

the process have already been assessed by the UNHCR. You are saying you do not have that information.

Mr Fleming—That is correct.

Senator HANSON-YOUNG—Why doesn't the department collect that information?

Mr Fleming—We do not necessarily know. We have it on individual files where we have an answer, but there is—

Mr Metcalfe—I think what Mr Fleming is saying to you is that we would know it in individual cases, the question is whether the number of people currently in detention who have been mandated or registered by the UNHCR is aggregated into a report. We can check to see whether we have such a report, but I think that Mr Fleming is saying is that report may not necessarily be accurate because it depends on the person self identifying as having gone through that process—and many people do say they were registered with UNHCR in Malaysia, Indonesia, Pakistan or whatever. I think we will need to take it on notice and check whether we can produce it in aggregate form. I think we would place the caveat on it that any statistics are going to be somewhat unreliable because we may not have positive verification as to whether that has occurred.

Senator HANSON-YOUNG—I accept that. I also accept that, if you are doing some cross-referencing with UNHCR then you do at least know which information is more reliable than others. I think I have made my point that you collect the information in individual cases but you do not put this together. That is what you are telling me.

Mr Metcalfe—No, I did not quite say that. I said I am going to check whether that is the case. You would appreciate that we produce tens of thousands of reports on lots of different themes. Sometimes we just do not have knowledge of all the reports we produce and which ones are able to be made available. But we will check on that and come back to you.

Senator HANSON-YOUNG—Do you think it would be a helpful piece of information to have, in light of how these different programs interact?

Mr Metcalfe—It is a good point you raise. There is the aspect of what it means for the individual, particularly the point Mr Fleming was making about whether it is a useful check on our processes. Normally, if we become aware that a person is mandated as a refugee, we are certainly at pains to ensure that the processes are as quick as they possibly can be. I think the broader point you are making is: are we seeing people arrive in Australia by irregular means who have already availed themselves of international protection, either having registered with UNHCR in some other country or, in fact, having been found to be a refugee. This is also an important point because it goes to the issue of whether people believe it is in their interests to pay people smugglers to travel in an irregular fashion, rather than having resettlement places made available to them and coming through a more regular type of means to Australia or one of the other resettlement countries.

Senator HANSON-YOUNG—I imagine it is information that would be very helpful, to paint a broader picture of those types of things. If you could take that on notice, please, and get back to us that would be very helpful.

Mr Metcalfe—Yes.

Senator HANSON-YOUNG—The second line of questioning I have is around the length of time and this might be something you need to take on notice because there are a variety of different time frames I want. On average, what is the length of time that people who are currently held in detention have been there?

Mr Metcalfe—I think we will have to take that on notice, and there will be widely varying experiences depending upon the person. There is a subset of people who are identified relatively quickly as being refugees, following our initial assessment of them, who do not have any security or health issues and are released quite quickly. A large number of people were subject to the processing suspension last year, which significantly added to the amount of time before they became available to us. And there are people who might still be awaiting some form of process and those people who have been found not to be refugees and who are pursuing review options. One statistic on the average length of detention could probably be provided but it would probably not help us very much in terms of individual experiences.

Senator HANSON-YOUNG—The policy position of 90 days is clearly not being adhered to.

Mr Metcalfe—For quite a lot of applicants it is not, particularly those who are—

Senator HANSON-YOUNG—Would that be for the majority of applicants?

Mr Metcalfe—I will correct myself on notice. I would say that we are probably now moving towards the majority, largely because of the processing suspension that has now worked its way through, and the High Court case has meant that we have to go back and start again with some applicants as well. So the combination of those factors would mean that for many people the process is extending beyond 90 days. There are other areas beyond the control of the department, such as security checking, for some people as well. Having said that, we remain determined to improve our processes and continue to recruit staff and other people, to try to ensure that we are processing applications properly but as quickly as possible.

Senator HANSON-YOUNG—Could I give you some time frames and have you could get back to me on notice? I would prefer this information today, if you are able to do that. I know you guys put out little tables anyway, so you have a lot of this information. What I want to know is how many people currently held in detention have been there longer than 90 days, how many have been there for six months, how many have been there for 12 months, how many have been there for 18 months and how many have been there for longer than two years?

Mr Metcalfe—That falls within program 4.3 and we may well be able to come to that when we get to that program.

Senator HANSON-YOUNG—I apologise if I missed this direct question from Senator Cash about ASIO assessments which you may already have answered—concerning people who have been successful to the point at which you recognise their need for protection and are simply waiting for the ASIO security clearance, how many are being detained?

Mr Metcalfe—Again, that takes us to 4.3. All aspects of the management status processing and detention of people who have arrived by boat fit under 4.3.

Senator HANSON-YOUNG—Maybe someone up the back has heard.

Mr Metcalfe—We will make sure they are expecting the question.

Senator HANSON-YOUNG—Could somebody give me an update as to where the complementary protection bill is and whether government is still committed to deliver it.

Mr Fleming—Yes, that is my understanding. The minister mentioned publicly last year that they were looking to re-introduce complementary protection legislation and that is in train.

Senator HANSON-YOUNG—So the department has prepared the draft legislation and it is ready to be introduced?

Mr Metcalfe—The introduction is a matter for the government. We can check with the minister as to whether he wants us to add anything but it is now a question for the government to proceed.

Senator HANSON-YOUNG—So the department has done the work it needs to do?

Mr Metcalfe—The matter has been to committee and some recommendations were made. I think all those issues are with the government.

Senator HANSON-YOUNG—Picking up on something you said to Senator Cash in relation to agreements with countries whereby somebody has been found not to be in need of protection and we return them, what is the reason we did not think—you might want to check *Hansard* if I have quoted you wrongly—an agreement was necessary with Sri Lanka?

Mr Metcalfe—Because essentially we have processes which appear to be quite appropriate for us and for Sri Lanka without the need for an agreement. The majority of countries readily take their own citizens home. People are removed from Australia to the United Kingdom, to the United States, to Sri Lanka and to China. Some countries for their own purposes believe it is best to put that in the form of an agreement. Sometimes that may have associated aspects of broader migration cooperation as part of that agreement. In the case of Sri Lanka, the high commission in Canberra and the government in Colombo are able to interact with us in a way that does not require a formal agreement to be in place. Essentially it is about them recognising that the persons are in fact citizens of their country and from an Australian point of view that there is no reason why it would not be safe to return that person.

Senator HANSON-YOUNG—What was the reasoning as to why we need an agreement with Afghanistan?

Mr Metcalfe—Afghanistan indicated its preference, in accepting the return of its nationals, that that be placed in the form of a memorandum of understanding and given the fact that there have been very significant flows of refugees both in and out of Afghanistan—people leaving and returning over the years—Afghanistan has quite a significant ministry associated with these issues and that is their preference as to how they will undertake the work.

Senator HANSON-YOUNG—When the agreement was signed and released, there was a lot of talk and a lot of emphasis from the minister put on the fact that we needed the agreement to protect the safety of those we would be returning. That was very much the emphasis put on by the minister. I am happy for people to disagree with that, but that was the

emphasis put on why Australia thought the agreement was a good idea, why the minister believed it was. Accepting that that was the key reason for the agreement from Australia's perspective, surely in a country like Sri Lanka, with those types of protections of people who have said they believe they would be persecuted if they were sent home, we would want the same guarantee that those people would not be facing harm or persecution upon their return.

Mr Metcalfe—The agreement with Afghanistan does not suggest that people would be persecuted by the government of Afghanistan.

Senator HANSON-YOUNG—No, the whole point was that they would be protected.

Mr Metcalfe—Precisely. As I have said, each country has particular circumstances. In the situation of Afghanistan the view of the Afghan government has been that it prefers to have formal MOUs in place and has them in place for a number of countries. Other countries operate differently. Our satisfaction has to be there regardless of whether there is an MOU or not. We are very pleased that UNHCR is a party to the MOU with Afghanistan because the return of refugees and conditions within different parts of the country is, obviously, a key consideration. We are very pleased UNHCR is involved. We are pleased we have an MOU that governs our migration relationship with Afghanistan. None of that changes the fundamental fact that we would not return a person or have a person leave Australia if it were unsafe to do so according to the best possible advice and opinion that we have.

Senator HANSON-YOUNG—In relation to Sri Lanka you do not believe that that needs to be in an agreement with the government?

Mr Metcalfe—We believe that we are able to satisfy that without the need for an agreement or guarantees.

Senator HANSON-YOUNG—That is all my questions about outcome 2. I have plenty for outcome 4.

Senator ABETZ—I draw your attention to question on notice No. 123, and thank you for that answer. Would it be fair to say that, on the figures that were provided in relation to subquestion 1, 44 per cent of boat people arriving in Australia do so by flying into Indonesia by plane?

Mr Metcalfe—Sorry, Senator, I am just getting that answer. I now have that answer in front of me.

Senator ABETZ—On those figures—I hope my maths is right—does it mean that 44 per cent of boat people arriving in Australia do so by flying into Indonesia by plane?

Mr Metcalfe—What this tells me, Senator, is that on the basis of our department's entry interviews, the number of IMAs to Australia, who had previously arrived in Indonesia by air by calendar year, were as follows—

Senator ABETZ—We know that.

Mr Metcalfe—I do not have a calculator with me; I will trust your maths.

Senator ABETZ—If the department rejects my calculations, if you could come back on notice, that would be helpful. Do you have updated figures for 2010 because in that answer

you indicated to us that you only had—this is no criticism—the information up until 19 August 2010.

Mr Metcalfe—No, I would have to take that on notice for such a specific question and endeavour to give you a more up-to-date figure.

Senator ABETZ—If you could, please, that would be very helpful. To the department's knowledge do irregular maritime arrivals require passports to enter Indonesia?

Mr Metcalfe—As far as I know all noncitizens of Indonesia require a passport to enter unless there are special arrangements concerning traditional movement of people from within the region. My understanding is that nationals from the Middle East and elsewhere would require a passport to enter Indonesia.

Senator ABETZ—Do we have the statistic in relation to those irregular maritime arrivals that arrive by plane that do not have passports to present to Australian authorities when they arrive in our waters?

Mr Metcalfe—We would have to further interrogate the information we have to provide an answer to that, so I will take that on notice.

Senator ABETZ—Are the irregular maritime arrivals, or boat people, required to give Indonesian customs a reason for travel to Indonesia? In the few times I have been overseas the country of destination has required me to indicate the purpose of my visit. Is that the same in Indonesia to your knowledge?

Mr Metcalfe—I would have to check on the Indonesian entry requirements. Certainly according to our knowledge—

Senator ABETZ—I thought there was a former ambassador there that might have information for us.

Mr Metcalfe—No. A former colleague of mine was the former ambassador but he is now retired. We can check as to what questions a person applying for an Indonesian visa either prior to arrival or on arrival is required to answer. That assumes that a large number of people arrive by air but, of course, we know that some people arrive by other means as well and may not go through regular border points.

Senator ABETZ—We will get to that later but thank you for that. Have there been any discussions with Indonesia to try to identify or return passengers arriving by air from IMA-source countries who do not have a valid reason for visiting Indonesia or a return ticket?

Mr Metcalfe—I would have to check. We have extensive conversations with Indonesia and other countries in the region about what I would broadly call border security arrangements, visa requirements and the sorts of checking and other things that may occur. But because those conversations have happened over several years and have been extensive, I think it would be best if I provided you with a considered answer.

Senator ABETZ—I look forward to receiving that information. I think we can be agreed that the number of boat people arriving has increased considerably. In 2008 there were 80; in 2009 there were 948; in 2010, up until 19 August, there were 1,860.

Mr Metcalfe—Those are the numbers who had arrived in Indonesia by air.

Senator ABETZ—Yes, and there were a lot more than that. You might be able to provide us with the figures in relation to 2008-09 and 2010 generally.

Mr Metcalfe—It takes us across into that later program where all will be revealed.

Senator ABETZ—Does the department have any estimates for 2011 or beyond and if so what are the department's estimates?

Mr Metcalfe—Chair, we are expecting to answer questions about that under outcome 4.3. Senator, we will be happy to respond to you later.

Senator ABETZ—At this stage, I do not anticipate being around at outcome 4.3. If you would be as gracious as to take that on notice for outcome 4.3, I would be much obliged.

Mr Metcalfe—We would be happy to do so.

Senator ABETZ—I take you to question on notice No. 122. In that we are told that for 2010, up until 27 October, the boat people arrivals were 4,902. Do you have that?

Mr Metcalfe—Yes, I have that.

Senator ABETZ—And by other means, albeit it was a different date—and I do not know why that is a different date but so be it—there were 3,188. But it stands to reason even with that discrepancy that the number of boat people arriving in Australia seeking asylum is now overtaking the number that come by all other means other than by boat.

Mr Metcalfe—I think that is a fair conclusion.

Senator ABETZ—Is this the first time in Australia's recent history of the past 10-15 years that that has been the case?

Mr Metcalfe—I would have to check on that. I suspect the figures from 1999-2000 and 2000-01 would take us very close in relation to that. The reason for what you call the discrepancy is that you will see on the question that for people who arrive by other means other than by boat is a figure available until 30 June 2010 unlike the figure for boat arrivals, which is 27 October. The footnote associated with that is that we record persons arriving by other means at the time they apply for a protection visa because some of them are already on a visa, enter Australia and then subsequently apply whereas a person arriving on a boat effectively applies at the time they arrive.

Senator ABETZ—Please take on notice for me then the question of what previous year boat people numbers exceeded those arriving through other means.

Mr Metcalfe—I will take that on notice. It will take us back until about a decade ago.

Senator ABETZ—Yes. That would be helpful. Has your attention been drawn to the *Age* article of 29 January 2011, headlined 'Ring preys on boat people'?

Mr Metcalfe—It may well have been at the time, but there are so many articles written about this that it does not spring to mind.

Senator ABETZ—It was allegedly an exclusive by Russell Skelton. It was a page 1 story in the *Age* suggesting:

HIGHLY sophisticated people-smuggling syndicates charging clients \$12,000 for a trip from Afghanistan to Australia are preying with apparent impunity on Hazara communities in Melbourne, Sydney and Adelaide.

Mr Metcalfe—Yes, I do recall that article now.

Senator ABETZ—This was quite an expose. Did the minister issue any media release in response to the information contained in that article, saying it was absolute rubbish or nonsense, or did he not?

Mr Metcalfe—Chair, again we are in the wrong area. I do not have the right people with me. I would have to check, Senator, whether the minister said anything in response to that and, if he did, what it was—noting that the responsibility for law enforcement aspects of this matter fall to the Minister for Justice and Customs or the Minister for Home Affairs

Senator ABETZ—I assume the assessment of that claim falls under Refugee and humanitarian assistance?

Mr Metcalfe—Again, all matters relating to the processing of people who arrive by boat come under output 4.3. Essentially where we are now, under 2.1, Refugee and humanitarian assistance, relates more to our program of bringing refugees to Australia and settling those 13,000 or 14,000 people that we bring here each year and associated issues. It was for that reason that we dealt with some of those matters previously with Senator Cash. All aspects relating to irregular maritime arrivals—their detention and their processing—fit under 4.3.

Senator ABETZ—I asked question No. 124:

How many “boat people” are currently in the “pipeline”?

The information that I was provided was that:

It is not possible to provide accurate data ...

I accept that, but the fact that you cannot provide accurate data is, with respect, no excuse for providing no information whatsoever. So I am asking whether or not there is any information that you have that might not be completely accurate but which is as good an estimate as one can make in relation to these matters.

Mr Metcalfe—Estimates of displaced persons who may be on the move towards Australia are notoriously unreliable. You asked how many boat people are currently in the pipeline. I assume by ‘pipeline’ you mean a pipeline of irregular travel towards Australia?

Senator ABETZ—Yes, that was understood and that is how you answered.

Mr Metcalfe—Yes, that was understood and how we answered the question. We certainly know that some people are heading our way, because people continue to arrive, but to try to indicate how many people may, at any one time, have in their head that they are travelling towards Australia would be a very difficult and impossible task.

Senator ABETZ—Yes, but is it in the thousands? Is it in the tens? Is it in the hundreds?

Mr Metcalfe—I would suggest it is certainly not in the tens of thousands or above.

Senator ABETZ—This *Age* article, once again, refers to 17,000 asylum seekers waiting in Indonesia to come to Australia and at least another 25,000 in Malaysia. I am just wondering whether the department has any view on those assessments.

Mr Metcalfe—I would regard any suggestion that all of those people were coming to Australia as exaggerated. We know that there are significant populations of displaced persons within the region. For example, Malaysia hosts close to 100,000 people from Burma and a number of other countries, the vast majority of whom have no intention whatsoever of coming to Australia—or certainly they have not evidenced that by travelling this way. We know that there are many people in Indonesia who have been there for some time as well.

A small proportion of those people actually come to Australia. Australia receives around two per cent of all such applications globally each year, but it is very difficult to get into the heads of all of these people who may or may not be seeking to do something.

Senator ABETZ—In question 127 on notice we were given a table and, in that table, under nationality was the category ‘stateless’. I am wondering: is that a self-assessment by those people that they are stateless or is that a determination that is made by officials?

Mr Fleming—It generally reflects the declaration by the person that they are stateless.

Senator ABETZ—By the person?

Mr Fleming—Obviously, if we had other information that they have a nationality, we would change that.

Senator ABETZ—In the first table under ‘stateless’ there were three and then over the page we have under ‘stateless’ 68 successful and 216 unsuccessful with 42 appeals, so it seems as though there are quite a number of people that come here or arrive stateless. It seems to me an interesting figure, but it is a self-assessment by these people.

Mr Metcalfe—It throws up some quite difficult issues relating to aspects of populations where citizenship may in doubt or in dispute. Two examples well known to this government and the previous government are the Bedouin population, where there are different views as to whether they are citizens of Kuwait or not, and also a group known as the Faili Kurds who have lived between both Iran and Iraq. So those aspects as to true citizenship are more complex than for someone born in Australia with an Australian birth certificate, for example. Those are the sorts of issues we have to manage in dealing with those issues.

Senator ABETZ—Is the task of assessing asylum seekers outcome 4.3?

Mr Metcalfe—It is.

Senator ABETZ—I promised not to return, but unfortunately I will have to.

Senator CASH—I am not sure if it comes in here, but in response to question 56 that was placed on notice the department lists 129 people in mainland detention centres who are awaiting removal. Of those, 18 are designated as stateless. Does that question fit here?

Mr Metcalfe—I would go into that probably under outcome 4.3.

Senator CASH—On that basis, it seems that the majority of questions are falling into 4.2 and 4.3, so I will finish up on this outcome.

CHAIR—Senator Barnett, you have no questions here?

Senator BARNETT—No, I do not.

CHAIR—Mr Metcalfe, thank you to your officers in relation to outcome 2 and program 2.1. We will move on. Program 3.1 is border management. Senator Cash, do you have—

Senator CASH—I do not have any questions in relation to this particular outcome.

CHAIR—Senator Barnett, do you have any questions here?

Senator BARNETT—No, I do not, thanks.

Senator CASH—Senator Furner, do not rock the boat!

CHAIR—And we do not have anyone else?

Mr Metcalfe—I have no questions, Senator.

CHAIR—Your people in that program can run away.

Mr Metcalfe—Not in this place, anyway!

CHAIR—Does that provide them with a bonus if they have absolutely no questions in estimates? All must be going swimmingly well, I suppose!

[4.34 pm]

CHAIR—We will move on to outcome 4 and program 4.1, which is visa compliance and status resolution, although I suspect the questions will probably get a little bit muddled between programs.

Mr Metcalfe—I will try to help where I can. Essentially this subprogram deals with immigration compliance activities in Australia—people who may have arrived as tourists and overstayed their visa—

CHAIR—People who stayed after the World Youth Council would be an example?

Mr Metcalfe—That could be one example. There are those sorts of issues. The issue of removability of people, the return of people, actually falls in the responsibility of officers here as well. I do know the breakdown of responsibilities across 4.1 to 4.3 can be confusing, so we are happy to assist the committee in responding to questions.

Senator CASH—I refer to the provisions of the Migration Act 1958 and the relevant regulations, and in particular to the obligations imposed on a sponsor and the sanctions available when a sponsor fails to satisfy their sponsorship obligations. In each of the past five years, how many business sponsors have had sanctions applied against them for failing to satisfy their sponsorship obligations? What was the nature of the failed obligations and what sanctions were applied?

Mr Metcalfe—I suspect we are back in program 1. I will see whether the officers can assist. Sponsorship obligations for workers or for family members are attached to the visa itself. That is where it occurs. This is more about people who have overstayed visas or breached visa conditions and that sort of thing. I accept it can be confusing so we will see if we can retrieve Mr Kukoc.

Senator CASH—That would be great.

CHAIR—Can we clarify this—is that officer no longer here?

Mr Metcalfe—He has left. Can we take this on notice?

Senator CASH—Yes, thank you very much. During the 2010-11 financial year, how many unlawful non-citizens have been located to date as a result of DIAC's compliance activities?

Ms Larkins—The data for unlawful non-citizen locations, full year 2009-10, totalled 14,169. This year, for 1 July to 31 December, 6,688 overstayers or people in breach of their visa conditions were located. I should say that locations include both people we find and people who voluntarily come forward to us.

Senator CASH—How many of those mentioned have been removed?

Ms Larkins—I cannot give you figures on how many of the ones we locate in any program year have been removed in that program year; what I can tell you is how many departures we had in a particular year. Last year we had 8,825 compliance related departures from the country. They are not necessarily people we located first in that program year.

Mr Metcalfe—There is obviously a lag effect which may extend across program years—they have been located in one year and it may fall across into the next year.

Senator CASH—In relation to the balance of the 14,169, what is the status of those people who have not been removed?

Ms Larkins—If I can suggest another way of looking at it, there is a pool of people who are overstayers in the community, and that is around 50,000. There is another group of people who are on bridging visas, and they are the pool of people we are actively working with to resolve their immigration status. There is also a small number of compliance clients who are in detention, and that is around 120.

Senator CASH—In relation to the 8,825 who have been removed, do you have the cost of that to the government?

Ms Larkins—I will take that on notice. I can give you a general range—somewhere between \$3,000 and \$15,000 per person. It really depends on the risk the person poses; the number of escorts we might need where they are travelling to.

Senator CASH—That is my next question—to which countries?

Ms Larkins—If you will just bear with me I can tell you; I have got that with me.

Senator CASH—Whilst you are looking for that answer I might just ask for some guidance from Mr Metcalfe: if this is visa compliance, is this where I ask questions about detainees who have absconded?

Mr Metcalfe—No, that would be 4.2. Essentially, people who are in the immigration detention network and the management of that network onshore are under 4.2.

Senator CASH—Thank you.

Ms Larkins—Just to be clear, again: the departure figure I gave you is voluntary departure and involuntary departure, and assisted departure. So it is everybody that we have had contact with, apart from the people who leave at the end of their visa lawfully.

Senator CASH—Ms Larkins, are you able to break that down? You do not have to do that now, but can it be broken down into its components?

Ms Larkins—It would be better if I took it on notice.

Senator CASH—Thank you very much. And you are going to provide me with a list of the countries to which they have been returned?

Ms Larkins—I can tell you the top five countries of returning activity: China, India, Malaysia, the United Kingdom and South Korea. They are the top five countries, but I can give you more detail on that.

Senator CASH—I do appreciate that; thank you. You probably are aware of a recent media article which reported the arrest of a 47-year-old Cairns man for allegedly running a fraudulent immigration visa scheme involving more than 120 people from India.

Ms Larkins—I am actually not aware of that.

Senator CASH—That is okay. I have a copy of it here. The article is from the *Cairns Post* of Tuesday, 1 February 2011: ‘Man faces court for fake work visa fraud’; ‘Cairns man accused of Indian passport fraud will face 97 charges.’ You might be familiar with the person’s name:

Sona Singh Bhela, 47, applied for bail in Cairns Magistrates’ Court yesterday after he was arrested and charged last Friday with 97 visa fraud offences.

Is there someone who would be able to update me on the status of this particular man?

Mr Metcalfe—No-one immediately obvious, Senator, but I will check and come back to you.

Senator CASH—That would be greatly appreciated. Also, what is the status of the 120 people that have been affected as a result of his activity? Will their visas be cancelled? If not, why not?

Mr Metcalfe—I suspect that that level of detail we will have to take on notice, but if we can provide an oral update we will.

Senator CASH—Just an update on the status of that particular gentleman. During the 2010-11 financial year, how many visas have been refused or cancelled by a departmental officer using the delegated powers given by section 501 of the Migration Act?

Ms Larkins—I will just find that. As at 1 January 2011, 60 visa applicants had been refused and 64 visas cancelled under section 501 during the current program year.

Senator CASH—And that was by a departmental officer?

Ms Larkins—It was.

Senator CASH—During that same period, how many visas cancelled under the above powers were refused or cancelled by the minister himself, as opposed to a delegate?

Ms Larkins—In that period no personal decisions were made by the minister.

Senator CASH—What is the current budget and for the years 2008-09 and 2009-10 for the conduct of compliance activities within the department?

Ms Larkins—Just bear with me.

Dr Southern—Senator, which years were you looking for?

Senator CASH—The years 2008-09, 2009-10 and to date.

Dr Southern—Departmental costs—

Senator CASH—For the current budget, sorry.

Dr Southern—Sorry?

Senator CASH—The current budget—2010-11.

Dr Southern—For 2008-09 it was \$76.6 million; for 2009-10, \$71.9 million; and for 2010-11, \$64.4 million. That is departmental costs. Administered costs: there were none in 2008-09; 7.2 in 2009-10 and 8.7 in 2010-11.

Senator CASH—In terms of that reduction, has any portion of this budget allocation been transferred to other output areas?

Ms Larkins—No, the reduction is more of an administrative reduction than an actual reduction in output. So the savings shown in the PBS are the result of reduced corporate overheads, completion of the Systems for People program in relation to program 4.1, IT efficiencies arising from the Gershon reforms and national office efficiency improvements. So they are not actually affecting the compliance work on the ground.

Senator CASH—During the 2010-11 year to date, how many visa holders, either temporary or permanent, have had their visas cancelled because they provided fraudulent or false information and/or documents?

Ms Larkins—If you bear with us we will look that up.

Senator CASH—Thank you. There are some additional questions which I will read out. Were any of these persons onshore and prosecuted in Australian courts? If so, what penalties applied in each case?

Ms Larkins—This might take a little while.

Senator CASH—I will continue with questions then. This may also be information that needs to be sought. How many non-Australian citizens who have been convicted of a serious crime and served more than 12 months in prison have been released into the community? How many have had their visas cancelled under the provisions of the Migration Act and removed from Australia?

Ms Larkins—As we responded to the question on notice at last estimates, we do not keep those figures. We would have to seek that information from state and territory correctional authorities.

Senator CASH—Are you able to seek it to date by taking it on notice?

Ms Larkins—We think that would be a significant piece of work for us to do and at the moment we do not have the resources to pursue that.

Senator CASH—Is there a time in the future when you might have the resources to pursue it?

Ms Larkins—It is one of the things where we would like to have better data holdings but we do not have any plans or investments to do that.

Senator CASH—Have you been able to do this in the past? When was the last time you provided—

Ms Larkins—No. We collect data from states and territories on the basis of MOUs but we have no formal right to that information and it is not our information to hold.

Senator CASH—When was the last time you provided that information?

Ms Larkins—I am not aware.

Senator CASH—Are you able to take it on notice and find out for me?

Ms Larkins—When was the last time and if we ever provided that, yes.

Senator CASH—Thank you very much.

Ms Larkins—To go back to your cancellation question, can you repeat the question for me?

Senator CASH—In the year 2010-11 to date, how many visa holders, either temporary or permanent, have had their visas cancelled because they provided fraudulent or false information and/or documents? Were any of these persons onshore and prosecuted in Australian courts? If so, what penalties apply in each case.

Ms Larkins—There were 180 people between July and December of this program year who had their visas cancelled for providing incorrect information. I will have to take up the follow-up action for those.

Senator CASH—In answer to question 290, which was taken on notice, the department stated that it would pay for the cost of clients in residence determination and further that the costs were comparable with maintaining a person in immigration detention facilities. Are you able to provide a comparison of those costs?

Ms Larkins—This would be a better question in 4.3.

Senator CASH—Do you have statistics to update me in relation to how many people have had their citizenship revoked as a result of fraud in the gaining of permanent residency and citizenship?

Ms Larkins—Again, that is a different outcome.

Mr Metcalfe—It takes you to about outcome 5.

Senator CASH—On that basis, that is all I have for that outcome.

CHAIR—Senator Cash, just keep going.

Senator CASH—Last time we did 4.2 and 4.3 together.

CHAIR—As we are at outcome 4, just keep rolling on now.

Mr Metcalfe—Chair, 4.2 is essentially the onshore detention framework and 4.3 is about offshore asylum seeker management, which includes not only detention issues but status determination, decision making and so on. The same officers will be here. So we are happy to assist the committee.

CHAIR—We will guide you through it.

Senator CASH—I will turn to some general process questions about when there is a death in detention. When there is the death of an IMA or a detainee at a detention centre, what is the process that the government undertakes for the funeral or the burial of the deceased?

Ms Wilson—There is a formal process of a Serco investigation, as well as an AFP investigation. In relation to the deaths at Villawood that we may be talking about, they are also being referred to coronial inquiries by the New South Wales Coroner. After those processes have completed there will be discussions with family and next of kin about appropriate burial arrangements.

Senator CASH—Are you talking about family in Australia?

Ms Wilson—It could be family in Australia or overseas. In relation to the death in August last year of a client in Curtin for health reasons, his family overseas was contacted and asked about their wishes for his burial arrangements. It was agreed that he would be buried in the Muslim part of a cemetery in Perth. That was arranged by the relevant groups over in Perth in consultation with DIAC. We facilitated that for the family.

Senator CASH—When you say that you ‘facilitated’ what was the facilitation?

Ms Wilson—We paid for the burial and we worked with the local community to determine the proper, culturally appropriate and sensitive way of doing it.

Senator CASH—How long does this process normally take?

Ms Wilson—There was no coronial inquiry into the gentleman who died at Curtin. The body was immediately available, and we made arrangements as soon as we could.

Mr Metcalfe—I think it is fair to say that it will vary widely depending on the particular circumstances.

Senator CASH—I can understand that. Is there any differentiation in the process if the death is onshore compared to offshore?

Mr Metcalfe—The major difference is not so much whether the person is on the mainland or on Christmas Island. The major difference we have seen recently has been whether the person had actually arrived and been placed in detention or whether they died before that occurred. For example, with the people who died as a result of the tragedy off Christmas Island—SIEV 221—they had never come into the department’s care because they died just before they arrived in Australia. We agreed with the Australian Federal Police that in those circumstances the arrangements for the funerals for those people would be primarily the responsibility of the AFP, but because part of the funeral arrangements involved the presence of family members who were in detention the department was closely involved as well.

Senator CASH—How does the department determine if a body is to be repatriated to the country of origin or buried in Australia or elsewhere?

Ms Wilson—Following on from the incident that the secretary just talked about, the AFP made contact with the relevant families, who were largely overseas but some were in Australia, and sought their requests.

Senator CASH—We are talking at the moment about the general processes followed. I will turn to some particular incidents shortly. In the general process that is followed, does the department always defer to the wishes of the affected family?

Mr Metcalfe—We do, and indeed it is a requirement of the Western Australia Coroners Act, which is the relevant legislation that determines matters on Christmas Island, that the

wishes of the family must be given priority. Not only would it be a matter of common sense and common decency but it is a legal requirement we adhere to.

Senator CASH—If the body is to be buried in Australia, how is that determined? Is that again the process of consulting with the family members and ascertaining what their wishes are?

Ms Wilson—It is the same legislation the secretary just referred to. It says that family wishes in relation to arrangements for the deceased should be afforded priority. So we would undertake that process.

Senator CASH—What are the costs borne by the department associated with a death that occurs in detention?

Mr Metcalfe—Again, it will depend on the circumstances. Ordinarily, the Australian government would assume responsibility for the cost. In the very sad circumstances of SIEV221, where people died before they came into the care of the department, arrangements are being worked through with the Australian Federal Police; however, some families have expressed a desire that the deceased be repatriated for burial in their home country. Again, the issue of costs is largely worked out between the responsible Australian government departments.

Senator CASH—Could you update us on the status of the various investigations into the SIEV221 incident?

Mr Metcalfe—We can, to a limited extent. There has been a coronial process. The Australian Federal Police is best placed to advise you on where that inquiry is at. Clearly, one of the early issues has been disaster victim identification, hence a number of the deceased were made available for burial last week but others are still yet to be formally identified. So the inquiries into the identity of the deceased have been completed for some but not others. The coroner of course has a jurisdiction relating to the circumstances of the deaths, and the AFP can provide you with advice as to where that is at, but clearly that will have some way to go. Separately, there was an inquiry undertaken by the Chief Executive Officer of the Australian Customs and Border Protection Service about the circumstances of the rescue operation, and that has been publicly available. It is my understanding, from an announcement by the government, that there will also be a select committee appointed to inquire into the matter. The department was involved in a number of briefings of the opposition spokesman—and I was involved in one of these—and in a series of briefings with a group of Independent members and Senator Hanson-Young. So there have been a variety of processes running across a variety of issues.

Senator CASH—Where are the survivors of the disaster being held?

Ms Wilson—There are six currently in Perth—

Senator CASH—Where in Perth?

Ms Wilson—There are two clients at the residential housing complex and four clients in an alternative place of detention in Perth.

Senator CASH—Where is that?

Ms Wilson—That is a hotel arrangement.

Senator CASH—Which hotel is being used in Perth?

Mr Metcalfe—For reasons of privacy and security arrangements, I would like to check whether that is a public record. We are talking about a family and women, therefore they are not in an immigration detention centre but in another place.

Senator CASH—So there are six in Perth?

Ms Wilson—That is right. Thirty-three on Christmas Island and the three crew have been taken into custody by the AFP in Perth.

Senator CASH—In terms of the department and its role in the disaster, has the government conducted any analysis as to the impact that this type of incident has on the decision of individuals to get on a boat and attempt to come to Australia?

Mr Metcalfe—My response to that is that this simply confirmed that some people smugglers are prepared to embark passengers and send them out with, quite often, young or inexperienced crew into what can be very treacherous situations. That is something we have known about and had concerns about. We have seen some very significant tragedies in the past. We do what we can to make people aware of the risks that they are taking. Using every possible means at our disposal, including new media tools on the internet, we have placed some material on You Tube that is trying to get the message through. We have also undertaken communication programs with the relevant communities in Australia of people from the countries who might be coming here. So it has not sparked a review as such but merely confirms that this is a pretty evil business and people can often place themselves at risk. We have just seen the tragic consequences of that.

Senator CASH—Since the disaster of SIEV 221, whilst you have not undertaken a formal investigation as to whether or not it contributes to the reasons people get on a boat, has the department actively increased its awareness-raising levels at the point of embarkation?

Mr Metcalfe—I have two responses. The media attention to this tragedy has, I suspect, rippled and resonated through the international media and through the diaspora communities and it has obviously very tragically affected some members of some particular communities and families. So to a certain extent the tragedy itself has served as a reminder to many people about the dangers people face. The Australian Customs and Border Protection Service has responsibility for undertaking targeted information campaigns overseas, and I think it continues to do that work. You can ask them about that. We have certainly continued to do our work here in Australia with the Afghan community or other communities where we suspect that news is travelling back and forth and we try and influence people to accept that irregular travel to Australia is very hazardous and that if people are in need of international protection they should approach UNHCR overseas and seek their good offices to deal with the issue.

Senator CASH—Going back to the general process question on the department arranging the funerals and the burials of the deceased persons, when it comes to costs is there a point at which the department says, 'That's it. We cannot afford to pay any more.' Or does the department foot whatever the bill is?

Mr Metcalfe—We would have to take into account all of the circumstances in reaching those sorts of decisions. There is certainly not a limitless cheque here but each circumstance would be looked at carefully on its merits as to what is reasonable. This particular circumstance we just had was particularly sad and a particularly difficult set of issues for us to work through as I indicated in my opening statement this morning.

Senator CASH—Are you able to take me through the process that the department undertook in arranging the recent funerals and the burials, in particular how the decision came to be made that the funerals would be held in Sydney as opposed to Christmas Island?

Mr Metcalfe—I am happy to do so, bearing in mind that, as I said earlier, the arrangement for the funerals per se was a matter for the Australian Federal Police.

Senator CASH—Because they had not actually come into your—

Mr Metcalfe—Precisely. We obviously worked very closely with the AFP, the authorities on Christmas Island, the responsible undertakers and others as part of the arrangements. We can answer part of the question but not the entire question.

Ms Wilson—To add a bit more, AFP had the discussions with family and next of kin overseas and DIAC made contact with family on the mainland. With regard to burials at Christmas Island, Christmas Island is a small community. There are no formal funeral arrangements or undertakers, so it is not possible to bury anyone apart from the local community on Christmas Island. We would have had to find an alternative place for burial of our clients.

Senator CASH—Can you please explain that?

Mr Metcalfe—Firstly, Christmas Island has no facilities and no undertaker or any other people able to manage the funerals. Given that we were dealing with people of both Muslim and Christian faiths, there were further considerations and we were looking at a series of funerals to occur at the same time. Also, a strong consideration was the fact that the island community essentially has a view that the facilities available on the island for a final resting place for the deceased are very limited and they should be reserved for islanders themselves. The AFP, in working through the arrangements for the funeral, was always going to have to look at bringing people to Australia, bearing in mind that there is also the issue of whether any people would be repatriated for burial back home.

CHAIR—Mr Metcalfe, you would be aware that the tradition on Christmas Island is that 90 per cent of the people there are buried in a number of Chinese cemeteries there, whereas Chinese people are buried in a very different way, with their feet heading out to the sea according to their custom. That is probably why the cemeteries on Christmas Island would not have been culturally appropriate.

Mr Metcalfe—Yes. I think it is fair to say that this particular set of issues was clearly very unusual and very testing of the island community, the AFP, the people involved in the disaster victim identification and Ms Wilson's and my own staff. As I said in my opening statement this morning, it has been a profoundly sad experience. I would like to put on the record again the fact that I think Ms Wilson and her staff have done a very good job in trying to manage this issue in a very difficult set of circumstances.

Senator CASH—Following on from that, it was determined that Christmas Island would not be an appropriate place to undertake the burials. What was the process to determine that it would be Sydney?

Ms Wilson—As I said before, AFP held discussions with family overseas and we held discussions with family on the mainland and, because they either had relatives in Sydney or had views about settling themselves in Sydney at some point in time, all the inquiries pointed to Sydney as the preference of the relatives that were consulted.

Senator CASH—Who made the final decision as to where these funerals were held? Was it the minister? Was it the department? Was it the AFP?

Ms Wilson—AFP formally engaged an undertaker, who did all the arrangements in consultation with AFP to determine the appropriate cemetery and burial. We knew we wanted to have a Muslim as well as a Christian burial and we left it to those discussions by the AFP to identify the best place.

Senator CASH—How do you determine the family members of those people on a boat who, based on previous history, come with no documentation the majority of the time and who have not yet come into our care because they have not made it to Christmas Island—though they are certainly in our waters?

Ms Wilson—The AFP had already undertaken extensive victim identification for all the bodies they released. They were best placed to know from that level of work they had already done. They already had to identify these people, so they had made those contacts. They were the avenues we used for the further connections.

Senator CASH—This is a cost to the Australian taxpayer, so I am going to turn to questions relating to the cost of the funerals. My understanding is that the minister has estimated that the expected cost of the flights will be around \$300,000. Do you have any further costings for the funerals that you can provide to the committee?

Ms Wilson—As with all our charters, we went through a procurement process for the chartered flights from Christmas Island to Sydney and back. That charter was also used for subsequent movements of clients off Christmas Island again. As the minister indicated, the cost of the charter from CI to Sydney and back was around \$314,000. There was one family member who had been taken to Perth for medical reasons and he was reunited with his family. The cost of that flight from Perth to Sydney was about \$1,500. He returned to CI on the charter, so there was no additional cost back to Perth.

Senator CASH—The cost from Perth to Sydney was \$1,500?

Mr Metcalfe—There would have been escorts involved.

Ms Wilson—There was also accommodation for the time the clients, the guards and health support staff were staying in Sydney.

Senator CASH—What was the cost of the accommodation?

Ms Wilson—All up, about \$6,300.

Senator CASH—Did that also include costs for security? Was that provided by your department or another one?

Ms Wilson—No. The detention service provider manages the security as part of our ongoing contract with them.

Senator CASH—How many people came down from Christmas Island to Sydney for the funerals?

Ms Wilson—Twenty-one came from Christmas Island and one from Perth, as I mentioned.

Senator CASH—Were any of the bodies repatriated to a country of origin?

Ms Wilson—Nine bodies were repatriated.

Senator CASH—Where were they repatriated to?

Ms Wilson—Two to Iran and seven to Iraq.

Senator CASH—My understanding is that the charter was unable to go directly back to Christmas Island because of the bad weather.

Ms Wilson—That is right.

Senator CASH—Can you please tell me what happened before it returned to Christmas Island?

Ms Wilson—Sure. It was scheduled to refuel in Port Hedland on the way to Christmas Island. Because of the storms heading that way, it was delayed and the clients were taken to Derby. They landed at the Curtin air base and were taken to an accommodation facility close to that area for one night, until we waited for advice about the weather clearing.

Senator CASH—Were there any additional costs associated with that?

Ms Wilson—There will be costs associated with that. I do not have them with me at the moment.

Senator CASH—If you could provide them to us when those costs come through, that would be greatly appreciated. I would like to go back to the decision that the funeral would be held in Sydney. Was it the minister or the AFP who made the decision that the funerals would be held in Sydney as opposed to the location where they were held?

Ms Wilson—The location for the funerals was determined by AFP in consultation with the families.

Senator CASH—What was the minister's role?

Mr Metcalfe—The minister had no role.

Ms Wilson—He was advised of the results of the consultation.

Senator CASH—With regard to security arrangements, what is the process to determine the level of security that will be required when you are taking 21 people from Christmas Island to Sydney?

Ms Wilson—We seek advice from our detention service provider.

Senator CASH—And that is the normal process?

Ms Wilson—That is the normal process. They make a risk assessment of the clients that are being transported and provide advice about how many staff should accompany the group.

Senator CASH—So there were 21 people from Christmas Island and one from Perth?

Ms Wilson—That is right.

Senator CASH—Were there detainees from any other detention centres at the funerals?

Ms Wilson—No.

Senator CASH—So it was just the people that we have referred to who were actually there.

CHAIR—I have a question that I want to ask. There has been a lot of media reports and commentary about the department flying the orphaned child down to the father's funeral and then returning that child to Christmas Island. I want to provide the department with an opportunity to explain that situation to us so that it is on the public record and there is some clarification about that turn of events.

Mr Metcalfe—Ms Wilson might provide the detail around this. I know there has been a great deal of public interest, and clearly it is a very sad situation. Much of it is focused on the little boy but, of course, there are three orphans as a result of this tragedy and we have been mindful of the welfare of all three orphans. The department's approach, as I said in my opening statement, has been informed by professional, medical, psychological and psychiatric advice as to the appropriate care and long-term welfare of the children. I know there has been some speculation and I normally would not comment on this issue. I normally would not comment on the issue of matters of departmental advice to the minister in this area. But I can assure you that in this area the minister was acting on departmental advice. Suggestions that there was a change of advice to either myself or to the minister are quite untrue. Media reporting to that effect has been completely speculative. In relation to the placement and the management of the group since the tragedy, where clearly they formed a very strong bond as a group, and given the fact that the funerals had to occur when the funerals had to occur and the family came to Sydney and returned home and the fact that we have now got to the position—based upon professional medical, psychological and psychiatric advice—as to longer term placements for some of the people, they are all issues that the department has been seeking to manage with the greatest concern and humanity for those concerned. Having said that, I will ask Ms Wilson to perhaps add something to that.

Ms Wilson—As the secretary indicated, these are all complex cases. The bodies were released fairly quickly by the AFP and there was a keenness by the families to actually have closure. When we were informed about the bodies being available for burial, we spoke to the whole group of survivors and said that this was happening. They were keen to have closure so we facilitated the funerals. Part of the discussion was: 'We are still considering your best placement options and therefore you will be returning to Christmas Island.' There were some outstanding psychiatric and psychological reports that we were waiting for. They were certainly fully aware of that when they boarded the plane and that message was reinforced to them while they were in Sydney. Also, as the secretary indicated, there were three orphans in the group and there were two orphans who were cousins left on Christmas Island whose family members have not been found or identified, so they are going through a whole process themselves. We did not want to just focus on one. We wanted a solution for all of them and we were waiting for advice in relation to best placements for them and best supports for them so

we could bring that forward. The minister has asked us to give priority to the three orphans and their extended family and, as the minister announced, we are making plans to put them into the community and community detention over the course of this week.

CHAIR—Is that for those three, or the five that you have mentioned, or all of them?

Ms Wilson—For the three orphans and their extended families, who are providing support to them.

CHAIR—Okay. So the three that went back to the island had some sort of connection there to say goodbye to or was it just to wrap up things?

Ms Wilson—Some of the survivors have also asked to go back to the site of the incident and say farewell in their own way, and we will be facilitating that for those who are keen to do that. There is also a need to say goodbye to the rest of the group, as the secretary explained. At the start of the process the psychiatric advice was that the group needed to stay together because they were supporting each other because they had been through a difficult incident together. More recent advice has been that the best way to manage them was to manage their individual cases in those support groups that have been identified.

CHAIR—Right.

Mr Metcalfe—Senator, I can certainly understand many people asking, ‘Why send the little boy back to Christmas Island?’ Without a full understanding of the situation, you can understand that people would say that, out of concern and compassion for him and for his family members in Sydney. We of course have to be mindful of the long-term interests, to ensure that any community care or community placements are viable and appropriate to ensure that the welfare of the child is uppermost in the arrangements.

As Ms Wilson has described, the advice coming to us was about the cohesion of the group, the need to provide closure on Christmas Island in terms of farewells and possibly, if people choose, a visit to Rocky Point, the scene of the tragedy. They are all occurring. However, also at very short notice, a number of the bodies of the deceased became available for burial, and families were naturally keen that burial occur as swiftly as possible. The two issues tended to intersect last week, so I can understand the concerns and the views of many people who may not have the full facts at their disposal or taken all of those issues into account. But, as I have said on a couple of occasions, our actions here have been driven by humanity and by concern for the long-term welfare of these people, taking into account professional advice. The minister has now of course announced that community placements on the mainland will be occurring soon.

CHAIR—Thanks, Mr Metcalfe.

Senator CASH—Senator, could I just follow that up with two questions in relation to the funerals, again?

CHAIR—Yes, all right.

Senator CASH—Is the department aware of any costs that were incurred by the New South Wales Police Force as a result of the funerals?

Ms Wilson—We have an arrangement with the New South Wales police about general support for our operations, including places like Villawood and Sydney IRH. This will come within that scope, and we have an arrangement where they can charge us back for any extra effort required on their part.

Senator CASH—Have you received an invoice from them to date?

Ms Wilson—Not at this stage.

Senator CASH—If one does arrive, would you be able to provide us with the total costs, on notice?

Mr Metcalfe—We will take that on notice, Senator.

Senator ABETZ—Are you anticipating one?

Ms Wilson—I am conscious that they provided some patrols around the outside of the places that we actually held the funerals. I am not sure how resource intensive that was. It would be up to them, depending on how resource intensive it was, as to whether they bill us or not. In some instances they do; in some instances they do not. That has been my experience in relation to New South Wales. We have very good relationship with them, Senator.

Senator ABETZ—For the New South Wales police it sounds like a very good relationship, because it seems they are the ones who decide whether you are billed or not, as opposed to having an agreement in place that makes that quite clear.

Mr Metcalfe—We do have an agreement, but I think there is an element of discretion applied by the police as to whether the patrols fit within a normal level of activity or they are something additional and special. We will wait to hear from them, Senator.

Senator CASH—Mr Metcalfe, one of the reasons Australians are obviously aware of the funerals and the tragedy associated with what occurred is because a lot of it was played out in the media. How did the media find out where the funerals were going to be held if these are such private and sensitive arrangements? Were they told?

Ms Wilson—No, the media were not told, but the family were told of arrangements when they arrived in Sydney. They were told about the Muslim service and the Christian service and what times they would be and where they would be, and certainly, as they always do, they have access to phones and they can make contact with people. We invited them to tell relevant family members who wanted to attend the service, so I cannot vouch for who they contacted, but certainly they were free to tell people who they thought should be at the service.

Senator CASH—So there was no policy on behalf of—

Mr Metcalfe—Quite the contrary, and this is where the management of the issue is complex. We can obviously understand the great interest and concern about this, but our overwhelming objective, together with the AFP, was to allow family members to grieve in private, as you would hope for any funeral. For that reason we certainly were not in contact with the media. I was not in Australia last week, I was overseas, but my understanding is that the media were quite critical that we were not disclosing lots and lots of detail and that we were basically saying, 'Well, it's private.' There was some frustration around that.

Of course, we are very happy now that we are through last week and the events have occurred to discuss these issues with the committee as part of our proper accountability process, but in the lead up to the arrangements the overwhelming concern was privacy. The fact that the media become available was probably inevitable I suspect given that so many people became aware of what the arrangements were. I am aware that the media were probably frustrated that we were not more forthcoming.

Senator CASH—What was the formal process to notify family members of the funeral arrangements followed by the department?

Ms Wilson—We invited the clients who were coming for the services to make contact with their relatives.

Senator CASH—And when you say the ‘clients’, it was the 21 who were on Christmas Island?

Ms Wilson—Yes, that is right. As I said, before they left we talked to them about what was going to happen, what sorts of services were being undertaken and how it was going to transpire over that day. Certainly we welcomed any relatives in Sydney that wanted to participate, and several of them attended.

Senator CASH—And so the clients on Christmas Island were given the opportunity to make those calls over to—

Ms Wilson—That is right, make contact. And, again, when they arrived in Sydney the phones were available for their use to make contact with family members should they choose to do so.

Senator CASH—So they arrived in Sydney well before the funeral? They were able to contact family members.

Ms Wilson—The night before.

Senator CASH—How many family members did you actually say ended up attending the funerals?

Ms Wilson—It is hard to say how many were family members as opposed to relatives or friends. There were some from the broader Muslim community who came as well. I would say at least 10 family members who reside in Sydney might have come.

Senator CASH—Per person who was being buried?

Ms Wilson—No, in total. We did not ask people to explain why they were there or anything like that, so it is hard to tell, but just from the associations—

Mr Metcalfe—Ms Wilson represented the department at the funeral. We thought it was appropriate that we have a senior representative there, and so I suspect what she is saying is just based on her own personal observation as to who was actually there.

Ms Wilson—That is right.

Senator CASH—Was the department able to ascertain how many direct family members there are in Sydney versus how many direct family members there are on Christmas Island? Were there relatives of the deceased on Christmas Island?

Ms Wilson—Of the decease we were burying? If they were a direct relative and they wanted to come to the service, we brought them to the service. My understanding would be that those who were direct relatives were in Sydney at the funeral. In relation to how many were there on the mainland, I cannot be sure that any relative that lives in that area attended. All I can account for is how many people I thought were there.

Mr Metcalfe—We obviously have seen the media reports about various family members attending and that sort of thing, but these were not our funerals to organise or to run. We did not control who turned up, and so any advice here is purely based on observations.

Senator CASH—I absolutely appreciate that. You believe approximately 10 family members that resided in Sydney were at the funeral in Sydney. What I want to draw out is how many family members were on Christmas Island that you had to bring to Sydney on the charter flight in addition to—

Ms Wilson—We brought 21 from Christmas Island. Seven were survivors, so the 14 basically either had lost an immediate family member or were a direct or close relative of a survivor and were providing support. For example, there were a few cousins who came to support the other family members who were grieving.

Senator CASH—So seven were survivors and 14 were relatives or family members or supporters?

Ms Wilson—Yes, from the Christmas Island cohort.

Senator CASH—And that is versus the 10 direct family members that you believe attended.

Mr Metcalfe—Around 10, but that is a very imprecise figure.

Senator CASH—Were those numbers known at the time that the decision was made to hold the funerals in Sydney? Was it known that there were going to be more family members coming from Christmas Island than there would be attending in Sydney?

Mr Metcalfe—I think Ms Wilson said that AFP, who organised the funerals, would have been well aware of the relationships involved because of their own work on the disaster victim identification and the policy inquiry into the deaths, so I think the answer is yes, they would have been aware of that number of people.

Senator CASH—But that is probably a more appropriate question for the AFP?

Mr Metcalfe—You will have to ask the AFP what the AFP knew.

Senator CASH—Senator Abetz followed on from my questions in relation to whether or not there had been any money paid to the department or you were going to be invoiced by the NSW police service. Are you able to tell me generally how much you have been charged by state or territory police services over the last 12-month period?

Ms Wilson—I have not got that information now.

Senator CASH—Is that something you are able to take on notice?

Ms Wilson—We are formalising MOUs with most of the state jurisdictions. We have had some in place already and some of them have been expanded, so I can take that on notice.

Senator CASH—That would be greatly appreciated.

Senator ABETZ—The request for sensitivity and privacy for the funeral is perfectly understandable. I assume that that terminology that is being used by departmental officials today is as a result of that which was requested by those who were burying their dead—or was it just something that the department thought might be a good idea, without consultation?

Mr Metcalfe—Our normal approach would be to treat any funeral as a sensitive and private matter. Whether there was a particular request from family members to that, we can check, but our starting position here is that these are not public events with the media invited and all that sort of thing. Essentially it is about being able to respect the deceased and for family to be able to mourn and pay their last respects, and that is usually done, in most cultures, in a very private sort of way.

Senator ABETZ—I fully agree with you, Mr Metcalfe. Ms Wilson, was that a message that came through from those that attended the funeral?

Ms Wilson—I am not sure if there was a formal asking, but certainly for many of the clients who were burying family members they had not seen them since the incident on the rocks and for some of them, even though they were in coffins, it was their first opportunity to say goodbye. And certainly in the Christian chapel there was a lot of grief, as in the Muslim service, and I think they really appreciated the privacy to be able to say their goodbyes in private.

Senator ABETZ—Were there any complaints about the media presence from any of those that were there burying their dead?

Ms Wilson—No. I think they were more focused on what they were there to do. We tried to manage the media with our media people and the detention service provider. What I can say is that they all came up and personally thanked me for the efforts we had facilitated to manage appropriate saying of goodbyes and final farewells to their relatives. They were very grateful.

Senator ABETZ—Without dragging this out, you had media advisers there in anticipation?

Mr Metcalfe—We had two public affairs officers there. It was becoming apparent that this was going to be quite a public event, notwithstanding our attempt to ensure it was a private event, so our media people were there essentially to liaise with the members of the press who were there.

Senator ABETZ—Just a quick follow up: where were these public affairs officers from? Were they based in Canberra?

Ms Wilson—One was from our Sydney office and one was from our Brisbane office.

Senator ABETZ—One was from your Brisbane office. When were the relatives notified—24 hours beforehand?

Ms Wilson—They were told on 7 February that the bodies would be released and that we were organising a service. That is when the relatives were told. I am talking about the relatives on Christmas Island—the survivors.

Senator ABETZ—But it became apparent, according to Mr Metcalfe, that there would be media there.

Mr Metcalfe—As part of normal—

Senator ABETZ—When did that become apparent?

Mr Metcalfe—I would have to check the record on that. As I said I was overseas. As part of our normal contingency planning around an event that was, in all likelihood, going to become public regardless of our starting position that it was a private matter, we would normally have media people present in case the media were present. It is quite a usual thing to do.

[5.36 pm]

Senator CASH—Mr Metcalfe, I would now like to turn to an area that, again, you and I canvassed at the previous estimates hearings. It is in relation to the East Timor regional processing centre.

Mr Metcalfe—We have gone backwards to 2.1 but I am happy to do that. I will see if Mr Fleming is still in the room.

Senator CASH—This is not under 4.2 or 4.3?

Mr Metcalfe—No, because it is essentially in relation to our diplomacy in terms of refugee issues more generally.

Senator CASH—I do apologise.

Senator ABETZ—I was under the same misapprehension as Senator Cash, after our previous discussions. If you can deal with it that is all good.

Mr Metcalfe—Just as a general point, I am always happy to assist at the beginning of the day if you want to say, ‘I want to ask questions here, where do I ask them?’ I am always happy to assist.

Senator CASH—I appreciate that.

Mr Metcalfe—As it turns out Mr Fleming is here and I am sure the chair is happy for us to—

Senator CASH—Mr Fleming is still here! He is probably going to wish he was not.

Mr Metcalfe—Yes; he should have gone!

Senator CASH—Mr Metcalfe, you will recall at the October estimates hearing that we had a discussion around the definition of ‘the region’. My question was:

In terms of the word ‘region’, what is the region?’

Your response was:

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.

And so the conversation continued. Are you able to provide the committee with an update on what the definition of 'the region' actually is?

Mr Metcalfe—I saw this, Senator. I know that there was a great deal of interest as to what is the region and what is not the region. Can I offer an alternative formulation?

Senator CASH—Yes, please do.

Mr Metcalfe—The means by which Australia has carried forward its international diplomacy on this issue over the last 10 or 11 years has been through the Bali process.

Senator CASH—Yes.

Mr Metcalfe—It was established by the former Minister for Foreign Affairs Mr Downer and his Indonesian counterpart and brought together countries from across the Asia-Pacific region and parts of the Middle East. I think I said last time that there were around 44—or certainly over 40—member countries.

Senator CASH—Yes.

Mr Metcalfe—We are certainly continuing to advance our international diplomacy on the aspects of the origins, the transit, the destination and the potential resettlement of people irregularly moving through our part of the world, through that Bali process. We are looking forward to further meetings in relation to that soon.

Any regional framework that is established will occur under the aegis of the Bali process and we would expect that there would be some broad conclusions of the Bali process and then a number of the states would opt into specific arrangements.

Senator CASH—Are those states from outside the Bali process?

Mr Metcalfe—It depends upon the arrangement. For example, you could argue that the Australia-Afghanistan MOU is in fact part of an overall regional framework because it is designed to deal with migration flows and the return of people from a source country. Australia has very good working arrangements with a number of countries, but we are looking through the regional protection framework to extend that level of cooperation. Essentially, the framework will involve those countries and states who decide to opt in to particular arrangements, whether they are returns, processing or resettlement, and we expect a range of things will occur. International organisations are also critical. In particular, the United Nations High Commissioner for Refugees is playing a constructive role in this area and we would certainly see them as being part of the regional protection framework as well.

Senator CASH—So have we backed away from the definition that we discussed at the October estimates hearings, which was that the region would be made up of the 44 countries in the Bali process, and we now have an opt-in process?

Mr Metcalfe—No. What I am saying is that we are advancing the regional protection framework concept through the Bali process. The Bali process involves over 40 countries—countries of origin, countries of transit, countries of destination and countries of

resettlement—and it includes the United Nations High Commissioner for Refugees. The regional protection framework is being developed through that mechanism.

Specific measures such as return agreements, transfer agreements or processing arrangements would then occur by countries who decide to enter into more specific arrangements, and that is a level of detail that is being worked through as well. So I think it is an errant and misleading concept to say that the region is not this and not that. What I am describing is the process, as we have for the last 11 or 12 years, for how we are actually engaging in a pretty productive way with countries in what I describe as ‘this part of the world’.

Senator CASH—So we are no closer to actually understanding what the region is?

Mr Metcalf—No. I absolutely understand what a regional protection framework is.

Senator CASH—That is not the question. The question is: what is the region? It is not what a regional protection framework is. What is the region? Which countries are going to participate in the region?

Mr Metcalf—What I am saying is that the regional protection framework has been taken forward under the Bali process, which involves a number of countries in the Asia-Pacific and the Middle-East.

Senator ABETZ—Which countries?

Senator CASH—Thank you, Senator Abetz. Which countries?

Senator Carr—We can list the countries if you like, Senator, but we are going round in circles.

Mr Metcalf—I think in response to question No. 103 we provided details of the 43 member countries of the Bali process and the other 18 participating countries that have an interest in the matter. This is where I think the discussion got a bit sidetracked last time: trying to say what the region is as opposed to who is participating in the discussions on the regional protection framework.

Senator CASH—So the countries that are part of the framework will be eligible to send people to the centre in East Timor?

Mr Metcalf—No, I am not saying that. I am saying that the regional protection framework will provide a series of guidance which, quite often, will be seen as a non-binding instrument. That is the way that the regional protection framework, the Bali process, has operated. The aspect of who may cooperate in relation to particular issues will be a matter for those countries.

Senator CASH—Okay. Will asylum seekers in Thailand be sent to the centre in East Timor?

Mr Metcalf—Not under any current proposal.

Senator CASH—Not under any current proposal; however, under a future proposal that may well be the case?

Mr Metcalf—You know that I do not do hypotheticals, Senator.

Senator CASH—Who actually will be going to the centre? Where do they actually come from?

Mr Metcalfe—You are talking about the proposed regional processing centre?

Senator CASH—Yes, the proposed regional processing centre in East Timor.

Mr Metcalfe—The proposal put by Australia to East Timor is that persons who arrive in an irregular manner from other places to Australia would be eligible for transfer to the regional processing centre. Whether other countries would seek to avail themselves of that is a matter for the future.

Senator CASH—Who is currently participating in these discussions?

Mr Metcalfe—Australia and Indonesia are taking the lead as the co-chairs of the Bali process. There have been other very productive discussions involving a number of countries and UNHCR—in Manila late last year, for example. We are currently working towards a meeting of ministers under the Bali process in the fairly near future.

Senator CASH—When is ‘the fairly near future’?

Mr Metcalfe—In the next couple of months. I will leave it for ministers to make announcements. As with all of these international issues, this is an issue that we are working on very closely with Indonesia and a number of other countries. I think it is appropriate that any announcements are made with the agreement of those involved. We are certainly well advanced now in working towards another ministerial meeting of the Bali process.

Senator CASH—That is very good news considering the entire process seems to hinge on the Bali process.

Mr Metcalfe—It has since Mr Downer and Minister Wirjuda from Indonesia established the Bali process 11 years ago. It has been the most significant forum in this part of the world for advancing discussions about irregular movements of people. There has been a lot of good work done building on those initial discussions.

Senator CASH—Seeing as we seem to have moved forward with discussions, will anyone in any country in the region who has arrived irregularly be able to be sent to the centre under the proposal?

Mr Metcalfe—As I have said, that level of detail is not there yet. I do not want to rule out or rule in anything that may occur in the future. I know what our proposal is, but whether other countries may wish to avail themselves of that is something for the future.

Senator CASH—What is your proposal? You said, ‘I know what our proposal is,’ but I am not sure. What is Australia’s proposal?

Mr Metcalfe—Australia has been in discussion with the government of Timor Leste about the establishment of a regional processing centre. That is an issue that we continue to have discussions with them about—the proposed centre and how it might operate. It is obviously a significant issue and it is something that is clearly receiving close consideration.

Senator CASH—How long has that been the Australian government’s position?

Mr Metcalfe—The initial announcement, I think, was made by the Prime Minister last year.

Senator CASH—In which month?

Mr Metcalfe—From memory, I think it was in a speech to the Lowy Institute for International Policy in early July.

Senator CASH—This is my worry. We understand what the Australian government's position is. It is now almost March 2011 and you say that there has been progress. I cannot understand what the progress is because, other than telling me what the Australian government's position is, you are unable to say who gets sent to the centre. There does not appear to have been any progress made in relation to any other country that may or may not be participating in this process. How is that progress?

Mr Metcalfe—I think the PM made it pretty clear, when she first articulated this, that this will take time. Matters of this nature are complicated and complex. They raise significant international legal issues and the Prime Minister was very upfront about that. No-one was suggesting that something would be up and operating within a week or two or anything like that. It is very much about capacity in the region for many years to come. I would suggest that it is in Australia's long-term national interest to ensure that there is a strong protection framework operating in our part of the world; to take measures to try and suppress, as far as possible, the irregular movement of people; and to provide opportunities for people in need of protection to avail themselves of such protection in a safe manner. We have been making good progress. I have mentioned that there have been some useful contributions made by UNHCR in relation to this work and we are expecting a quite significant ministerial level meeting fairly soon.

Senator CASH—Is Antarctica going to be part of the region?

Mr Metcalfe—No.

Senator CASH—That is progress, because we now have a definitive answer from you that we have one particular country that is not part of the region. That is progress.

CHAIR—Senator Cash, Mr Metcalfe—

Mr Metcalfe—I think it is quite ridiculous, Senator, to suggest that Antarctica—

Senator CASH—Well that is how ridiculous this entire regional processing centre situation is.

CHAIR—Senator Cash, as the chair I am asking you to come to order and Mr Metcalfe, please let me finish what I was saying. As I understand it, you have provided a list of countries participating in the Bali process—

Mr Metcalfe—Correct.

CHAIR—and other countries that have initiated an interest in the process in response to the question on notice. What was the question on notice? Perhaps you should clearly give us that number so the senators at this table can look it up and use those countries as a reference.

Mr Metcalfe—Senator Cash asked us—question on notice No. 103 from 19 October estimates—to provide the names of the countries that are members of the Bali process and we have done that.

CHAIR—They are the countries that will be involved in this processing centre.

Mr Metcalfe—That is right. There are no continents named or referred to and as far as I know Antarctica does not constitute a country under the Bali process.

Senator ABETZ—So all 43 countries are going to be involved in this processing centre.

Mr Metcalfe—No, I have not said that. I said that the regional protection framework has been advanced—and is being advanced—through the Bali process. The issue of specific arrangements within the protection framework is a matter for particular countries, and Australia is having discussions with the government of Timor Leste in relation to the particular proposal about a processing centre.

Senator ABETZ—So which particular countries are involved?

Mr Metcalfe—I refer you to the answer to question on notice No. 103 of the last Senate supplementary budget estimates hearing.

Senator ABETZ—All 43 of them?

Mr Metcalfe—The Bali process—

Senator ABETZ—That is what I just asked and I was told—

Mr Metcalfe—The Bali process comprises members from 43 countries.

Senator ABETZ—Yes, but then you said you were in discussions with particular countries about the centre. I want to know which particular countries because I assume the fact you used the term ‘particular’ countries means you were not including all 43 that you had previously provided to us.

Mr Metcalfe—What I said is that the Bali process and the regional protection framework is being advanced through the now-longstanding Bali process.

Senator ABETZ—We know that.

Mr Metcalfe—The specific proposal within a broader regional protection framework of a regional assessment centre or processing centre is a matter that is being pursued by Australia with, at this stage, the government of Timor Leste.

Senator ABETZ—Only.

Mr Metcalfe—That is correct. I have said that several times.

Senator ABETZ—Can you remind me then, what did you use the term ‘particular countries’ in relation to in your previous answer? The *Hansard* will disclose that for us.

Mr Metcalfe—I will have to check the *Hansard* but my understanding is that I was saying that within the Bali process it will be open to particular countries to adopt particular arrangements. I referred earlier to the arrangement that Australia has with Afghanistan in relation to returns. Afghanistan is a member of the Bali process. There may well be other arrangements reached between resettlement countries, countries of first asylum, countries of

origin and countries of destination like Australia. The aspect of a regional assessment centre or regional processing centre is one specific measure that can be encompassed within the broader regional protection framework that has been proposed as part of the Bali process.

Senator ABETZ—If I may quickly follow up on that, we are only discussing the processing centre with Timor Leste. Is that correct?

Mr Metcalfe—Timor Leste is also a member of the Bali process.

Senator ABETZ—Yes, but that is the only country that we are having discussions with.

Mr Metcalfe—In relation to a regional assessment or processing centre, at this stage that is the only country that we are in discussions with.

Senator ABETZ—Have we approached other countries about this proposal and have they refused to enter into discussions with us?

Mr Metcalfe—We have informed other countries about the proposal but we have not approached other countries with a view to hosting such an assessment centre.

Senator ABETZ—Sorry?

Mr Metcalfe—We have not approached any other country with a view to hosting such a centre but we have certainly discussed with and informed other countries of the idea behind an assessment centre.

Senator PRATT—What other countries? Indonesia? Malaysia?

Mr Metcalfe—We have certainly been involved in briefings and discussions with Indonesia and Malaysia, and Thailand, and there would be other countries as well.

Senator ABETZ—We are telling them, but they are not responding.

Mr Metcalfe—No, we are simply briefing them and keeping them informed of our particular proposal. What I am trying to describe here is a regional protection framework which may have within it particular initiatives or measures. The proposed regional assessment centre is one such measure that is the subject of a bilateral engagement at this stage between Australia and the government of Timor Leste, and which we have been providing information about to other countries. Your question was have we approached anyone else about such a centre; the answer is yes we have—we have told them about it but we have not asked anyone else to host such a centre.

Senator CASH—Are you able to take on notice to provide to the committee a list of the countries that the Australian government has informed about the regional processing centre?

Mr Metcalfe—I am happy to take that on notice.

Senator CASH—Last time in evidence you said that those who had come into the region would be eligible to be transferred to the centre. Is that still the case?

Mr Metcalfe—The Australian proposal is that people who arrived in Australia in an irregular fashion would be the people we would identify for transfer to the centre. I do not think my earlier evidence would indicate, and I am happy to check the *Hansard*, that any person from any part of the world who comes into any part of the Asia-Pacific region or any country that is a member of the Bali process would be eligible for transfer to the centre. I

think I have made it very clear today, and I thought I made it clear last time, that the regional protection framework concept is being advanced through the Bali process and the issue of the regional assessment centre is being advanced bilaterally by Australia with the government of East Timor. We are therefore interested in dealing with people who may have come to Australia in an irregular manner.

Senator CASH—Last time you referred to into the region, not into Australia. You said those who had come into the region would be able to be transferred to the centre—so if I got into the region I was able to be transferred to the centre. Is that still the case?

Mr Metcalfe—What I said last time was that there would be a collective responsibility for displaced persons 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. What I am saying is that the broad concept of the collective responsibility for displaced persons is being progressed through the Bali process discussions on the regional protection framework. Australia is certainly a country that is advancing the idea of a regional assessment centre, and we would certainly be seeking to refer persons who arrived in Australia. If other countries wished to do so, it would be open for them to initiate those specific discussions. At this stage I am not aware of any other country that has sought to open up such discussions.

Senator CASH—The whole point of the regional processing centre is not about who will actually host a centre; it is more about who comes into the region and is then sent to the East Timor centre.

Mr Metcalfe—That takes you to a level of detail. There is an issue of should there be a centre, should East Timor host the centre—that is clearly a matter for discussion and for decision that is yet to occur—and then there would be a whole range of issues as to what in fact would the case load be. At this stage the only approach as far as I know is Australia's, in raising the idea of a processing centre to be able to transfer people who had arrived in Australia by irregular means to another place, and therefore to significantly reduce the incentive for people smugglers to send people to Australia in a dangerous and difficult way. It is about trying to bring an orderly process into what is currently a disorderly process.

Senator CASH—We seem to have progressed backwards from the last estimates because what we definitively know about the regional processing centre based on your evidence tonight is that an IMA coming to Australia is able to be transferred off to East Timor.

Mr Metcalfe—That is the concept.

Senator CASH—You are unable to tell the committee whether or not there are any other countries that will actually be sending people to the processing centre. You have really set up another processing centre for IMAs that are arriving in Australia. This is just another place that we can send people to. We appear to be the only country that is actually participating in what was stated to be a regional processing centre in July last year.

Mr Metcalfe—I understand what you are saying but, with respect, I disagree with that characterisation. What I said last time—and this was taking into account comments that Minister Bowen had made—was that, while Australia has a clear national interest in establishing a regional assessment centre, it would of course be open for other countries, if they wished to avail themselves of that centre, to seek to access it with appropriate

arrangements being in place. Last time I said it was up to other countries but it could operate for a number of people. What I know at the moment is that the international focus has been on advancing the broader regional protection framework concept. The specific initiative of a regional assessment centre is something that Australia has been advancing and it is quite consistent with the regional protection framework. Time will tell the extent to which other countries agree that these arrangements are in their interests and the interests of their partner countries in this part of the world and whether they seek to avail themselves of specific measures, in the same way that Australia has now established a returns agreement with Afghanistan.

Senator CASH—Mr Metcalfe, I am going to read some of your evidence from the previous estimates hearing to you because it appears to be inconsistent with the evidence that you are giving tonight and I would like to give you the opportunity to respond to that. Your evidence was:

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 ... It is about people moving in an irregular fashion from outside this part of the world ... and who are moving through this region primarily with the objective of seeking asylum in a developed Western country.

Mr Metcalfe—I agree with that entirely.

Senator CASH—You do agree with that?

Mr Metcalfe—Yes. I do not think I have said anything today that contradicts that.

Senator CASH—Other than that at this point in time the only country that appears to be participating in this process is Australia and we cannot actually identify whether or not someone who comes into the region can actually be sent to the centre because we do not have any other countries that have signed up to be part of this process.

Mr Metcalfe—I keep coming back to the point that there are two concepts operating here. The broader regional protection framework—and the Prime Minister has talked about the need for a regional protection framework—is being advanced through good discussions through the Bali process. The specific initiative of a regional assessment centre is not intended to have the people who are already in the region or who have come from within the region transferred there. Australia's national interest is about those people who have come from the other part of the world who are on their way to Australia and to whom we seek to say, 'There is no point coming to Australia. You should avail yourself of international protection measures that are available to you in countries of transit.' There are significant displaced populations within the region. For example, Malaysia hosts a very large number of people from Burma. It would be open for discussion as to whether those people were seen as eligible for participation in a regional assessment centre or not. As I have said, time will tell as to these arrangements, but we do believe measures to reduce incentives for people to get on boats and risk their lives coming to Australia are a positive thing and we are working very cooperatively with other countries in taking those ideas forward.

Senator CASH—At this point in time though, how is this not just a magnet to come to Australia? The only way you get to East Timor based on what you have said tonight is if I get on a boat and I attempt to come to Australia.

Mr Metcalfe—Yes, it is a very fair question, and there is a whole range of ways that you can seek for it not to become a magnet. Sorry, Senator?

Senator HANSON-YOUNG—It does not seem much different from Christmas Island does it, if that is the case?

Mr Metcalfe—Yes, but there are a range of ways.

Senator HANSON-YOUNG—Except that of course we would not necessarily have to take them—

CHAIR—Senator Hanson-Young, Senator Cash has the call, so we will get the witness to answer Senator Cash's question.

Mr Metcalfe—I was about to say that there are, of course, significant historical parallels to this process. The comprehensive plan of action that operated in our part of the world over 20 years ago was an effective way to deal with the large exodus of people from Vietnam, and we did not see people travelling from Vietnam in an irregular manner. These days, the countries work very well on that issue. Would a centre itself become a place of attraction? Would it become a magnet? Those are good questions and all those issues are being worked through.

Senator CASH—We appear, though, to have moved from an announcement in July that focused very much on a centre and a place that people, irregular maritime arrivals, could be transferred to, and backtracked from a centre to what is now a region. But the Prime Minister in her announcement was quite specific: she talked about a regional processing centre; she did not just talk about a regional processing framework. We seem to have moved away from a far more acute analysis of the situation to just a broad-brush approach.

Mr Metcalfe—I do not think I have done that, Senator. And I think the Prime Minister has been quite clear in her comments about a regional protection framework. Certainly, she has discussed that with a number of her counterparts in the region. But she has also talked about the specific initiative. So I do not think I can really add anything to that.

Senator CASH—That is fine. I am happy to move on. What I would like to ask, though, is this. We talked about time frames previously, and you said that the Prime Minister had not set any particular time frame for the establishment of the regional processing centre, and you would be pursuing it through the Bali process. I do remember that last time you did refer back to some initiatives that had been undertaken during the Howard government years. Are you able to just remind the committee of how long it took for the Howard government to actually establish the processing centre on Nauru?

Mr Metcalfe—I could, but I do not know, Chair, whether that is something for me to appropriately comment on—actions of a previous government.

Senator CASH—It is merely a question: how long did it take? You were the departmental head at the time.

Mr Metcalfe—No, I was not, actually.

Senator CASH—Oh, you were not? I do apologise. I withdraw that.

CHAIR—Mr Metcalfe, can I just clarify that: you are right; this is additional budget estimates, so we are talking about last year's budget and any other additional expenditure since last year's budget. I do not think we are talking about the 2007, 2006, 2005 or 2004 budgets.

Senator ABETZ—Yes, but these moneys are built on or continue work that was done earlier.

Senator CASH—Absolutely, and it goes to the fact that we have gone from a government that was competent to a government that is completely incompetent.

CHAIR—But we currently have—

Senator Carr—That is a political comment that you cannot ask the officers to comment on.

CHAIR—Senator Cash, this is additional estimates for this budget.

Senator CASH—Minister, good evening. How are you? Nice to see you, at 10 past six!

Senator Carr—I have been sitting here all day, waiting for a question—waiting, all day!

Senator CASH—Be careful; you may get what you wish for after dinner.

Senator Carr—You will have to do better than you have done so far.

Senator CASH—It will be interesting to see what your response is then.

Senator Carr—You cannot ask the officer for political opinions about the failures of your government.

Senator CASH—I did not ask him about a political opinion at all!

Senator ABETZ—We are talking about border protection; please, do not talk about failures!

CHAIR—Senator Cash, do you have questions?

Senator CASH—Yes. I do. Before I move on to my next line of questioning, can I just confirm, for the record, that no other country has been signed up to send anyone to the regional processing centre, and that no-one else has signed up to host it, other than East Timor—and East Timor has not even signed up to host it.

Mr Metcalfe—That is right, and I have made it very clear that those discussions are continuing.

Senator CASH—Can I just move on to—

Senator TROOD—Senator Cash, just before you—

CHAIR—No, I am the chair. Senator Cash, do you have any other questions?

Senator CASH—On the East Timor processing centre—absolutely. On this particular point, I will be moving on. So if Senator Trood has a follow-up—

CHAIR—Senator Pratt, you have questions, I understand?

Senator PRATT—Thank you very much, Chair. I understand that Minister Bowen has had some high-level discussions with the United Nations High Commissioner for Refugees regarding regional processing. Do you have any further information about that?

Mr Metcalfe—Yes. The minister was in Geneva in mid-December last year. He met with the High Commissioner, Mr Guterres, and had some very productive discussions with him and with senior staff of the UNHCR on global refugee situations—on particular pressures facing countries in the Mediterranean, in Australia and in North America—and of course they discussed Australia's thinking about a regional protection framework. I mentioned earlier to Senator Cash that UNHCR has been playing a constructive and positive role in helping guide thinking in relation to a regional protection framework. I think those discussions were very worth while, and we will certainly continue to work closely with the UNHCR on these issues.

Senator PRATT—We have already had some discussion on what a region is. I suppose I am trying to distinguish from that. The Bali process is more about source, transit and, I suppose, countries that people might arrive in, and therefore it is very geographically diffuse.

Mr Metcalfe—Yes, it is. The Bali process, which was set up in 2001-02 by the former government, was deliberately quite broad in its ambit to effectively involve countries of origin of refugee flows, like Afghanistan, Sri Lanka, Iraq and Iran, for example; countries of transit in this part of the world, such as Malaysia and Indonesia; countries of destination for irregular movements, such as Australia, New Zealand, Canada and so on—not Canada, sorry; Canada is an observer; as well as resettlement countries. They are effectively the countries that may have a role to play in the effective management of what is a significant international issue.

Senator PRATT—That is the Bali process, on the one hand. Any regional processing centre is likely to need to have a similarly diverse set of linkages.

Mr Metcalfe—Yes. As I have been explaining to Senator Cash, within the proposed regional framework that Australia is taking forward to the Bali ministerial meeting there is the potential for a whole range of particular initiatives and measures—return agreements, transfer agreements, resettlement arrangements. So the particular idea of a regional assessment centre fits within that concept.

Senator PRATT—How does illegal fishing sit at the moment in terms of the significance of the problem currently?

Mr Metcalfe—Sorry, Senator. I just missed the first part of your question.

Senator PRATT—It was in relation to illegal fishing.

Mr Metcalfe—Illegal fishing?

Senator PRATT—Yes.

Senator CASH—Chair, is this still in relation to the East Timor regional processing centre, because I know—

CHAIR—I have given Senator Pratt the call to ask questions now. While we are still in this outcome she has the call to ask questions.

Senator PRATT—We did change to outcome 4. I would have thought that fits within 4—although the regional processing centre was back at 2.1. So, yes, I am bringing us back to 4.

CHAIR—Yes.

Mr Metcalfe—I will have to check current statistics about illegal fishing, but my sense is that the actual numbers of illegal fishers being detained by Australian naval or Customs personnel is significantly down from where it was a few years ago, and there has been some really good work done with the Indonesian authorities to try and educate the crew about where they can fish and where they should not fish and so on.

Senator PRATT—Yes, that was my next question.

Mr Metcalfe—Ms Wilson will be able to provide a bit more detail for you.

Ms Wilson—As at 4 September there were two illegal foreign fishers in immigration detention, and for the period 1 July 2010 to 4 February the number of illegal foreign fishers in detention was about 61. That was a reduction from 147 in the previous financial year, 2009-10. As the secretary has indicated, the numbers have been dropping off significantly because of a lot of good work happening.

Senator PRATT—What are the factors behind that drop?

Ms Wilson—There has been a lot of education when people actually arrive at the centres on their first visit about the consequences of repeated offence. There has been a lot of deterrent work with naval assets and Customs and Border Protection Service assets out in the oceans, and a lot of targeting. But you are best placed to talk to Customs about the efforts they put in on sea.

Mr Metcalfe—And if you are interested, Senator, the Australian Fisheries Management Authority has worked closely with our embassy in Jakarta about spreading the word about where the line is and where people can fish lawfully, and about how they break the law if they come across into Australian waters.

Senator PRATT—I would imagine some parallel work is being done by AusAID and the like.

Mr Metcalfe—I suspect so, but I think those other agencies are better placed to help you.

Senator PRATT—Thank you

Senator CASH—Chair, I have one more question.

CHAIR—Is it for outcome 1 or outcome 2?

Senator CASH—It is on the East Timor regional processing centre.

CHAIR—We are back at outcome 2 again?

Senator CASH—Yes. I would appreciate that indulgence.

CHAIR—The PBS outlines the outcomes, so perhaps next time we will get it right.

Mr Metcalfe—As I said, I am happy to assist senators. I know that it can be difficult to work out where things fit. In future if it would assist, when people say, 'I want to ask questions here,' I am more than happy to say, 'This is the place for it' or 'That is the place for it.'

CHAIR—We could get people to do that this year.

Mr Metcalfe—We are here and we are happy to help.

CHAIR—We could get people to do that the day before or they could study the PBS more closely and then they would know.

Senator CASH—I am more than happy to do it next time because it means I will get their time earlier. Mr Metcalfe, is it correct that no other country has signed up to send people to a regional processing centre other than Australia?

Mr Metcalfe—That is correct.

Senator CASH—No-one has signed up to host it?

Mr Metcalfe—That is correct.

Senator CASH—No-one has signed up to take anybody from the centre?

Mr Metcalfe—That is correct.

Senator CASH—If you look at the difference between what is going on with East Timor and what could potentially be going on with Nauru—should the government choose to go down that path—it is that Nauru would like to be involved in this process.

Mr Metcalfe—I cannot comment on Nauru. I have had no discussions. I have seen media reports, but I cannot add anything in relation to that. What I can say is that, in accordance with the announced government policy, the department is continuing to work with the Department of Foreign Affairs and Trade and others to advance the government's policy agenda.

Senator CASH—In relation to East Timor?

Mr Metcalfe—That is correct.

Senator CASH—You are not pursuing any options in relation to Nauru?

Mr Metcalfe—No.

Senator CASH—Even though they are ready, willing and able?

Mr Metcalfe—I just cannot answer that.

Senator CASH—Okay.

Senator TROOD—Mr Metcalfe, is your agency the lead agency in relation to the East Timor processing centre?

Mr Metcalfe—That is correct.

Senator TROOD—Would you be consulting with the Department of Foreign Affairs and Trade about aspects of the development of the processing centre?

Mr Metcalfe—Joined at the hip.

Senator TROOD—Is that right?

Mr Metcalfe—Yes.

Senator TROOD—I am delighted to hear that. Are you so joined at the hip that you have encouraged the foreign minister to intervene and use his well-renowned diplomatic skills to try and break the impasse that seems to have developed here?

Mr Metcalfe—I cannot speak for the foreign minister; you would have to pursue that in foreign affairs estimates. What I can tell you is that there is strong government commitment to this policy area and that my department and the Department of Foreign Affairs and Trade work very closely—in particular, the Ambassador for People Smuggling Issues is a very close colleague. He accompanied Minister Bowen on a visit in the region late last year. I am very satisfied at the commitment from that portfolio in relation to these issues.

Senator TROOD—I am encouraged by that. Since the portfolio commitment is so strong, I would have thought that the foreign minister might make an equally strong commitment to advancing this particular foreign policy issue. He does not seem to have done so.

Mr Metcalfe—It is not up to me to speak for a minister in another portfolio or indeed for a minister at all. I have absolutely no doubt that the government has got a very clear aspect and it is being pursued by appropriate ministers.

Senator Carr—We have stated on numerous occasions that the foreign minister has a very clear role in these matters. Similarly, DFAT continues to play the role that it has in international engagement and diplomatic discussions, particularly through the Ambassador for People Smuggling Issues.

Senator TROOD—Perhaps you could just explain to me precisely what the foreign minister's role is, since you have brought the matter to our attention.

Senator Carr—To articulate the case and discuss with relevant authorities in the region, which he has been doing.

Senator TROOD—Has he been to East Timor and raised the matter with the East Timorese government?

Senator Carr—You will have to take that matter up with the relevant committee. I have no doubt that the foreign minister will be pursuing this matter, as all other members of the government will be.

Senator TROOD—I can happily do that later in the week. Mr Metcalfe, to your knowledge has the foreign minister raised this matter with the East Timorese government?

Mr Metcalfe—According to reports I have seen, the foreign minister has been active, in his numerous multilateral and bilateral visits, in raising this issue. I know that he and my minister consult regularly on this issue. Minister Bowen has the lead on this issue. Clearly he is pursuing this matter but he is well-supported by his colleagues.

Senator CASH—Mr Metcalfe, could I just confirm which countries are already providing resettlement within the region?

Mr Metcalfe—Let me clarify: which countries provide resettlement of persons who are displaced?

Senator CASH—Correct.

Mr Metcalfe—People recognised as refugees and who are residing in countries in this part of the world are being resettled in the United States, Canada, Australia and I am quite sure there would be other countries as well.

Senator CASH—New Zealand?

Mr Metcalfe—Yes, New Zealand does take people from our part of the world as well.

Senator CASH—Has New Zealand given any indication that they would be prepared to increase the number of resettlement places?

Mr Metcalfe—Not to my knowledge. For some years, New Zealand have had a refugee resettlement program of around 750 persons. They manage their resettlement programs differently than Australia in that they bring people in about two tranches per year and put them into what we would have called a migrant centre. Within their annual allocation of 750 places, as to how much preference they give to our part of the world, to Africa or the Middle East is something I do not have personal knowledge of. But New Zealand have certainly been a positive contributor in responding to this set of issues.

Senator CASH—Has the United States or Canada given any indication to the government that they would be prepared to increase the number of places that they have allocated for resettlement?

Mr Metcalfe—No, but these are issues that we will be discussing through the Bali process. I do know that the United States has recently increased its intake of refugees from Malaysia—for example, people residing in Malaysia who are refugees from other countries. But each country will determine its own resettlement program and intake. As I have said, we have a very good model that goes back to the comprehensive plan of action in the late 80s and early 90s where resettlement countries like Australia, New Zealand, the US and Canada worked with countries of first asylum, with the countries of origin and with the international community. That is essentially what we are seeking to replicate.

I keep stressing that I think this is in Australia's long-term national interest. I suspect that the issue of irregular people movement globally is something that is not going to go away. It is a phenomenon of the 21st century. It is in our national interest over the coming decades to have the best possible arrangements in place in our part of the world.

Senator CASH—Have Malaysia, Indonesia or Thailand been asked, or have they agreed, to provide resettlement places?

Mr Metcalfe—They would not normally see themselves as countries of resettlement; however, they all host considerably large populations of people who may have been mandated as refugees or who have registered or who are displaced in other ways. I mentioned Malaysia has a population of many hundreds of thousands of people who are living there in a regular fashion including about 100,000 who are assessed as in need of international protection. Normally their contribution is through that provision of initial protection and Western countries have traditionally taken on the permanent resettlement.

The general policy approach of the international community in relation to displaced persons and refugee situations is that, if possible, a person is able to return quickly to the place that they have come from, if it is safe. Some people will be hosted by countries in the neighbourhood. Only as a last resort in a country would people be permanently resettled elsewhere. The number of resettlement places globally is, I think, around 100,000. Mr Fleming may have a better figure. Of course we are talking about a displaced population of 20-plus million. Countries like Pakistan and Jordan take on an enormous role just in hosting

populations of people who have spilled across borders. That is the contribution they make. Pakistan is hosting very large numbers of people, for example.

Senator CASH—In terms of Malaysia, Indonesia or Thailand being asked to agree to provide resettlement places, is the answer to that question ‘no’. I appreciate what you said.

Mr Metcalfe—It is not something that we have asked them to do. Whether UNHCR has asked them to do it, I am not sure. I would be a little surprised, given that the way that the burden-sharing occurs internationally as it has not largely had those countries taking on a resettlement role. But they do host large populations of people for long periods of time.

Senator CASH—The issue that then arises is that within our region it is Australia and New Zealand who offer the resettlement places.

Mr Metcalfe—That is correct.

Senator CASH—It would appear that there is no-one else outside of the region.

Mr Metcalfe—And, indeed, there are few other countries who are signatories to the convention.

Senator CASH—Exactly. In the document entitled, ‘Regional assessment centre concept’ of November 2010 a clause says:

By offering direct resettlement placements through renewed international commitments generated through the broad RPF, the RAC could deliver a guaranteed outcome for refugees. This will ensure that Timor-Leste is not left with the burden of caring for the refugees from the RAC.

The issue that arises based on that line of questioning is that, if we are actually guaranteeing a resettlement—and that really is what this document says—would you accept that?

Mr Metcalfe—Yes, we have been very clear that were Timor-Leste to host such a centre it would not be left with a burden long term.

Senator CASH—Based on the discussion we have had tonight in terms of resettlement within the region there are two countries who will be offering resettlement and that is New Zealand with 750 places and Australia.

Mr Metcalfe—I do not accept that. Certainly Australia would have a role to play. There is no doubt about it. But we would certainly be, in those circumstances, talking with other resettlement countries and they may well have an interest in resettling people from such a centre.

Senator CASH—When you say ‘talking with other resettlement countries’ which countries in particular are you referring to?

Mr Metcalfe—I would be talking with the United Nations High Commission for Refugees and certainly the United States and Canada as well as the Nordic countries would be the sorts of people that we would talk to, as we do and have done over the years. For example, all the people who went to Nauru who were found to be refugees were resettled in Australia and New Zealand, and the United States was prepared to take some as well.

Senator CASH—In terms of our region it is us and New Zealand. Is that a fair comment?

Mr Metcalfe—In terms of resettlement countries in our part of the world it is Australia and New Zealand. That is in terms of formal resettlement with permanent residents and access to citizenship. I do note that many countries in the region do bear a substantial burden in hosting populations of people.

Senator CASH—In terms of the guaranteed resettlement that is set out in the regional assessment centre concept what is the maximum time period that someone can be left in East Timor before they will be resettled as part of this particular concept?

Mr Metcalfe—That would be a subject for negotiation. Indeed, one of the issues you raised earlier, about pull factors or a magnet factor, is the sort of thing that you would actually need to work through quite carefully such that the place would not become a magnet in itself. But ultimately we would not expect that, for a case load transferred from Australia, East Timor would be required to absorb that case load but that there would be arrangements made through resettlement for refugees to be resettled and for nonrefugees to be sent home.

Senator CASH—We discussed at the last estimates that Jose Ramos-Horta had stated a maximum time of three years. He would not be prepared to have anybody in East Timor for any longer than a three-year period.

Mr Metcalfe—That is my recollection.

Senator CASH—Have any Bali process members been asked or offered to have resettlement places?

Mr Metcalfe—We know that some of them do provide resettlement places. I am not talking specifically about people who might be found to be refugees through an assessment centre, but we do know that the United States takes 70,000 refugees a year and that Canada takes 20,000-plus refugees a year. These are substantial numbers of people and substantial programs. The US and Canada are both participating countries in the Bali process—not members but participating countries—and we would certainly be expecting to talk with them about those issues as we move forward.

Proceedings suspended from 6.31 pm to 8.01 pm

CHAIR—I formally welcome the Hon. Senator Kate Lundy. I congratulate her on her new title, having been resworn—is that what we can say?—today at 3 o'clock.

Senator Lundy—I think that is a fair description.

CHAIR—She is now the Parliamentary Secretary for Immigration and Multicultural Affairs. Congratulations!

Senator Lundy—Thank you very much.

CHAIR—Mr Metcalfe, you wished to say something?

Mr Metcalfe—I think Mr Fleming has information that we undertook to get back to the committee on.

Mr Fleming—Firstly, around Fijian applicants for protection visas I have a breakdown of the grant refusal rates for primary and review. The primary grant rate in 2009-10 was three per cent and the RRT remit rate, which is when it overturns, was 19.3 per cent. The primary grant

rate for the first six months of 2010-11 was six per cent and the RRT remit rate was 19.8 per cent. So they are not vastly different figures between the years.

CHAIR—Thank you for getting back to us with that information.

Mr Fleming—There was also a question about the status of the 16 Burmese asylum seekers and that they were reported as having been found to be refugees and were awaiting security assessments. They are still awaiting those security assessments.

Senator CASH—So there has been no change in their status?

Mr Fleming—That is correct. Senator Cash, you also indicated you are interested in the number of Afghan asylum seekers and where they were in the system. I have not been able to quickly get reliable statistics. You said you have a series of questions and I was wondering about the breakdown you were after.

Senator CASH—Thank you for attempting to get the information. I will put the questions on notice and then you will see how it flows through.

Mr Fleming—Thank you.

Senator HANSON-YOUNG—I gave some notice before, when we were on outcome 2, around the question of the numbers of days, months or years that people had been held in detention. Do you have those details?

Ms Wilson—Do you want me to do it by percentage or by number?

Senator HANSON-YOUNG—Numbers, please.

Ms Wilson—As at 4 February, 29 people had been in detention for seven days or less; 300, one week to a month; 1,095, one month to three months; 1,643, three months to six months; 3,111, six months to 12 months; 422, 12 months to 18 months; and 34, 18 months to two years; 25, greater than two years.

Senator HANSON-YOUNG—Of those people, is there anyone who the department would deem, at this stage, to be detained indefinitely because there is not some visible resolution?

Mr Metcalfe—No, Senator.

Senator HANSON-YOUNG—How many people have been found to be in need of protection, assessed under the protection framework, but are still awaiting their ASIO clearance?

Mr Fleming—There are around 900.

Senator HANSON-YOUNG—Out of those 900 people, are there any time limits on how long those people should wait until they get an answer on where their case is up to in relation to the ASIO assessment?

Mr Fleming—There is no time limit set. We are not able to grant a visa until we have a security assessment.

Senator HANSON-YOUNG—That would then be indefinite, would it not?

Mr Fleming—We do not have a definite date.

Senator HANSON-YOUNG—No—so it is indefinite.

Mr Fleming—In terms of having a hard date, yes.

Senator HANSON-YOUNG—At this stage, those 900 people are being held indefinitely because there is no time limit or time frame by which ASIO needs to deliver an answer on their security clearance?

Mr Fleming—That is correct.

Senator HANSON-YOUNG—In relation to how the immigration department and ASIO interact on these people's cases, is there any type of information that the department gets about where things up to or even if their case has progressed at all? Do you as a department have any ability to know in order to then be able to keep detainees up-to-date with their progress?

Mr Fleming—I do not believe we get progress information in that way. There is a process whereby we can request that particular cases be prioritised, but we basically get from ASIO the security assessment when they have finalised their assessment.

Senator HANSON-YOUNG—So what type of information do you give a case manager to help with managing the case of somebody who is one of these 900 people who are in detention? They have gone through a process where they have always been allocated a case manager, and now, if they have gotten to this point where you have already assessed them as needing refugee protection, and now it is just left up to ASIO, what type of information does the case manager have to be able to inform and speak with and advise their clients?

Ms Larkins—The case manager does not just engage on immigration processing, they engage on a range of things.

Senator HANSON-YOUNG—Of course.

Ms Larkins—But they would basically tell the client that we are awaiting a security assessment so that is the nature of the information.

Senator HANSON-YOUNG—And that is all those immigration department case managers can say, 'We're just waiting on ASIO.'?

Ms Larkins—That is right. We will tell them exactly where they are up to in the process and where departmental decisions have been made, and we will say, 'This is where you're up to and we're waiting on a security assessment'.

Senator HANSON-YOUNG—Out of the almost 500 people who have been in detention for more than 18 months, how many of those people would be waiting their ASIO clearance? Do you suspect that would make up the bulk of the 900?

Ms Wilson—I think we would have to take that on notice, Senator.

Senator HANSON-YOUNG—Could you? It must be pretty frustrating for case managers to have to constantly say to clients: 'It's out of our hands; it's out of the department's hands. We're managing the detention facilities, but we have no idea where your case is up to or if it's progressed.'?

Ms Larkins—I do not think it is true to say that they have no idea. Case managers usually have very clear information about where a case is up to. They will not have information that goes to ASIO's internal processes, but they certainly know, 'I'm at this part of the process and I'm awaiting a security assessment.' Case managers deal with people who go through protracted immigration resolution processes commonly.

Senator HANSON-YOUNG—Case managers probably cop the brunt of a whole lot of poor government decisions; frankly, more than they should. Putting that aside, I feel for them. In this particular case it must be pretty difficult to be an effective case manager for a client when your own department has no say on the next stage of somebody's application. It must be extremely frustrating.

Ms Larkins—I guess the nature of the role is they are not decision makers. They communicate with clients about the status resolution process, but they do not make decisions themselves. That is what they are trained to do.

Senator HANSON-YOUNG—Absolutely, and it sounds like they do not work for a department that makes the decision either, so it must be doubly frustrating for those people. How do you think that the 900-odd cases within the immigration detention network at the moment, who are waiting for security clearances under ASIO—what kind of stress do you think that is putting on the facilities at the moment? Nine hundred people is a lot.

Ms Larkins—I am not in a position to comment on that, Senator.

Senator HANSON-YOUNG—Okay. Where would the bulk of those people be housed at the moment? Out of the 900, do we know the breakdown of where they are located?

Ms Wilson—Based on the information I have, they are on Christmas Island.

Senator HANSON-YOUNG—Most of them are on Christmas Island?

Ms Wilson—Yes.

Mr Metcalfe—Senator, I do not want you to leave here with the impression that we are simply not doing anything about this. While the officers have been quite correct in saying that we do not have knowledge of where a particular case might be in ASIO's internal processes, we do have the ability to say to ASIO that, for whatever reason, we believe that certain cases do require priority, and ASIO are responsive to that. We have a very regular dialogue at different levels—from myself and the director-general through to other levels—in which we ensure that ASIO are very aware of the numbers of people that they have and that they are working to make decisions as quickly as they can. No doubt you can pursue that with that organisation tomorrow.

Senator HANSON-YOUNG—I will. I will definitely be pursuing it with the agency.

Mr Metcalfe—I am sure you will.

Senator HANSON-YOUNG—On the issue of the department raising with ASIO cases that they believe need to be expedited or prioritised—the word you used, I believe—what criteria do you use to determine that someone's security clearance needs to be given priority over somebody else's? What are the criteria you put to ASIO to determine that?

Mr Metcalfe—People in detention are the highest priority—they are given higher priority than, say, visa applicants who may not be in detention. We gave evidence earlier that around 40,000 people have been the subject of security-checking requirements in the last year or so. Because people are deprived of their liberty in detention cases—particularly where we have formed the view that the person is owed protection—they are the highest priority. Others may be able to provide advice on whether there are any particular criteria used to give priority within that cohort, but my general awareness was that, on occasion, we do raise particular cases and ASIO are responsive to that.

Senator HANSON-YOUNG—Among the detention cases, what criteria do you use to decide that somebody is a priority?

Ms Wilson—Families and children are given priority within the mix, people who have mental health issues or torture and trauma issues are escalated and we also consider length of time in detention—that also has an effect on prioritisation within that mix.

Senator HANSON-YOUNG—We have spoken numerous times about the length of time it takes to get through cases. We all know that the 90 days has blown well out; you can see that from the figures. There are a variety of reasons, including the various policies that have been spoken about today. Last time we spoke, back in October, we talked about recruitment within the department—to try to put on extra personnel to get through the cases. How many extra staff or positions have been brought on to try to deal with the processing of cases that are within the capacity of the Department of Immigration and Citizenship to deal with?

Mr Metcalfe—I will get the right officers to come to the table. I think Mr Fleming, Mr Allen and Mr Correll might be able to assist. We have certainly increased the number of officers associated with refugee status decision making. Mr Correll will probably have the correct figure or the absolute figure, but I think we are now up to about 160 or 170 officers—

Senator HANSON-YOUNG—In total?

Mr Metcalfe—In total, whose full-time job it is to make assessments. Based upon the number of applicants we have, we believe that that is about the right number. We are now seeing good numbers of decisions being made. There is the additional issue of the new process that commences on 1 March, whereby the role of the departmental officer will be to quickly ascertain if there is a view that the person is a refugee. If there is a concern that the person may not be then, without making a finding per se, the matter is immediately referred through to the independent reviewer. We believe that that will accelerate the process.

It will also have the advantage of ensuring that there is a much greater focus and opportunity for government funded lawyers assisting applicants to present the full case at the beginning of the process because, as we have found many times, the material coming to us for the primary decision has been relatively incomplete or may not have dealt with all aspects. It is only when it goes to review that those issues are fully explored. But Mr Correll might be able to provide some staffing information.

Mr Correll—The overall number of staff engaged in refugee status assessment work is 170. The numbers have been built up over the last 12 months through significant recruitment activity and through the deployment of staff working in other areas of the department into that field. We do think that is about the right number, bearing in mind other factors like

accommodation for interviewing and a range of other issues that need to be balanced out in running that.

Senator HANSON-YOUNG—So what kind of increase has that been over the last 12 months?

Mr Correll—It would have been broadly at least an increase of 100, I would have thought. I do not have that precise figure but it would be in that sort of order.

Mr Allen—Over that period we have increased from around 35 RSA assessors to the current figure of around 170.

Senator HANSON-YOUNG—Has the department had discussions about how personnel might need to be or have been increased in being able to conduct the assessments through ASIO? Has the department had any conversations with the other agency in relation to staffing matters?

Mr Allen—Yes.

Senator HANSON-YOUNG—Has the department given any help or have you had any staff transfer from the department to ASIO to help with that workload?

Mr Metcalfe—Not to my knowledge. We certainly have provided lots of advice and suggestions in a friendly way. We are certainly aware that that organisation is conscious of its obligations and its need to have the right number of staff dealing with this issue, bearing in mind that it has quite significant security assessment processes for its own staff and there are quite often lead times associated with getting people in place who can undertake this function for it. But I am not sure, Mr Correll, if we have had our staff go over to ASIO.

Mr Correll—On occasions we have had our staff work with ASIO staff. That is not on an ongoing type of arrangement but more an ad hoc basis. I can think of a couple of instances. However, we are in close dialogue with ASIO about how we might be able to work together in more collaborative ways with staffing issues. It is true that there is quite a long lead time for recruitment to ASIO because of their security checking requirements and so we are looking to how the two agencies might work together to achieve a better result in that area and hope to get some developments in that space quite soon. We also try to provide ASIO with as good reporting as we can to show pictures of progress with the overall process of assessments and work closely with them in terms of identifying priority cases, as we have discussed before. Certainly they have experienced challenges with the volumes in their processing.

Senator HANSON-YOUNG—I move on to some questions around the October announcement by the minister in relation to moving at-risk families out of detention facilities into community housing. Does the department expect that all children will be removed from those facilities by June?

Ms Wilson—We are working from the youngest to the oldest, particularly with the unaccompanied cohorts. We are working well through those. We have worked through the 15- and 16-year olds. Again, that is dependent on arrival numbers and how those proportions are with unaccompanied minors and families, but our intention is to give unaccompanied minors and vulnerable families, including families with young children, priority in that mix.

Senator HANSON-YOUNG—Admittedly, in October there were just over 600 children, whether in family groups or as part of the unaccompanied-minor cohort. Now there are over 1,000. What you are saying is that you are trying to meet the June deadline but you are not sure whether you will get there.

Mr Metcalfe—We are certainly doing our very best. I said in my opening statement this morning that we are very grateful to the Australian Red Cross and to a number of church and community organisations who are working in an extremely productive, cooperative manner. Everyone has the same objective, which is to provide community arrangements for this particular group, but we do need to make sure that those arrangements are properly based and well founded and that they work properly for people. We are starting to see some people now moving into those arrangements, and that number will pick up over the weeks ahead. So we are doing everything we can to meet that deadline. Ms Wilson does make a fair point, though, that since October we have had continuing arrivals of people. I should say that we do not have any children in detention centres; they are held in motels, transit centres and other places. We all agree that community housing is a better place for them. We are very pleased that the Inverbrackie facility now provides housing and accommodation for people, and we are looking forward to getting people into community arrangements.

Senator HANSON-YOUNG—Thank you. As you know, I have been to the Inverbrackie facility, and I do acknowledge that it is better than the Asti Motel.

Mr Metcalfe—We agree, Senator.

Senator HANSON-YOUNG—I have a question about how you prioritise who is coming out and ensure that as many children, whether they are unaccompanied or with family, are released by June. When the minister made the announcement in October, no promise was given that all children would be removed by June. The promise was just that they would be doing whatever they could to get a significant number out. When you are looking towards that June deadline, what direction have you been given—or what criteria are you using—to say that X number of children will be removed because they fulfil these criteria?

Ms Wilson—As I said, we are working from youngest to oldest. We are also identifying families in which there might be other issues that we need to think about as well. We are working closely with case management and detention staff in each of the centres to identify individuals or family groups who should be given priority. All of that information is then fed through to our national office, where we prioritise the process.

Senator HANSON-YOUNG—If you are identifying vulnerable children, based particularly on age—and I accept that you are working from youngest to oldest—what is the age cut-off at which you say that they are not necessarily in the most vulnerable group?

Ms Wilson—We will keep working through the groups. Are you asking me whether we stop at age 17 or 18?

Senator HANSON-YOUNG—Yes.

Ms Wilson—Our view is that we will keep going until the 17-year-old cohort but, as you would appreciate, the age groups keep replenishing themselves with subsequent arrivals.

Senator HANSON-YOUNG—A number of different reports have come out of late, in particular the report commissioned by the Human Rights Commission after they made their visits. They have done Christmas Island, the Darwin facilities and of course Leonora. And then there is the report that was released publicly by the Ombudsman. Is the government going to be responding to any or all of those reports and, if so, within what kind of time frame?

Ms Wilson—We have largely responded to all of them. Regarding the Ombudsman report, there is also a departmental response on the website, and we have an arrangement with the Human Rights Commission whereby they will give us a report two weeks ahead and give us an opportunity to respond. We will lodge both their report and our response on the website.

Senator HANSON-YOUNG—So what is on the website is the official government response?

Ms Wilson—That is right.

Senator HANSON-YOUNG—Out of the recommendations that have been given by those reports, have any been actioned by the department or taken up—and this might be a question for the minister—as recommendations the government will act on?

Ms Wilson—Every time the Ombudsman or the Human Rights Commissioner visits a facility they do an entry briefing and an exit briefing. Many of the things identified can often be fixed on the spot—they do not take a lot to fix. There is not a significant policy change required and they will be actioned straight away. The Ombudsman report comments on the fact that there have been significant improvements since the visits over the last 12-month period. That is the way we tend to do it. We do not wait for the report; we talk to people while we are visiting and try to do what we can in response to the issues.

Senator HANSON-YOUNG—So out of the recommendations in those public reports, are there any the government has outright rejected?

Mr Metcalfe—We would need to check to give a complete answer. For example, it is more or less the first recommendation from each Human Rights Commission report that it does not believe that detention of asylum seekers should occur at all or, if so, it should only happen in extremely limited circumstances. The government has a clear policy position. In fact, there is a clear legal position in relation to that. There are some areas where there is simply a respectful difference of opinion on issues of policy but on many practical issues—and we very much welcome scrutiny by the Ombudsman and the Human Rights Commission as a very important part of our accountability—we become aware of the issue, we talk about it with them and it is fixed by the time the report comes out, as Ms Wilson has said.

Senator HANSON-YOUNG—Can I have the exact number of unaccompanied minors and also family groups who have been released from the facilities thus far since the October announcement as part of the process to remove them into the community?

Ms Wilson—There have been 160 clients granted residence determination by the minister as of today since the October announcement. My information has it that 78 of them are children and out of that group 37 are unaccompanied minors and the rest would be part of a family group.

Senator HANSON-YOUNG—Since 2008, how many children—and I have asked this every time so I assume you can just add up the numbers—have been born to parents who were being held in some type of detention facility—except that they are not born in detention, they are born in hospital?

Ms Wilson—I will have to find that, Senator.

Senator HANSON-YOUNG—While you are looking for that, maybe somebody else can answer this question relating to detention value number 5 under this government about detention in immigration detention centres being used only as a last resort and for the shortest possible time. I am asking specifically because I have an interest in my own children's commissioner bill, which the department has given a submission to, where the department has stated that they detain children only as a last resort. I would like an example from the department of when detention has been the last resort rather than the first resort. When somebody is brought to Christmas Island, where are they put? Is there any example where the department does not detain a child in the first instance?

Mr Metcalfe—The detention values apply to immigration detention generally. There are many cases where we locate people in the community who have overstayed their visa, for example, where detention is not used as an option. We are proud that we have been able to establish new procedures to deal with that. However, the first immigration detention principle is that all unauthorised arrivals will be detained and will be subject to health, security and identity checking. We try to give effect to the apparent conflict between 1 and 5—

Senator HANSON-YOUNG—There does seem to be quite a conflict.

Mr Metcalfe—by essentially ensuring that no child goes into an immigration detention centre. I think it is fair to say that our job has been made very difficult by the number of arrivals. This would be an easy value to apply if we did not have boat arrivals in the numbers that we currently do. But, having said that, we have sought to give effect to it by ensuring that there are alternative places of detention—that is, either in the construction camp on Christmas Island, in motels or in transit centres. For reasons that the minister articulated in October, it is the government's view that we should move as quickly as we can to set up arrangements for people to be held in more normal situations in the community itself, and that is something that we are doing.

Senator HANSON-YOUNG—But you cannot, aside from those people who are being managed by the department for other visa reasons, cite an example where somebody who has come to Australia seeking asylum in the first instance is not detained as the first resort.

Mr Metcalfe—No. The first principle of the detention values is the applicable value. But the government's commitment has been that no child should be held in an immigration detention centre, and that is the case.

Senator HANSON-YOUNG—Ms Wilson, have you got those birth figures?

Ms Wilson—No, I am sorry. I am going to have to take that on notice.

Senator HANSON-YOUNG—Okay, thank you. If you are going to take it on notice, it would be helpful if you could give me the figures for how many children have been born in the detention network since 2008—in particular in the last 12 months.

Ms Wilson—Sure.

Senator HANSON-YOUNG—Thank you. I want to go to the cost of the detention facilities on Christmas Island. We have this conversation quite often about the difficulties of being able to break up the cost of detention on Christmas Island. I would really like to know, based on how the department budgets for these things, what types of costs have been incurred in the last three years on Christmas Island detention facilities and therefore what the projected cost will be for the forward estimates.

Mr Metcalfe—We will have to take that on notice. We are happy to do so. There will probably be a couple of aspects to that. Firstly, there is the cost of operating the centre. The centre, of course, has been expanded and there would be capital works as well. So we need to reflect that in the figures. As far as the forward projections are concerned, that is an extremely speculative figure because it depends very largely on future arrivals that may or may not occur. I am quite comfortable about providing accurate figures on what has happened, but it is far more difficult to get out a crystal ball and see what might happen in the future.

Senator HANSON-YOUNG—Sure. But you are all preparing proposals for the budget, so you would have some idea of what you are projecting.

Mr Metcalfe—Yes. We have had long and happy discussions with this committee in the past about how the forward estimates are produced and how it is not intended that they be seen as a government position on what will occur. Essentially, it has to be a figure derived from the best possible estimate, which is basically a rolling average of the last five years. That rolling average will of course change depending upon the arrivals of the most recent years.

Senator HANSON-YOUNG—I accept that. I am not asking for the figures so I can hit you over the head and say too many boats are coming. I am asking for the figures so that we can get a sense of what is the most cost-effective way of housing people. In that vein, I will give you some other questions on notice around the cost of detention facilities on the mainland and how much it costs to detain and house people in the community setting as well.

Mr Metcalfe—Thank you.

Senator HANSON-YOUNG—My final question is in relation to children going to school. First of all, how many kids are on Christmas Island?

Ms Wilson—There are 314 children as of 14 February.

Senator HANSON-YOUNG—Of those, how many are at school?

Ms Wilson—130 minors attend school at the Christmas Island facility as of 14 February.

Senator HANSON-YOUNG—How many children are housed on the mainland in the various facilities?

Ms Wilson—715 as of 14 February.

Senator HANSON-YOUNG—How many of those attend school?

Ms Wilson—My understanding is that all of the children who have been there for a reasonable period of time are attending school. We have some recent movements to the mainland and those children should be starting school relatively shortly. The children at Inverbrackie, as you know, all started school in the week of 31 January, and that was the last

cohort of schooling that we had to get in place. With movements of people from Christmas Island to the mainland there is always a bit of a lag time in catching up getting them into schools when they arrive.

Senator HANSON-YOUNG—How many are at school from the mainland at the moment?

Ms Wilson—I would have to get that number.

Senator HANSON-YOUNG—Okay. Would it be easier to break up the number by facility or do you want to just give me a total?

Mr Metcalfe—We can give you a total, excepting that that will be at a point in time and the figure will move around.

Senator HANSON-YOUNG—I accept that. I understand the survivors from the Christmas Island boat tragedy are all back on Christmas Island as of two days ago, apart from the family who received wide publicity and who were brought to Sydney this week. Are there any other plans to move the survivors to the mainland?

Ms Wilson—Yes. As well as that family you talked about, the minister announced last week that there is another family group with two orphan children who are cousins who will also move this week to the mainland.

Senator HANSON-YOUNG—They will be on the same flight?

Ms Wilson—That is right. That is what we are trying to arrange at the moment. We are working through all the other groups within the survivor group and their supporting family with a view to establishing the right placement on the mainland. The three orphan children and their supporting family are being given priority.

Senator HANSON-YOUNG—There are plans in place to move the existing survivors?

Ms Wilson—That is right. As we said earlier, initial advice was to keep the group together. Having gone through the trauma that was the most appropriate thing to do. We have had child psychiatrists and other medical specialists on island very recently and they are providing us with detailed advice in relation to each of the groups within the survivor group.

Senator HANSON-YOUNG—What is the time frame for the rest?

Ms Wilson—We are hoping to prioritise them because of all the trauma they have been through, but it depends on availability of placements as well.

Senator HANSON-YOUNG—Will they go into community-style housing or will they go to Villawood, Maribyrnong or Inverbrackie? What type of arrangement are you looking at? Are you looking at the community settlement or facilities on the mainland?

Ms Wilson—I think the minister stated that children will be going into community detention arrangements this week. In relation to the rest of the cohort, we are yet to brief. Currently, I guess, our view would be that we are trying to get them into community detention placements as the preferable alternative, but it depends on individual cases and situations.

Senator HANSON-YOUNG—Thank you.

Senator CASH—If I could return to the regional processing centre. I did go back and check estimates from October and we actually did ask those questions under outcome 4. That

is just for the record. I know that today we are saying it is under outcome 2, but it certainly was asked under outcome 4 in the last estimates hearing, hence my questioning.

Mr Metcalfe—We are being asked under outcome 4 now. But did I agree that they were under outcome 4 last time or did I just happen to notice that they were—

Senator CASH—You noticed it this time. I think last time we did ask them under outcome 4.

Mr Metcalfe—Yes, but we are in outcome 4 now but that does not alter the point as to whether they are outcomes or outcome 4s.

Senator CASH—I just wanted to make the point that, yes, the reason I—

CHAIR—They were probably in the wrong place last time.

Senator CASH—That was all. Had it been raised obviously I would have then asked them under outcome 2.

Mr Metcalfe—Your expectation was that it was 4 last time and it would be 4 this time.

Senator CASH—Correct.

Mr Metcalfe—Anyway we are happy to help.

Senator CASH—Thank you. In relation to the regional assessment centre concept document, when was a copy provided to the government of East Timor?

Dr Southern—It was provided during the first week in December.

Senator CASH—Thank you very much. And what was the response of East Timor to the proposal?

Mr Metcalfe—East Timor are studying the proposal.

Senator CASH—So they have not actually provided an official response to the government as yet?

Mr Metcalfe—There have been some discussions but there has been no sort of formal response provided.

Senator CASH—What has been the nature of the discussions?

Mr Metcalfe—They have been involving officials of the Australian Embassy in Dili. The discussions have been very much about East Timor ensuring that it has got its own internal processes in place to properly study and consider the issues and Australia providing any information that we have been asked through that time.

Senator CASH—So there has been no formal response back from the East Timorese government to the Australian government?

Mr Metcalfe—No. We have not had a formal response as yet.

Senator CASH—So there has been no formal acceptance of the proposal by the East Timorese government?

Mr Metcalfe—That is correct.

Senator CASH—Have any other countries been provided with a copy of the proposal?

Mr Metcalfe—I would need to check on that. Could I take that on notice, please?

Senator CASH—Absolutely, and also what has been their response to the proposal, if any.

Mr Metcalfe—I will take that on notice as well.

Senator CASH—In relation to the proposal, is there a provision in the additional estimates to fund the proposal?

Mr Metcalfe—No.

Senator CASH—So there's none. In terms of the size of the centre being considered or discussed or contemplated in this document, where will it be located? Will it be a secure facility? What are the estimated costs of the facility? Do we have any further information around that?

Mr Metcalfe—I do not think I can add anything to what I have previously said.

Senator CASH—Is that from the October estimates?

Mr Metcalfe—Yes, and what I have said earlier today, that essentially we are happy to get into more detailed discussions but that is yet to occur.

Senator CASH—Do you mean the Australian government to the East Timorese government?

Mr Metcalfe—That is correct. The paper that has found its way into the public domain is a broad indication. The minister has made quite a few comments about his thinking and the government's approach to that issue and I do not think I can add much more to that.

Senator CASH—In terms of the centre being able to accommodate families and children, is that something that you have explored further?

Mr Metcalfe—That would certainly be one of the issues. We would ordinarily certainly have the position that families should not be held in a detention arrangement and, of course, the concept of this centre is quite flexible, which might vary between very open arrangements through to a more secure facility depending upon the nature of the cohort, the wishes of the country concerned et cetera. The minister has indicated that that level of flexibility will need to be there.

Senator CASH—In terms of the actual funding of the centre, and I know we explored this in the October estimates, do we have any further information in relation to what other nations will actually be involved in the funding of the centre, or is it just anticipated that Australia will actually be funding the centre?

Mr Metcalfe—I do not have anything to add to what I said previously.

Senator CASH—In terms of the provision—or the lack of provision—in the additional estimates to fund this proposal, where is the funding of the proposal coming from?

Mr Metcalfe—I have said there is nothing in the forward estimates at this stage. Were the proposal to become very active and to be presented to government as a new policy proposal, then full costings would be required at that stage.

Senator CASH—So we have not gone down a costing path yet?

Mr Metcalfe—That is right. Certainly it would be our view, of course, that the policy rationale for such a centre would be that it would be an effective mechanism in preventing arrivals in Australia or people who have arrived in Australia from staying here for very long and therefore would be essentially defrayed from costs otherwise associated with detention in Australia.

Senator CASH—Has the department commenced any form of costings on the centre, even a preliminary analysis of what it may cost?

Mr Metcalfe—We have done some broad indicative work in that area.

Senator CASH—Are you able to enlighten the committee as to what the broad indicative cost may be?

Mr Metcalfe—I would prefer not to, but it is quite clear that any centre would be a significant outlay. That is certainly our experience from earlier policy positions such as relating to Nauru and Manus Island. The cost of constructing and managing a centre is significant, but it needs to be defrayed from the costs that would otherwise be incurred from people who arrived here and stayed in detention.

Senator CASH—When you say you would prefer not to enlighten the committee as to the potential cost, even an estimate, of the centre, is there a reason for that?

Mr Metcalfe—I have said that the cost would be substantial, but, until there is greater particularity as to the centre, any costs would be speculative.

Senator CASH—So it will be a substantial cost, but we do not know what that substantial cost would be.

Mr Metcalfe—It would be a substantial cost, but there are so many variables associated with the costs that it really is not helpful, I think, to canvass anything other than to say that, inevitably, any facility for the care and determination of status of people anywhere is an expensive undertaking.

Senator CASH—Turning to a different line of questioning, the *Australian* reported that a total of \$86.5 million was spent in contracts for hotel rooms, lease rental properties and building costs plus staff accommodation over the current financial year. Are you able to confirm that the figure reported in the *Australian* is correct? If it is not, do you have the correct figure? Can you also please provide a breakdown of the figure and point to where this appears in the budget papers?

Mr Metcalfe—I think that between Ms Wilson, our chief financial officer and his support we might be able to assist.

Senator CASH—Thank you. I do have a number of questions regarding appropriations.

Ms Wilson—I am not familiar with the article you are referring to.

Senator CASH—I will have a copy of the article emailed to me.

Ms Wilson—Was it in response to a question on notice?

Senator CASH—No, it was an article in the *Australian* dated 9 February 2011 and headed ‘Costs of onshore facilities explode’. I am happy to provide it to you if you would like to look at it.

Mr Metcalfe—Thank you very much; we appreciate that.

Senator CASH—Not a problem at all.

Ms Wilson—We have found the article. Thank you for the article. Can you just repeat the question.

Senator CASH—No problem at all. You have the article in which the *Australian* reports that a total of \$86.5 million was spent in contracts for hotel rooms, leased rental property and building costs plus staff accommodation over the current financial year. Are you able to confirm whether or not that figure is correct? If it is not correct do you have the correct figure and are you able to provide a breakdown of the figure?

Ms Wilson—The article appears to list a number of entries on the public record through AusTender. I would need to check AusTender to see whether everything was listed on Austender so I would prefer to take that on notice. On scanning through it, it looks as if it picks the key ones but—

Senator CASH—It looks as if it could be correct but—

Ms Wilson—I would just need to double check because not every—

Mr Metcalfe—It sounds like it is a figure that the *Australian* has come up with from an analysis of some publicly available material. I do not think it is a figure we have given them in response to a media inquiry.

Ms Wilson—No.

Mr Metcalfe—We will double check.

Senator CASH—Please do that. Obviously, if the figure is incorrect please provide the correct figure, the breakdown of the correct figure and where the figures appear in the budget papers.

Mr Metcalfe, you would obviously be aware that on 10 February 2011 the Special Minister of State Mr Gray announced that funding for irregular maritime arrivals would be boosted from \$471 million for 2010-11. You are aware of that announcement, obviously.

Mr Metcalfe—I am aware that that is provided for in the additional estimates.

Senator CASH—Correct. Speaking in parliament Mr Gray said that the total appropriation being sought this year for all government services is \$1.36 billion. He then said:

The Department of Immigration and Citizenship will receive supplementary funding of \$290 million for operational costs associated with the management of offshore asylum seekers.

Are you able to give the committee a breakdown of where the \$290 million will be spent?

Mr Metcalfe—I will ask my colleagues to provide some detail. Essentially, that figure derives from the fact—we have had long discussions about this in the past—that we go into the forward estimates with a particular figure, bearing in mind that it is quite unpredictable, and then there is a reconciliation process done part way through the year. The department is

funded on a no-win, no-loss basis for this and so the additional sum sought reflects the reality of what we are required to incur to undertake this task. Mr Correll or Mr Sheehan may be able to answer any specific details that you may need.

Mr Sheehan—I have a list here of the particular sites and the comparison between the PBS and the pace document. I can give you the increase or decrease by site. Is that what you are asking?

Senator CASH—Maybe it is but I am looking for a breakdown of the \$290 million—the additional money—and where it will be allocated.

Mr Sheehan—To different sites.

Senator CASH—Is that where it has been allocated?

Mr Sheehan—For instance, at Christmas Island there is an increase of \$78 million. Do you want the exact number?

Senator CASH—I am happy to have the rounded figures.

Mr Sheehan—To the nearest million?

Senator CASH—Thank you very much.

Mr Sheehan—At Curtin there is a reduction of \$26.4 million.

Senator CASH—A reduction of \$26.4 million.

Mr Sheehan—There is. At the NIDC there is an increase of \$993,000. At Port Augusta there is a reduction of \$11.8 million. At Northern in Western Australia there is an increase of \$34.3 million. At Virginia Palms there is an increase of \$8.1 million. At the Asti there is an increase of \$14.6 million. At Darwin Airport Lodge an increase of \$36.9 million. At Scherger, an increase of \$24.9 million. At Leonora there was \$37.2 million; Inverbrackie, \$12.5 million—

Senator CASH—These are all increases?

Mr Metcalfe—Yes.

Mr Sheehan—For Villawood, it was \$35.9 million. Perth immigration detention centre, the PIDC, had an increase of \$6.7 million. Perth immigration residential housing, PHRC, had an increase of \$3.1 million. Sydney immigration residential housing has an increase of \$3.6 million. Melbourne immigration transit accommodation, MITA, had an increase of \$9.5 million. Brisbane, BITA, had a \$5.3 million increase. Berrima House in Darwin had an increase of \$1.3 million. Then there is community detention, with a figure of \$14.3 million. There has been a reduction in family accommodation of \$29 million. For the national office, which is mainly overheads, it was \$30.3 million. That should give you a total of \$290 million.

Senator CASH—Approximately. I appreciate that; thank you very much. How many IMAs did the department budgeted for in the 2010-11 period?

Mr Correll—In previous estimates it was indicated that 2,000 new arrivals were budgeted for in 2010-11. That was the original budgeted figure.

Senator CASH—How many have arrived to date?

Mr Correll—So far, around 3,500 have arrived.

Senator CASH—So that it a 150 per cent increase?

Mr Correll—Yes. That is reflected in the additional funding through the additional estimates process.

Senator CASH—What is the department's projections through to 30 June in terms of irregular maritime arrivals?

Mr Correll—Based on discussions with the Department of Finance and Deregulation through the additional estimates process, we are working on a figure of around 6,600 arrivals.

Senator CASH—Around 6,600. Basically, another 3,100 between now and June.

Mr Correll—That is about it.

Mr Metcalfe—Just for the record, that is not an intelligence estimate. That is purely a financial modelling exercise.

Senator CASH—Absolutely. I appreciate that. We will get to 6,600 before we get back to the 2,000 that was originally estimated. There was an announcement by Mr Gray. What is the total budget for this year for offshore asylum seeker management?

Mr Sheehan—It is program 4.3. It is \$597,134,000.

Senator CASH—Where did I get the figure of \$761 million from?

Mr Sheehan—On the bottom of page 34 of the PAES document, the total amount for all expenses associated with program 4.3 is \$761,186,000.

Senator CASH—And that is since the new appropriations have come through?

Mr Sheehan—It is.

Senator CASH—How does that compare to what last year's original budget was?

Mr Sheehan—The original estimate in the portfolio budget statements for 2010-11 was \$471,183,000.

Senator CASH—Where did I get the figure of \$304 million?

Mr Sheehan—It is \$290 million.

Senator CASH—I had a figure of \$304 million from the original budget, and you are saying that it is \$471 million. So I had an increase of \$457 million.

Mr Sheehan—No.

Senator CASH—No? What did you say that the original budget was?

Mr Sheehan—The original budget estimate for program 4.3 in the PBS document was \$471,183,000. The difference between that and the \$761 million is \$290 million.

Senator CASH—Okay: \$290 million. In terms of the projections for irregular maritime arrivals going forward, can you explain on what basis official forward estimates in the budget for IMA management through to 2013-14 do not surpass \$250 million a year?

Mr Correll—This is a little bit like the discussion at the last Senate estimates hearings.

Senator CASH—It is.

Mr Correll—For the out years, there is a formulaic approach.

Senator CASH—Yes, I know. And it has been proven wrong yet again—by several thousand.

Mr Correll—Yes. It is based on the five-year rolling average.

Senator CASH—Am I the only one laughing?

CHAIR—Yes, I think so.

Mr Metcalfe—We are quietly laughing.

Senator CASH—I am sorry. You get to a stage where you have to admit—and I am not having a go at you, Mr Correll; I have absolute respect for you—as a government, and perhaps, Minister, you could answer this, that you forecasted a budget based on 2,000 arrivals and, halfway through the year, you are already at 3,500. The department is telling you, albeit it is not a perfect estimate, that you are looking at 6,600 and yet you continue to make the forecasts as if the boats are going to stop coming.

Senator Lundy—I do not think that is correct at all. I think the department is providing you with an exemplary description of how they come to their forecasts.

Senator CASH—But they are wrong.

Senator Lundy—You can stand there and laugh all you like. The department has a formula and the government works with the advice that the department provides.

CHAIR—I assume, Mr Metcalfe, that you do not have a crystal ball.

Mr Metcalfe—As we have discussed on many occasions, we try and predict what will happen in the future in such an unpredictable area. In 2000 the numbers were very high—the numbers went up and the numbers went down. That is a feature of this area. For the accountants among us, our budget rules require that we provide forward estimates. They are not a government statement as to what will happen in the future. Government policy is obviously to seek to significantly reduce the number of arrivals through the sorts of measures we have been talking about this afternoon. Budget rules require that provision be made in the forward estimates. We know with certainty some of the estimates—because it depends upon the number of people who are already here and who will continue to be in detention—but, beyond that, that is the device that our esteemed colleagues in the department of finance use, and we agree that a rolling average is as good a mechanism as any. Senator, we have been through this on many occasions.

Senator CASH—We have. There is nothing new in the information that has been provided tonight. We already know what the figures are—the fact that it was budgeted for 2,000, we are now at approximately 3,500 and you are looking at approximately 6,600. If the government continues to forecast on this basis, using this formula, as if no boats are arriving, it significantly undermines the credibility of the government's broader budget figures. Come the next budget in May, there can be almost absolutely no faith whatsoever put in the figure that is released by the department, based on what we saw last time and based on what we are

seeing now. The numbers that are being provided to the Australian community are almost farcical.

Mr Correll—I would note that, leading up to the next budget, there will be a complete re-estimation of the coming financial year—that is, 2011-12 cost estimates. The best reasonable estimate will be made and then the out years, assuming that the existing model is applied, would again pick up the rolling five-year average. The year immediately ahead picks up the estimate based on the most current information and then the out years use the standard rolling average. That was the methodology chosen because of the volatility in the irregular maritime arrivals. Certainly, given the numbers in recent times, there have perhaps been some significant differences with the actual numbers. That is the rationale: to not project beyond the immediate year ahead, other than using a five-year average.

Senator CASH—I completely accept that. You are right: we have had this conversation before. However, in terms of the overall credibility of budget figures, I am absolutely amazed—I really am—that you continue to use this formula. Are you able to explain the forward estimates which show a budgeted, approximately—in fact, it is slightly more than I am going to say—50 per cent reduction in expenditure in 2011-12, with further reductions in subsequent years. Can you remind the committee of the basis for those reductions?

Mr Metcalfe—That is a direct result of the rolling average that Mr Correll—

Senator CASH—Yes, exactly!

Mr Metcalfe—Well, there is no other answer, Senator. It is a direct result of the rolling average. That rolling average will change because the next budget will pick up the numbers that we have this year. Mr Correll said that next year's forecast will take into account what we know, and we know that a substantial amount of costs will be incurred because the people are here already. But to try and predict future levels of arrivals—future wars, famines, reasons for displacement—and success in sending people home becomes an awful lot of assumptions that I do not think any—

CHAIR—Could I just ask something to clarify that. Is this the way predictions of arrivals have been funded for many, many years or were we suddenly doing something different in 2008 that had not been done in years previously?

Senator Barnett interjecting—

CHAIR—Senator Barnett, we will have a debate, if you like, about the number of boats that arrive, but I am simply asking Mr Metcalfe for—

Senator Barnett interjecting—

CHAIR—Senator Barnett, I am the chair. If you do not mind, I will ask my question uninterrupted. I am simply asking you, Mr Metcalfe, to clarify for me whether successive budgets, going back many, many years, have actually had this rolling contingency built into them because of the unpredictable nature?

Mr Metcalfe—I would have to undertake some research as to what arrangements were in place when we had the last big surge of asylum seekers, in the late nineties and the early part of the previous decade. From memory—but this is a very old memory—I do not think that there was any particular provision made in the forward estimates for all of the people who

came. For some years then there was a nominal figure that around 200 people might arrive, but again it was purely nominal, based on the fact that something was put in the budget. What the department of finance and we have sought to do in this progressive rolling average figure, with all of the reasons that we have explained at great length in the past, is to provide at least some link to what is currently happening but bearing in mind that that is not a forecast as to what will actually happen, because there are too many variables to say that it is a firm forecast. It is a planning figure which is required, and it is as good a figure as any.

Senator CASH—Given the government's commitment to a budget surplus in 2012-13, the current rate of irregular maritime arrivals and the current detention population, do the forward estimates represent a reasonable projection of likely costs in these years?

Mr Metcalfe—I believe they are the most reasonable that can be devised.

Senator CASH—Based on the five-year rolling estimate?

Mr Metcalfe—That is correct.

Senator CASH—Are there any plans to overhaul the budget process due to the continuing large numbers of arrivals?

Mr Metcalfe—In relation to estimates of future costs?

Senator CASH—Correct.

Mr Sheehan—As part of this year's budget process, we are consulting with the department of finance about what the estimates are. But at this point we have not changed the five-year rolling average, because that is the five-year rolling average. But we are in the budget process and we are discussing the estimates with Finance.

Senator BARNETT—Is that one of the options—to change the model for your budget planning into the future?

Mr Metcalfe—I do not think it is appropriate for us to go into budget discussions, to confirm or deny things that may or may not be being discussed. I just think that we need to wait for budget night.

Senator BARNETT—Are you locked into the five-year rolling average model?

Mr Metcalfe—I am just saying that we currently have the five-year rolling average model—

Senator BARNETT—That is all you can say?

Mr Metcalfe—and the issue of whether that will change will be a matter for the budget process.

Senator BARNETT—Clearly that is a question worth considering.

Senator CASH—Very briefly, when you mentioned the breakdown of where the \$290 million was to be allocated, you mentioned an increase in Northam, in Western Australia, of \$34.3 million. That segues very nicely into some questions that I have on the proposed detention centre at Northam.

Mr Metcalfe—Senator, could you please repeat the question.

Senator CASH—Absolutely. I turn to the Northam detention centre. Ms Wilson, the government publicly stated in October last year that it intended to transfer 1,500 male detainees from Christmas Island to Northam and that this transfer would see 1,200 male detainees move to Northam prior to the end of March 2011 with the remaining 300 transferred by the end of June 2011. As this announced date is but six weeks away, can you advise how many detainees will be transferred by the end of March 2011 and what the scheduled time frame is for the balance of the 1,500 male detainees?

Ms Wilson—That was the original timetable that was announced. Since that timetable was announced in October, the department has done a lot of work on the site, including engineering reports. It has identified problems in building with substantial bedrock granite on the site. Also, it is a steep slope. We have also got advice from the state government about the issues to do with power requirements on the site. So our time line at the moment, as a result of the work we have done since the announcement, is likely to be 600 by mid-2011 and 1,500 by the end of the year.

Senator CASH—Have you been out to the site to actually see what work has been done?

Ms Wilson—I have not been out to the site myself, but I have a team of people who are working on Northam who visit regularly.

Senator CASH—I live in Western Australia and I have been to Northam, obviously. I can assure you that nothing has been done. I am prepared to accept that, potentially, people have been out there to survey it, but I was there very recently and not one blade of grass had actually been moved as part of the process.

Ms Wilson—That is because there are a lot of initial approvals we might need to get, such as approval from the Department of Sustainability, Environment, Water, Population and Communities. We have got to go through a whole lot of approval processes, which are in train at the moment. We are planning to source demountables that are already built, so the building will not need to happen on site. The buildings will just need to be affixed once they get to the site.

Senator CASH—You will be aware that the announcement by the government caused considerable angst amongst the people of Northam and that there was a very well-publicised meeting, held in the town hall in Northam, where the department appeared. One of the issues I have with what has occurred is: why would the department make an announcement that it would be transferring 1,500 male detainees from Christmas Island to the community of Northam, in particular where two of the residents actually back onto what will be the detention centre, if it had not undertaken a proper due diligence process? Why would you do that to people living in the town of Northam?

Mr Metcalfe—I think that there is a difficult ‘chicken and egg’ issue here. Very properly, the minister thought it was important to let people know about plans for detention facilities in order to enable the communities to be consulters to the particular arrangements, and that sort of thing. If the department and the minister had not done that but had started having engineers, geologists and various other people going out, news would soon have spread that the department was in the area and looking at the facility, and so there would have been rumours and uncertainty.

Clearly, the minister would not have made that announcement, based upon the best advice we had from the Department of Defence as the Commonwealth owner of the land about the facilities and the arrangements, unless that was the advice that we were confident about. As Ms Wilson said, as we have now had access to the facility and have been able to look at it more thoroughly, there are a range of issues that need to be worked through, and which are being worked through, in order to create the facility. You can appreciate the dilemma of not saying anything and having people very concerned as to what is going on, as opposed to saying something, even if that saying something is not based upon a complete site evaluation.

Senator CASH—I was actually at the town hall meeting where the department answered questions that were put to them by the community. It was presented as a *fait accompli*. There was certainly no qualification that the department or the government had not yet undertaken a due diligence process. I have been to Northam and spoken to a number of residents and they are in a complete state of disarray because they truly believe that, in six weeks time, there will be 1,200 male detainees being transferred to Northam but there is actually nothing going on there. Nobody is telling them what is going on. Is this how the department normally handles such a delicate issue within a community?

Mr Metcalfe—I will get Ms Wilson to talk about the consultative and other arrangements. It is true to say that the government's decision and the announcement was that there will be a centre on Commonwealth land at Northam and, as I think Mr Correll has discussed with the committee on previous occasions, Northam in fact has a long history in relation to a migrant centre et cetera. The purpose of the consultation was very much to hear from the community about its concerns and to set up arrangements to enable dialogue to occur. We can talk about what that dialogue is and how it is occurring, but I accept this is a difficult area of public policy. People will have concerns and it is very appropriate for the department to respond on those issues, as I think we have done very successfully with the vast majority of residents at Inverbrackie where initially there were very strong concerns. But we now see teens of the local community welcoming people, kids attending school and the facility operating in an effective manner. That is essentially what we are also looking to do in Northam, Western Australia. Ms Wilson can talk a bit about how we have continued to engage with the community since those first meetings.

Ms Wilson—A community reference group was established and first met on 18 November, soon after the community meeting—

Senator CASH—Could you please advise the committee who is in that reference group?

Ms Wilson—I do not have a detailed list in front of me, but it lists the local council, relevant business leaders—I can give you a list of the actual membership on notice.

Senator CASH—Again, separate issues have been raised with me in relation to this group—that it is not a representative group of the community. Does it have anybody from the actual community on it?

Ms Wilson—I understand it does.

Senator CASH—Will you verify that?

Ms Wilson—I can give you the membership. The group has met every four weeks since then, so the most recent meeting was on 3 February and all of these things around timing have been discussed with the group. There is also a web page on the department's website which keeps up-to-date information about what is going on. There is an email address on the website where people can forward their questions and that is being managed by our DIAC office in Western Australia. We also held a business opportunity seminar in December 2010, in Northam, to talk to all the local businesses about what opportunities there may be in terms of building the facility. That is when our project manager was appointed, and I understand that seminar was also quite well attended.

Senator CASH—When you say 'well attended,' how many people attended?

Ms Wilson—I understand there were 30 or 40 local people, people interested in the business, there.

Senator CASH—One of the issues that have arisen is that the proposed Northam Immigration Detention Centre land is the feeding ground for the endangered Carnaby's black cockatoo. My understanding is that DIAC is now required to seek a purpose or clearing permit before it can commence clearing any land. In the event that the state government does not provide that permit—because this is an endangered species we are talking about; it is at the top of the list here—what then happens? It is a very relevant consideration.

Ms Wilson—We have been working very closely with the department of environment—

Senator CASH—The Western Australian department?

Ms Wilson—That is right, and we referred it through their processes on 9 December. We actually received approval on 7 February to proceed—

Senator CASH—You have received approval from the department?

Ms Wilson—Yes. As I said, that was one of the due diligence things we needed to do. Carnaby's black cockatoos were observed feeding on some trees in the area, but there is no suggestion that they nest on site, because there are no suitable trees in the area. However, there are a group of trees we have identified where they feed that we were not planning to build near anyway, but we have noted that and we will make sure—

Senator CASH—You do not.

Ms Wilson—we have regard for that as we build.

Senator CASH—Was the government aware, prior to its public announcement about constructing the detention centre, that the project land did cover the feeding ground of the Carnaby's black cockatoo?

Ms Wilson—We did not have possession of an environmental plan for the area. We had sought assurances from our colleagues in the Department of Defence as to the best they knew about it. But, clearly, this takes a detailed report and a lot of work to unpack.

Senator CASH—What due diligence is the department required to undertake prior to making an announcement that is going to affect a community in such a way?

Mr Metcalfe—I think that goes to the point I raised before, Senator, that governments have a difficult task here in that, to get a full understanding of the site would necessarily mean that

people would know that the site was under examination and lead to, I suspect, a great deal of misinformed and possibly alarmist comment. On the other hand, to not have any knowledge of the site and to simply announce it clearly leaves you open to the fact that you do not actually know what is there.

Now, this is Commonwealth land. It has been occupied for over 60 or 70 years, I suspect, if not longer, by the Department of Defence. Certainly, in our work within government in identifying possible sites for detention centres, we sought to understand as much as we possibly could, and ministers relied on that advice in making decisions and announcements. Having got to that stage back in October, I think it was, when the announcement was made, the minister made it clear that in future he would like to provide greater lead times but that there were essentially some decisions required very quickly from him.

As I said before, it is a chicken and egg situation in that, if you wanted to have complete knowledge of the proposed site, people would become aware of the fact that you were looking at it. That has to be balanced against having only limited knowledge and then having to undertake some tasks after the site is identified for a centre. Obviously, we are going about working seriously and properly through the issues with the relevant planning authorities and environmental authorities—the engineering works and other issues. Ms Wilson has indicated that we continue to remain committed to the site, to working with the local community to make sure it works, and I think we have actually got a pretty good record where we have done that.

Senator CASH—Mr Metcalfe, I assume you are aware—because it is a rather significant issue that was raised at the meeting in the town hall in Northam and has been raised in the press since, in Western Australia in particular—of the couple whose property backs onto what will be the detention centre. I have met with the couple. I have been to their home. I have seen the proximity of the detention centre. Certainly, departmental officials have met with them, because the couple do have some very serious concerns. In the event that they are able to show a diminution in value of their property due to the proximity of the Northam detention centre, are they entitled to any form of compensation, monetary or otherwise, from the department? Is there a policy in place—if they had their property valued and it came back as being less than it was?

Mr Metcalfe—I just do not have knowledge of that. I will take that on notice.

Senator CASH—Would you please because it is a very serious issue for them and their property is affected by it.

Mr Metcalfe—I would note—and this is not in any way providing a response—that quite a few of our detention centres have neighbours and some of those neighbours existed before the centres came there. We certainly seek to operate our centres in a way that does not impact on the local community. Having said that, I will take your question on notice.

Senator CASH—I appreciate that. There will not be the transfer of 1,500 male detainees in the time frame that was announced by the government. What is going to happen to the 1,500 detainees that were earmarked for transfer? Where are they at the moment?

Mr Metcalfe—The issue of their placement and the use of facilities are matters for the minister to make announcements about.

Senator CASH—Is the department aware of, or has the department had any discussions in relation to, a proposal to rename the Northam detention centre and delete any references to Northam in an attempt to remove any stigma or adverse comment that the detention centre may create or in an attempt to appease various parties who are opposed to the location of the detention centre?

Ms Wilson—I can comment on the name. My understanding is we have a Northam and a northern, which is in Darwin. There was some confusion about Northam and northern. The community reference group asked if they could consult, especially the Indigenous community, about names. It was not about the stigma; it was just about getting a local name that would apply. They consulted with the Indigenous community and came up with the name Yongah Hill—‘yongah’ means kangaroos. That name was chosen because the site was a source of food for Indigenous people in the area. That is my understanding as to the context of the name.

Proceedings suspended from 9.32 pm to 9.46 pm

CHAIR—We will resume our questioning and examination of the additional estimates.

Mr Metcalfe—I am just confirming whether there will be questions for outcomes 5 and 6.

Senator CASH—Yes, there will be. Mr Metcalfe, in relation to the 1,500 detainees that were earmarked to be transferred to the Northam detention centre but, due to the delay in the establishment of the centre, they will not be, I did ask you where they currently were and you said that it was for the minister to determine where they were.

Mr Metcalfe—I thought you asked how they are being accommodated.

Senator CASH—No. Where are they? Are they still at Christmas Island?

Mr Metcalfe—You are aware that we have people right through our facilities—Christmas Island and elsewhere. We have a clear objective to reduce the numbers of people on Christmas Island. We have had a number of reports urging us to do that. We need somewhere for them to go. Northam has been identified as a place for single men to go to. Beyond that I do not think there has been a specific identification of who would be the future Northam population.

Senator CASH—Right. I think the announcement was, ‘fifteen hundred males from Christmas Island’.

Mr Metcalfe—If that was the announcement then that would be so.

Senator CASH—So they would still be on Christmas Island, presumably.

Ms Wilson—A couple of things I would add are that, since the announcement, there have also been more arrivals with, probably, families and children in the mix. As you know we have expanded Darwin Airport Lodge and that was announced as well. We have also set up Inverbrackie. So there have been other facilities. According to our new timetable I outlined earlier we anticipate 600 beds by the middle of the year. So while there is a delay we still have substantial beds by the middle of the year. All of that is in the mix so we have been able to use the other facilities we have for families to continue to move people off Christmas Island.

Senator CASH—There is stress on the detention network. I think everybody accepts that. We cannot dispute it. In the previous estimates we had canvassed stage 3 of Derby and we

canvassed it quite extensively and the department was adamant, on behalf of the government, that there was absolutely no plans at all to bring on stage 3. In response to a question on notice I asked what was the forecasted cost of Northam—\$164 million as per the announcement—and my question was: what would it cost to actually bring on another 300 or 600 beds at Derby. The response was that it would be \$60 million. Given the stress on the detention network, are there any plans by the government to bring on stage 3 given that, at this stage, I would have thought it was a realistic option knowing that the Shire of Derby, Shire President, Elsia Archer, is quite willing and able to take these people on.

Mr Metcalfe—There are no plans.

Senator CASH—There are still no plans.

Ms Wilson—And we meet with Elsa regularly.

Senator CASH—I know you do. It is just that \$60 million compared with \$164 million is, I would have thought, a reasonable proposition but I accept there are no plans to bring it on. I turn now to the total incidence of self-harm. Do we have the right officers to answer the questions?

Mr Metcalfe—Yes.

Senator CASH—Since 18 November 2010, how many incidents of self-harm in immigration detention have been reported, excluding hunger strikes?

Mr Metcalfe—We will probably need to take a minute to find that.

Ms Wilson—Can you re-ask the question please, Senator?

Senator CASH—Absolutely. Since 18 November 2010, how many incidents of self-harm in immigration detention centres have been reported, excluding hunger strikes?

Ms Wilson—I can give you the number from 1 July 2010 to 4 February 2011.

Senator CASH—I will take that number for now.

Mr Metcalfe—Senator, you are asking essentially from the last estimates.

Senator CASH—Correct.

Mr Metcalfe—Okay. We do not have that. We can give you a year-to-date until the 4 February figure. That will obviously encompass some of the figures that were previously reported to you. If you want an answer from 18 November, we will have to take that on notice.

Senator CASH—That is fine. I will take the other figures for now but if you could take it on notice that would be appreciated.

Ms Wilson—For this financial year in relation to self-harm there have been 182 incidents across the network.

Senator CASH—And that excludes hunger strikes?

Ms Wilson—That is right.

Senator CASH—How many of these incidents required hospitalisation?

Ms Wilson—I have not got that detail with me.

Senator CASH—Could you take that on notice and also break it down to reflect the 18 November figure as well. How many of these involved minors in detention?

Ms Wilson—Again, I do not have that level of detail here.

Senator CASH—If you would be kind enough to take that on notice. How many of those people involved in the incidents were given follow-up psychological treatment?

Ms Wilson—I am happy to take that on notice as well.

Senator CASH—Thank you. Since 18 November 2010 or, if you do not have that figure here, the year-to-date, how many incidents of self-harm were recorded in the following detention centres: Christmas Island. You can do year-to-date if you have that information and then I will get you to take on notice 18 November 2010.

Mr Metcalfe—Are you going to run through all the centres, Senator?

Senator CASH—Christmas Island, Villawood, Northern, Maribyrnong, Melbourne Immigration Transit Accommodation, Scherger, Leonora and Inverbrackie.

Mr Metcalfe—We will see whether we have year-to-date figures with us, otherwise we will take it on notice.

Ms Wilson—Senator, I do not have it for all the other facilities. I think I have it for Christmas Island. I am just having a look for you. At Christmas Island, again for the same period this financial year, there have been 61 instances of self-harm.

Senator CASH—And you will take on notice the figures in relation to—

Mr Metcalfe—We will disaggregate it according to those other centres.

Senator CASH—Thank you very much. Since 2007, how many reported hunger strike incidents occurred in all the immigration detention centres? Can that figure be broken down annually?

Ms Wilson—I think the best thing is to take that on notice as well.

Senator CASH—Of those, how many required hospitalisation?

Mr Metcalfe—We will take that on notice.

Senator CASH—How did this compare retrospectively each year since 2001? How many reported hunger strike incidents have occurred in detention centres—it is the same list that I mentioned previously—since 2007? Do you have any statistics on that?

Ms Wilson—In terms of voluntary starvation, there were 158 incidents this financial year.

Senator CASH—Across all of them?

Ms Wilson—Across all the centres. We would have to take it on notice to provide you with a breakdown, but I should note that in 2001 and 2002, if you do a comparison, there were many more self-harm and voluntary starvation instances than there are currently. The number of self-harms in 2001-02 was 427 and the number of voluntary starvation was 969. This is just as a point of comparison, which you asked for. We can give you the years in between, but that was a significant year with a comparable population who had moved through detention.

Senator CASH—In relation to each of the detention facilities on Christmas Island and the mainland, can you tell the committee what arrangements are made for the storage of valuables and cash that belong to detainees?

Ms Wilson—On Christmas Island, the clients have access to locked facilities where they can store their valuables with them.

Senator CASH—That is personal—

Ms Wilson—Personal, yes. They keep a key and the service provider keeps a key. They are able to take a few things with them into their room—maybe a picture or a book—which they are able to lock away. There are similar facilities in the other detention centres basically for clients locking up personal items of a precious nature—not necessarily clothes.

Senator CASH—Is this something which is made available to each client?

Ms Wilson—That is right, on a client by client basis.

Senator CASH—When was this first made available? Is it a new policy? Is this a policy which has always been in place?

Ms Wilson—It has always been in place on Christmas Island and in each centre there have been different locking-up arrangements. Clients do not keep cash in the centres so that is also locked away and a record is kept of every client's items that are put away.

Senator CASH—There is a record and that is good. So what is the value of goods and cash stored in these facilities?

Ms Wilson—I am not even sure if we can take that on notice because they lock it away.

Senator CASH—But if there is a record kept—

Ms Wilson—How do you price a ring? We do not go to pricing the things that people lock away.

Mr Metcalfe—We do not go to valuations.

Senator CASH—Do you have a record of the amount of cash that is being stored in these safe facilities?

Ms Wilson—I am not sure if we would have an aggregate total. We will probably have it in relation to each person's record but I do not think anyone has added it up. I will have to find out how complicated it is.

Senator CASH—To disaggregate that information for me.

Mr Metcalfe—If we do not have an aggregate and had to go to every case, we could not do it. It would be an unreasonable diversion of resources.

Senator CASH—Certainly there is cash being stored by—

Mr Metcalfe—Some clients have cash. That is receipted and kept in safe care. We will need to check as to whether the detention service provider can provide us with an aggregate but if they cannot we will not be able to provide them.

Senator CASH—That does raise an interesting issue. If they do keep cash and there is no record of it, what process would the department follow if a detainee did turn around and say, ‘I’ve just had 5,000—

Mr Metcalfe—I do not know. We are saying that there is a receipting of each individual’s—

Ms Wilson—But not an aggregate.

Mr Metcalfe—but we will need to check as to whether a record is kept to say, ‘As at a certain point, we, the detention service company, are keeping X-thousand dollars in some form of safe keeping.’ I suspect that the answer is going to be that there is an individual record but no collective amount put together. We can check on that.

Senator CASH—Is it true that more than US\$1 million in cash is being kept on behalf of detainees in one of the Darwin centres?

Mr Metcalfe—That really goes to whether we can answer the previous question, so we will take that on notice as well.

Senator CASH—Mr Metcalfe, are you aware that this is an issue which has been raised?

Ms Wilson—Certainly I was not aware of the sum of money you have just mentioned.

Mr Metcalfe—And it is news to me.

Senator CASH—Does the department have any idea as to the amount of money that may be being kept, now that the figure of \$1 million is put out publicly?

Mr Metcalfe—We have said that we will check as to whether we do have a record. The department’s own staff would not be involved in that transaction. That is Serco’s responsibility as part of their detention service contract. So we will need to talk with them as to whether they total the amount or whether it is kept on individual files.

Senator CASH—If it is kept on individual files, are you able to explore for me the ability to provide the committee with that data?

Mr Metcalfe—I am happy to explore it but I think our answer may well be that that is an unreasonable diversion of resources, given the number of people in detention, to go through each case to uncover that particular detail.

Senator CASH—In relation to each of the detention facilities on Christmas Island and the mainland, would you be kind enough to provide the committee with a full list of all personal items that the detainees are provided by the Australian government? Can you give me an example of what they are provided with—toothpaste, toothbrush?

Ms Wilson—They would get toothpaste, toothbrush, a number of sets of clothes, T-shirts, sneakers, socks, shirts—it depends on what they bring with them. They could need a complete set of everything, as opposed to supplementing some things.

Senator CASH—Are you able to provide to the committee the complete list of things that can be taken from and given to a detainee?

Ms Wilson—Yes, we can.

Senator CASH—Are condoms provided to detainees?

Ms Wilson—There are dispensing machines in most of our facilities, following advice from many health care providers that that is what is required in these environments. So we do provide them via dispensing machines.

Senator CASH—You say that is in most of your facilities. Are you able to take on notice and provide to the committee the exact locations of the condom dispensing machines—the sites they are actually being provided at?

Ms Wilson—Sure.

Senator CASH—Thank you very much. On the basis that the answer is yes, does the department keep a record of how many condoms have been dispensed to detainees?

Ms Wilson—As the secretary indicated, that is a function that would be managed by our service provider rather than the department. I would need to talk to them to find out if there is a record.

Senator CASH—Thank you very much. I appreciate that. Again, at each of the detention facilities on Christmas Island and the mainland, are there any problems in relation to drug addiction amongst the detainees?

Ms Wilson—I just need to clarify that question. There are clients who are in receipt of medication that is prescribed for particular conditions.

Senator CASH—Perhaps I should say addiction to unlawful drugs—what we would consider to be unlawful.

Ms Wilson—I think we would have to take that on notice. I am not sure about the question about addiction. I would need to find out from our health care providers whether any of the clients have been diagnosed with drug addiction.

Senator CASH—If the answer is yes, would you be kind enough to provide to the committee the nature of the drug addiction and, if drugs are being used, what drugs they are? How many people are involved, and have there been any incidents in which drugs have actually been found at the detention centres?

Ms Wilson—Let us take that on notice.

Senator CASH—Is there a needle exchange program operating in any of the detention facilities?

Ms Wilson—No, there is not.

Senator CASH—Absolutely none at all?

Ms Wilson—No.

Senator CASH—Is there a methadone program operating in any of the detention facilities?

Ms Wilson—There are some methadone programs operating. I would need to take it on notice to provide the details.

Senator CASH—Okay. Thank you very much. Just to confirm: there are methadone programs in place at some of the detention facilities?

Ms Wilson—I would need to take that on notice.

Mr Metcalfe—We will take it on notice. Some of our clients, of course, have come out of a prison program or have come into our detention having been overstayers and may well have had a methadone program in place as they came into the centre. Obviously we are guided by health advisers on the appropriate arrangements. We can provide you with more detail on that.

Senator CASH—Thank you very much. I appreciate that. In relation to the facility at Leonora, there was a complaint about the use of computers by some detainees to post disturbing images of dismembered bodies and of torture on their Facebook page and distribute them to children. Is the department aware of that claim at Leonora?

Mr Metcalfe—Yes. I was contacted directly about that.

Senator CASH—Did the department launch an investigation into that?

Mr Metcalfe—Yes, we have looked at that.

Senator CASH—What was the result of the department's investigation into the claims?

Ms Wilson—A teenage client at Leonora was identified as posting some of this. We engaged Ernst and Young to undertake an independent review of procedures across a range of sites. With some of the social network sites you either give them access or you do not give them access; you cannot control the level of access. Ernst and Young identified that there was a need to educate clients on the appropriate use of internet filters and to better monitor internet usage. Those arrangements have been upgraded in all of our centres. The review also identified a number of enhancements to IT systems for cross-checking and reporting on what clients were accessing. We also found, just by talking to the families in relation to this particular incident, that the family was not aware that the child was using Facebook or what it was. So we spent a lot of time on educational programs for families so they can self-monitor the use of these sites by their own family members.

Senator CASH—How old was the teenage client in question.

Ms Wilson—I do not have a particular age.

Senator CASH—Was it a male or a female?

Mr Metcalfe—From memory it was a male.

Senator CASH—Is any action being taken by the department in relation to the child who posted the inappropriate pictures?

Ms Wilson—As I said, there was quite a serious discussion and I understand access was restricted for a period of time. His access was closely monitored and there was also a need to go and talk to the school and the other children who might have been affected about what had happened and what we were doing to manage it.

Mr Metcalfe—I think the pictures were taken down as soon as it was drawn to our attention. That is one of the issues with the internet and parents all around the world are facing these sorts of issues.

Senator CASH—I do not disagree with you, Mr Metcalfe. It absolutely is one of the issues with the internet. I have now had the opportunity to go to the detention centre at Derby twice and on both occasions I have been into the donga that houses the computers. Each time I have been there every single computer had a person on it and at least 50 per cent of those people

were on a Facebook page. A number of them had pictures of Scott Morrison on their pages and a number were looking at different locations in Afghanistan. They were in English so I could actually read them. I asked the Serco staff, 'What monitoring is put in place?' I was advised that there was no monitoring put in place. Is that true? Does the department monitor what sites the detainees are going to?

Ms Wilson—They do. There are Serco officers in all the internet rooms who are meant to be physically walking around and keeping a line of sight on sites and checking if people are on inappropriate sites. As I said, by tightening password control and access, there is now a reporting mechanism back to Serco to provide them with information about who might be accessing inappropriate sites that they can also act on.

Senator CASH—You can do that when you are walking around and the site is in English. A number of the Facebook sites are actually in Arabic. How is a Serco official meant to distil whether or not inappropriate information is being provided via a Facebook site if the Facebook site is in Arabic?

Mr Metcalfe—How would you describe inappropriate, Senator?

Senator CASH—Inappropriate according to what the general community standard here would be.

Mr Metcalfe—Our concern would be pornography or child pornography. That of course is pictorial and able to be identified. The written word can be a powerful thing but we are talking about people who are in administrative detention, not in correctional detention, and within a detention environment we have an obligation to provide as normal a life as possible. I accept that can be very difficult given the facilities we have to operate in. So, if people wish to communicate with each other and to read material, that is something that occurs. Certainly I would not expect a Serco guard to be able to interpret Arabic writing in the same way that I could not either. There are practical limitations upon what we can reasonably do. Certainly our concern in situations such as the one you described at Leonora, where there was what I would regard as very unpleasant photographs being posted, is to work with the families concerned because it was a young person involved and to ensure that what you would regard as community standards in relation to pornography and violence are detected. This is an area where we continue to ensure that we are able to provide a safe environment for our clients.

Senator CASH—Is the department aware of any instances where a detainee has accessed either pornography or child pornography?

Ms Wilson—I am certainly aware of some instances where clients have tried to access some pornography.

Senator CASH—Is that only pornography or does that include child pornography?

Ms Wilson—I am not aware personally of any child pornography. Because Serco does reporting on sites that are hit, they can actually block sites if it is identified that there is frequent access to a certain site that is inappropriate.

Senator CASH—And what action is then taken against the detainee, considering in our own culture, if you are at work and you access porn online, you are pretty much looking at dismissal?

Mr Metcalfe—These folks are not at work; they are at home. It is a home that we provide for them.

Senator CASH—That is a very interesting distinction. Okay, I will consider pursuing that one further.

Mr Metcalfe—This is their home for the time being.

Senator CASH—Yes, is there a difference between accessing unlawful child pornography and just surfing the net for porn at home?

Mr Metcalfe—Certainly, we do not condone any of that because it is simply contrary to law regardless of the place. The point I am making is that you were saying ‘at work’ and I was saying they are actually not at work, they are in what is their home. It is a home provided by the Australian government. There are community standards expected in terms of behaviour. Adherence to Australian law is part of that and under no circumstances would inappropriate access of explicit pornography or, certainly, child pornography be permitted. You have asked what the sanction would be. There are a variety of sanctions applicable in the detention environment, the most obvious is withdrawal of facilities to access those computers.

Senator CASH—Has that ever occurred? Has that action had to be taken against any detainees?

Ms Wilson—There has been withdrawal for certain time periods.

Senator CASH—Are you able to take on notice and provide to us the instances where that has actually occurred and the time period of the ban?

Ms Wilson—Yes, we can certainly try again. We will have to get that information through our service provider. I am not sure how detailed the records are that they keep.

Senator CASH—Thank you. In relation to the detention centre at Derby is the department aware of the number of detainees who are of the Muslim faith and the number of detainees who are of the Christian faith?

Ms Wilson—I do not have a breakdown, but I understood that a high proportion were Muslims.

Mr Metcalfe—It would be a high proportion that would be Muslims but our primary way of reporting client details is by nationality not by religion.

Senator CASH—I appreciate that. It has also been raised with me, and I would like to know whether or not this has actually been brought to the department’s attention, that the very limited number of Christians at the detention centre in Derby are unable to publicly disclose their faith because of the fear of persecution from the detainees who are not of the Christian faith. Has that been raised with the department?

Ms Wilson—It has not been raised with me. I would have to take that on notice to find out whether it was raised with the local manager at the centre. We certainly provide a range of religious options and celebrations. If you look at the calendar of activities at Curtin, it actually celebrates a range of different religious events. We bring in people like the imam from Perth and a whole range of other players to support the various faiths of those clients.

Senator CASH—Mr Metcalfe, are you aware of those allegations?

Mr Metcalfe—No, I am not and I would be concerned if there was a view that people felt it was unsafe to adhere to any religious faith. We aim to provide a safe environment. It is certainly my expectation that our centre manager and the detention centre staff would be making arrangements to ensure that, were there any concern, that was overcome.

Senator CASH—Mr Correll, I am aware that you have been up to Curtin. Are you aware of any such allegations?

Mr Correll—No, I am not.

Senator CASH—Senator Abetz is not here yet. If want to go to some of the answers provided to questions on notice and ask for a brief status update. In relation to question on notice 276 I asked:

In August 2010 the media reported that a detainee in the custody of DIAC/Serco officers absconded whilst on an excursion to a bowling alley. Has this absconder been apprehended and returned to custody?

The answer I received was no. Do you have a current status update?

Ms Wilson—Yes, I do. The client who escaped from the bowling centre on 31 July was located and detained on 13 January.

Senator CASH—Okay. I only received this answer about 10 days ago. I wanted to check that. That is what is in my folder. Can I confirm that the answer I have been provided with is incorrect?

Mr Metcalfe—I will just get the answer back again.

Senator CASH—Thank you, I appreciate that.

Mr Metcalfe—It would appear that that answer is incorrect, and we apologise for that.

Senator CASH—That is not a problem at all. Do you know when this answer was actually provided to the minister's office? I am assuming you provide the answers to the minister's office prior to them being released.

Mr Metcalfe—That is according to longstanding arrangements. No, I would have to check.

Senator CASH—Okay. But certainly that is incorrect. Could I have the date on which the person was detained?

Ms Wilson—I understood he was located and detained on 13 January.

Senator CASH—Do you know where they were detained?

Ms Wilson—Sorry, Senator, the answer is correct. I was misreading the information I have in my folder. He has not been relocated; the answer is correct.

Senator CASH—So what happened on 13 January?

Ms Wilson—That is when he was detained. He was detained on 13 January 2010 and he escaped on the 31st. I am just reading it out of sync. I am sorry.

Senator CASH—That is okay. He was detained on 13th of the first. He absconded in August 2010.

Ms Wilson—That is right.

Mr Metcalfe—If we can apologise again, and I will simply say it is getting late and we are all a bit tired.

Senator CASH—That is all right. I was getting a little confused. In May 2010 the media reported that three detainees had absconded from the Maribyrnong detention facility. I asked: ‘Have any of these absconders been apprehended and returned to custody?’ That was QON 275. The answer was no. Do you have an update in relation to these absconders?

Ms Wilson—I do not have an update on it in my folder.

Senator CASH—Would you be kind enough to take that on notice?

Ms Wilson—Sure.

Senator CASH—In April 2010 the media reported that a detainee in the custody of DIAC/Serco officers absconded while on a ‘reward’ excursion whilst at the Melbourne Aquarium. That was question 274. I asked, ‘Has this absconder been apprehended and returned to custody?’ The answer I was provided with was no. Do you have a status update?

Ms Wilson—It is still no.

Senator CASH—In March 2010 the media reported that three detainees had absconded from the Villawood detention centre. I asked, in question 269: ‘Have any of these absconders been apprehended and returned to custody?’ The answer I was provided with was no. Do you have a status update on that?

Ms Wilson—I need to take that on notice. I do not have that specific one in my folder.

Senator CASH—Thank you. Finally, in May 2010 the media reported that six detainees absconded from the Villawood detention centre. I asked in question 270: ‘Have any of these absconders been apprehended and returned to custody?’ The answer I received was no. Do you have a status update?

Ms Wilson—I understand that it is still the correct answer but I will double-check that on notice.

Senator CASH—I appreciate that. Chair, on that basis, I will defer to Senator Abetz.

CHAIR—Just before you do, does that mean we have no other questions for outcome 4?

Senator CASH—Unless we are prepared to stay here all night, which I am, the answer to that question will be that I have no further questions.

Senator ABETZ—This is 4.3.

CHAIR—Sorry, so we do have questions in outcome 4.

Senator ABETZ—Yes.

CHAIR—Are there any questions in outcome 5?

Senator CASH—Yes, and outcome 6.

CHAIR—Okay. Senator Abetz, we will go to your questions.

Senator ABETZ—Before I get started, can I congratulate Senator Lundy: I think this is the first time I am appearing before a Senate estimates where you are in the chair, so all the best with it, but hopefully not for too long. In the meantime, congratulations and well done.

Senator Lundy—Thanks for that reference.

Senator ABETZ—Earlier today—this morning or whenever it was; I forget when—I was asking about asylum seeker claims. If an asylum seeker claims to be a refugee and that claim is successful, what written substantiation of that decision is required, if any?

Mr Metcalfe—Senator, just so I understand your question: what written substantiation of our decision that the person is a refugee?

Senator ABETZ—Yes, that is right.

Mr Metcalfe—The normal process would be that if we form a view that a person is owed protection by Australia, is a refugee, they would undergo any remaining security and health checks, and in the case of irregular maritime arrivals a submission would then be put to the minister inviting the minister to lift the bar, as it is described, to allow the person to apply for a protection visa. Ordinarily the minister would agree for that to occur. So the documentation associated with that would be on the relevant departmental files, associated with the findings of that person's status and the appropriate recommendation to the minister.

Senator ABETZ—That is if the person were an irregular maritime arrival?

Mr Metcalfe—That is correct.

Senator ABETZ—If you are not an irregular maritime arrival—

Mr Metcalfe—Then again there would be a decision taken by a departmental officer or, in some cases, the Refugee Review Tribunal, and that would be contained on the departmental file and include the reasons for the decision, and if the person met the criteria for the visa then the protection visa would be granted. The major difference is that the irregular maritime arrival is a process that occurs prior to the minister exercising a personal power in relation to a person who is onshore in Australia, having arrived by aircraft. The minister would usually have no involvement if the decision was to grant the person a protection visa.

Senator ABETZ—So what amount of documentation is required in that circumstance?

Mr Metcalfe—Normally the documentation would consist of the application from the individual and any supporting material, the final records and notes made by the departmental officer in forming their view that the person was in fact owed protection by Australia, and associated aspects of the processing, for example, the health checking and other checking.

Senator ABETZ—What happens if an asylum seeker is unsuccessful? What written substantiation of the decision is required from the departmental official?

Mr Metcalfe—Again, the departmental official would make a record indicating their reasons for the decision and, in the case of a person who has arrived by air and is onshore in Australia, the person would be notified of the reasons for the decision. The Migration Act sets down the particular requirements in relation to this and the fact that they had a review right to the Refugee Review Tribunal that is exercisable—

Senator ABETZ—Would it be fair to say that the work in relation to writing up the decision for a successful application for the departmental official is a lot less than in relation to an unsuccessful application?

Mr Metcalfe—I might just check, because I have available to me an officer who was involved more closely in this. Certainly, it is our expectation that any decision taken by a departmental officer, whether it is yes or no, is appropriately recorded and the reasons provided. However, in the case of refusals, because there is a review available, then it is important for the department to articulate the reason precisely why we have formed a particular judgment—whether it goes to credibility or the fact that we do not believe that the persecution occurred or whatever it might happen to be.

Senator ABETZ—I will take you to the review stage, rather than at first instance. If at the review it is determined that the application should be successful—are we waiting for an official to—

Mr Metcalfe—I am not expecting any officer to talk; I just need him to advise me, Senator.

Senator ABETZ—All right. You have told us about ‘at first instance’, if I can use that term, or the initial application. I will now take you to the review stage. If at the review stage the applicant is successful, what written substantiation for that decision is required in comparison to the applicant being unsuccessful?

Mr Metcalfe—Again, we are talking about two different processes. For people who—

Senator ABETZ—I am talking generally—again, I am not with IMA.

Mr Metcalfe—I am drawing the distinction between IMAs and non-IMAs. For non-IMAs, that review decision is a matter for the Refugee Review Tribunal, and we had representatives from the tribunal here this morning. They would normally have a reasonably detailed explanation of the reasons for their decision—their thinking, how they weighed the evidence—and concluding whether or not in their view the person was a person who was owed protection by Australia.

Senator ABETZ—You may well have to take this on notice: in 2008, 2009 and 2010 what number of initially unsuccessful asylum seeker applications were reversed on appeal and what written substantiation was required in these instances?

Mr Metcalfe—I will take that on notice. I think we will need to continue to draw the distinction between non-IMA processes and IMA processes.

Senator ABETZ—Yes, that is fully understood, and so, if you can, provide two answers, in effect.

Mr Metcalfe—I will do my best. As a footnote to that, you will be aware that following the High Court decision in M61 and M69 from last year the minister has announced revised processes to apply from 1 March for irregular maritime arrivals, so those processes will commence shortly. They still do go to a role of the departmental officer in making an assessment, but if the officer comes to the view that it is more likely that the answer will be no then the matter is immediately referred to the independent reviewer to undertake their activity, thus ensuring that the process time is reduced.

Senator ABETZ—It has been put to me that there is a lot more work for a departmental official in rejecting an application than there is in giving it a tick and allowing it to go through. That is the basis of my inquiry.

Mr Metcalfe—Thank you for that advice. I will address that in my response on notice. The officer I have with me is the global manager for refugee status decision making and his advice to me is that the amount of documentation will vary, depending upon the particular case and the circumstances, but certainly we do not operate that it just goes through on the tick if it is a yes or that there is a lot more work associated if it is a no. We ensure that there is good documentation of the reasons for the decision, whether it is yes or no. But if it is a rejection then clearly we need to indicate the reasons for the rejection and in the case of the onshore case load there are statutory requirements associated with the statement of reasons.

Senator ABETZ—So that which I was told therefore seems to be right—

Mr Metcalfe—No, I do not agree with what you were—

Senator ABETZ—that there is less documentation associated with giving somebody a tick as opposed to rejecting an application.

Mr Metcalfe—I think that is probably too broad a comment to make. It will depend on the circumstances—

Senator ABETZ—Of course it will, but generally?

Mr Metcalfe—the case load, the cohort et cetera—

Senator ABETZ—Of course.

Mr Metcalfe—and the rationale. I suspect your source might be going to the new process that has been announced, from 1 March, in which case if a departmental officer processing an irregular maritime arrival forms the view that a case is likely to be refused then it should go immediately, with proper documentation but quickly, to the review process so that it gets undertaken well. An important change, though, that is occurring in the new process is that we will be putting much more onus on the applicant and their adviser to tell us full and complete particulars at the beginning of the process, because there has been a view that the process in the past has been not a complete set of information in all cases, leading to a rejection, and only after that rejection did the full story come out. We are very keen to get the full story upfront, and that is something that we believe the new processes will assist us in.

Senator ABETZ—If you can take it on notice—

Mr Metcalfe—I have undertaken to, yes.

Senator ABETZ—because the strong indication I have been given is that, if in doubt, it is a lot easier for the departmental official just to tick it and allow the applicant in because of the amount of paperwork and work involved in fully documenting the reasons for a rejection, and that might be indicative of the high number of successful applicants.

Mr Metcalfe—It is certainly not a ‘tick-and-flick’ system. There is documentation required.

Senator ABETZ—Yes, but a lot less for a successful applicant as opposed to one that the official rejects.

Mr Metcalfe—Certainly my expectation is that the reasons for an approval and the reasons for a refusal will be documented fully. To suggest that it is a tick is an incorrect characterisation. To suggest that there may be more documentation on the same case rather

than less would be a matter of judgement, I suspect, depending on the case. I think Mr Fleming may have something to assist me with here.

Mr Fleming—It is essentially to clarify that, even in approval cases, we require a documentation of the reasoning why there is an approval, so the decision makers still have to document why they are satisfied about the claims, that they are for a convention reason.

Senator ABETZ—Mr Fleming, let us cut to the chase here. Would you agree that the documentation required for an affirmative decision usually is a lot briefer than the documentation that is required for a rejection?

Mr Fleming—No, not generally.

Senator ABETZ—Not generally?

Mr Fleming—No. I have seen—

Senator ABETZ—Would you be able to provide us with a random sample, without telling us who the cases were, of the number of words in support of an affirmative decision as opposed to the number of words in relation to a rejection? I do not know whether it is easily attainable

CHAIR—And Mr Fleming, perhaps you might want to answer the question you were asked a minute ago, before you were cut off. I think you are going to give us an explanation.

Mr Fleming—It went to the fact that, in a lot of decision records, I have seen there are very extensive approval decision records just as there are some very extensive refusal decision records.

Senator ABETZ—But there are very few, if none, where the documentation for a rejection is not extensive.

Mr Fleming—That is correct.

Senator ABETZ—Yes, that is correct. Whereas, if I may then immediately follow up, in relation to some successful applications, affirmative decisions, the documentation is not necessarily as extensive as it is in rejection cases.

CHAIR—Mr Metcalfe, you might want to clarify that.

Mr Metcalfe—Yes. I think, Senator, we have taken sufficient on notice to respond. I would not want to leave you with the impression that the number of words is the only determinant of the quality of the decision. The quality of the words —

Senator ABETZ—Yes, we can have all the wonderful terminology, Mr Metcalfe.

Mr Metcalfe—It may be possible to articulate difficult concepts in reasonably brief wording without that being a reflection as to the quality of the decisions. So, I suspect, a word count would be just one indicator as to whether the decision making was appropriate in the circumstances.

Senator ABETZ—Of course the quality of the thinking could be very important and not reflected in the number of words, but if you would please pursue that, because that is the only objective indicator, is it not, the number of words—

Mr Metcalfe—No. I think there are other objective indicators. For example, we do ensure that we employ quality control measures and checking to ensure that the quality of our decision-making across various teams is appropriate and correct. So to reduce what is an extremely complex decision based upon international law, Australian law, a person's particular circumstances and issues as to whether we believe their story, whether they are credible and whether they have may have been tortured or are suffering from trauma, to a word count, I think, would be a misrepresentation as to the quality of the decision-making process.

Senator ABETZ—What other objective measure could or would there be?

Mr Metcalfe—What I am saying is that we believe that the measures such as our quality control arrangements and the overall assurance arrangements we have do go to aspects of assuring quality.

Senator ABETZ—But, with respect, that is not objective. That is a statement of trust: 'We've got the measures in place but we're not going to exactly tell you the detail of them and how they work.'

Mr Metcalfe—I suspect few areas of government decision making are as accountable as this. There are review arrangements for rejection cases to the RRT and, in the case of IMAs, to the Independent Review Process. In the case of approvals, we have our own quality control and we are subject to audit and inspection by a number of agencies. So I would just say that this is not a sort of closed shop where we are saying 'just trust us'; there is a lot of accountability around this.

Senator ABETZ—All right. How many approvals does the department, through its quality assurance mechanism, appeal and say, 'This person should not have been granted asylum'?

Mr Metcalfe—We do not appeal our own decisions. The quality process is about ensuring that prior to the decision being taken there is quality control in place.

Senator ABETZ—But you were telling us that the quality assurance, with those who were rejected going to the review tribunal, was that none of the positive decisions are then taken to the review tribunal.

Mr Metcalfe—No, and I was not saying that they were. What I was saying was that it does not get to a positive decision without a quality control process being available.

Senator ABETZ—Yes, being available, but it is not an objective measure. With the rejections you can say, 'X number were rejected, which were upheld on appeal or rejected on appeal,' whereas with those that are ticked or approved we do not have such an objective mechanism to measure the appropriateness of the decision. That is why I am asking. I accept that it is not a perfect mechanism, but it seems to me to be one of the only mechanisms, and that is the word count. But I think you have agreed to take that on notice—

Mr Metcalfe—Yes.

Senator ABETZ—and if you could do a random sample for us that would be very interesting.

Mr Metcalfe—Certainly. Without in any way being flippant—because you know me well enough to know I would never be flippant—I would suggest that Shakespeare in a sonnet could probably convey as many ideas as many people would take 15 novels to convey. Does that mean that the 15 novels are a better articulation of the idea than the 14 lines of the sonnet? The quality of the thinking and the language is a determinant as well as the sheer number of words.

Senator ABETZ—Yes, and the objective measure of the quality thinking that went into the decision we will never know other than the words that were written.

With regard to the article I drew to your attention earlier today, ‘Ring preys on boat people’ in the *Age* of 29 January 2011, did the minister issue a media release responding to that article, saying its information was right, wrong or indifferent?

Mr Metcalfe—I am not sure. I will have to check on whether the minister issued a media release or made any public comment about that.

Senator ABETZ—It was a fairly major page 1 story in the *Age* newspaper highlighting some of the activities of people smugglers. I think the answer is no.

Mr Metcalfe—I am being told the answer is no.

Senator ABETZ—Right. This was a major story, and one would assume that if it contained huge inaccuracies it would have been within the public interest for the minister to immediately come out and respond to it. Whilst you cannot necessarily answer for the minister in that regard, possibly, Parliamentary Secretary, you could take on notice for me to ascertain what the minister’s view on that was.

Senator Lundy—Certainly.

Senator ABETZ—Can I ask the department to please go through that article, given the time constraints we have, and ascertain whether or not the matters contained in the article do have the ring of truth about them or confirm some of the concerns that the department might have in relation to the activities of people smugglers in Australia.

Mr Metcalfe—Happy to, Senator, noting that I suspect some of the issues which go to criminality and other issues will be matters not for my department but more properly for the Australian Federal Police or possibly the Customs and Border Protection Service. To the extent that we can offer any comment, we will.

Senator ABETZ—Thank you. One of the very important aspects of this article was that:

The *Age* has been told that the once-sanguine attitude among Afghans to smugglers is shifting. Sources who approached this reporter to talk in detail about the networks said they did so because of the December Christmas Island disaster, ...

Given that disaster and given that we were told on 29 January in the *Age* that elements of the Afghan community are now opening up, concerned about the developments et cetera, I am wondering whether the department has used this opportunity to ascertain further information. If you do not, which I accept, then possibly this question could be referred to the Federal Police.

Can I quickly take you to question 239, which deals with the issue of diplomatic negotiations. We touched on that earlier today. I was told in the answer to that question:

DIAC is not able to disclose any information regarding confidential diplomatic negotiations.

Yet we have been told a lot about the negotiations in relation to the East Timor processing centre. It just seems that we cherry-pick as to that which we talk about and that which we do not.

Mr Metcalfe—I would not agree with your proposition, Senator.

Senator ABETZ—Of course you would not, but it is the fact that today we have had substantial discussion about that which has occurred between Australia and East Timor and discussions with other countries about a processing centre, but we cannot be told whether or not we are negotiating any new return agreements to countries for failed asylum seekers. We cannot even be told with what countries we are talking because this is such high-secret confidential information—yet we can talk at will about the East Timor processing centre.

Mr Metcalfe—We did have a conversation, I think, with Senator Cash earlier about return agreements and we did provide some information there. We are of course only too happy to provide information that would not prejudice any confidential diplomatic negotiations. The discussions we had earlier about East Timor were largely issues that were in the public domain or issues that, in my judgment, we could respond to without jeopardising any sensitive diplomatic negotiations. Our objective is to assist you where we can.

Senator ABETZ—I suppose there were no real negotiations taking place on East Timor, but that is more a political point than anything else. I will leave it at that, thank you very much.

CHAIR—That is it for outcome 4.

[10.42 pm]

CHAIR—We now move to outcome 5.

Senator CASH—We could have spent a lot longer with you and I am very sorry that we are not going to have the time tonight. I know we need to get through two outcomes in the very short period of time that we have and there are three senators wanting to ask questions. What I propose to do is to put the questions to you and ask for a very brief answer. I would genuinely like to explore them a lot further, but in the interests of the time we are not going to get there. The National Accreditation Authority for Translators and Interpreters Ltd contribution was revised upwards in Appropriation Bill (No.3), for the February 2010-11 appropriations, from \$566,000 to \$1.9 million. What was the reason to the threefold increase?

Mr Fox—The reason for that increase was that the department and the government were advised by the board of NAATI that they were in a difficult financial situation and that they required a cash injection to enable them to continue to operate and to be sustainable in that period. That was the reason for that increase.

Senator CASH—What was that difficult financial situation?

Mr Fox—Essentially it was that they would become insolvent if they did not receive an additional injection from their members. NAATI's funding is derived from two main sources.

About 30 percent of its funding comes from governments around Australia. About 50 percent of that contribution comes from the Australian government. The balance comes from the state and territory governments. The other 70 percent comes from their own revenue raising. They advised us that their own revenue raising was falling short of what they expected.

Senator CASH—This is something we could explore for some time, unfortunately. What steps does the government take to verify the truth of the claims?

Mr Fox—A company called Walter Turnbull—then a separate entity—provided some advice to the government. They looked at the entire financial operations of NAATI and suggested that its current business model needed some adjustments and that some changes were required within NAATI. Those changes were made. They also recommended that, unless the members increased their contributions to NAATI, there would be an ongoing shortfall. We in the Commonwealth increased our contribution and we are seeking to engage with our colleagues in the states and territories to have them increase their contributions as well. Those negotiations are ongoing.

Senator CASH—Are you able to provide the report that was commissioned to the Senate committee?

Mr Fox—Certainly. I do not have that with me, but I will be able to provide that.

Senator CASH—Given that it has provided a significant injection of cash, what will the government do, in terms of ongoing monitoring of NAATI, to ensure that NAATI is utilising its funds in the most appropriate manner?

Mr Fox—That probably goes to policy.

Senator Lundy—I think we are awaiting further advice following the interaction with the states. That is an issue of policy. I am certainly happy to take that on notice, but it is under active consideration now, so I do not think I am going to be able to provide you with a specific answer.

Senator CASH—I would like to explore this further. Has the increase in cash meant that any more translators or interpreters are actually being seen on the ground or was the cash injection literally to get them out of a cash flow situation?

Mr Fox—It was a combination of the two, I think. It was to enable them to continue to operate and to remain solvent. If they had not remained solvent, there would be fewer accredited interpreters and translators. You need to remember this is a body that does accreditation rather than actually providing the services. Its job is to provide accreditation of translators and interpreters. It advises me that there has been an increase in the number of accredited interpreters in some new and emerging languages, for example Hazara, but whether that translates into an increased number—

Senator CASH—We will wait and see—potentially at the next estimates hearing.

Mr Fox—Yes.

Senator CASH—If this was a cash injection for the reasons you have outlined, that explains why it is revised back down to \$601,000 for 2011-12?

Mr Fox—That is right. It was a one-off injection.

Senator CASH—It was a one-off injection. I have a number of questions which I will have to put on notice.

[10.48 pm]

CHAIR—We will now move on to outcome 6.

Senator FURNER—I commence by congratulating the minister on the recent new policy, The People of Australia. As a proponent of multiculturalism, I am extremely encouraged by that policy. How is the new policy being received by the community? I appreciate that it has only been recently released, but I am wondering if there has been any feedback at this stage.

Senator Lundy—It has been warmly welcomed by the community generally. I have certainly received many direct representations from people expressing their enthusiasm that the policy is now available, but I have also received similar representations from the Federation of Ethnic Communities Council of Australia—they have been campaigning for some time, as you are aware, for a full multicultural policy to be released—and, of course, we have the response by the Multicultural Advisory Council itself. Senators may know that the policy responds to AMAC's recommendations to the government, received last year. Finally, the Race Discrimination Commissioner, Mr Graeme Innes, warmly welcomed the policy as well, as have many other community representatives.

Senator FURNER—How will the policy strengthen our trade relations with other countries?

Senator Lundy—I think one of the great strengths of multiculturalism in Australia is that it is a shining example of how we have a strong appreciation of other countries, and we welcome people here from around the world through our very successful settlement policies and our migration scheme. I think that gives us a very global view, as a nation, and the profound skill set that comes with that, be they language skills or experience of our migrants who settle here and become citizens of different countries, builds into business, community and our cultural sector, and I think we benefit substantially from that as a nation. It is individual experience but collectively it enhances our trade relations, our business relationships and our prospects for future growth enormously.

Senator FURNER—Finally, how will AMAC's terms of reference assist both the government and multiculturalism in our country?

Senator Lundy—The current Multicultural Advisory Council will be superseded with our proposed independent Australian Multicultural Council. That will be an independent council with the same selection process for members as per the ABC and SBS board, so there will be a merit selection process. Their expanded terms of reference will provide for a substantial new focus on celebrating the successes of multicultural policy and multiculturalism in Australia. They will also have a role to play in a strategic partnership for a national antiracism campaign. They will also be involved in establishing an inquiry into access and equity provisions relating to government services to all Australian. This is a very important principle of Australian government service provision. They will also have a role in establishing a multicultural ambassadors network. This is a fantastic idea, where leaders in the community who already identify strongly with the strengths of multiculturalism in Australia will have an

opportunity to provide that leadership in much the same way as we identify ambassadors for other important Australian values.

Senator FURNER—Thanks very much.

Senator Lundy—Thank you for your interest, Senator Furner.

CHAIR—I think we are all interested in this. Is this Australia's first multicultural policy?

Senator Lundy—No, there has been a very strong tradition of multicultural policies over many years, going back to the Whitlam government but also the Galbally report significantly led to a whole range of policies, including the establishment of SBS in the middle to late seventies. From then there have been successive multicultural policies, and this one, as I said, is responding to the latest advice sought by this government in our last term. It was released on Wednesday last week by Minister Chris Bowen.

CHAIR—It has had a very positive response in the Northern Territory, just for the record.

Senator BARNETT—I would like to ask some questions about the banning of Bibles at citizenship ceremonies.

Mr Fox—I do not think that is the way to categorise it, Senator.

Senator BARNETT—I am about to ask you some questions about that. After the estimates of 19 October last year, I wrote to the minister on 28 October and then again on 12 January this year. Neither letter has been responded to, and I think that is a disgrace. I table those two letters, with the committee's consent. You have answered question 117, and the last paragraph of your answer reads:

As Australian citizenship ceremonies are secular in nature it is not appropriate for organisations hosting citizenship ceremonies to give holy books as gifts ...

and it goes on to make other comments. Can you advise which organisations host citizenship ceremonies in Australia? Are they mostly local governments?

Mr Fox—They are mostly local governments.

Senator BARNETT—So, in the department's reading and analysis of the code, local governments are not allowed to provide holy books—a Bible, the Koran or some other holy book—as gifts. Is that correct, Mr Fox?

Mr Fox—That is correct and that is explicitly stated in the code.

Senator BARNETT—I am happy for you to alert me to that, but the way I read the code is quite different.

Mr Fox—Senator, you drew that to my attention at the last estimates, as I recall.

Senator BARNETT—That is right, and this is your analysis, or the department's analysis, of the code. What about the giving by community groups, NGOs, churches or religious organisations, Christian or otherwise, that are at citizenship ceremonies? Are they also disallowed from the giving of religious books at citizenship ceremonies?

Mr Fox—Do you mean in the form of gifts?

Senator BARNETT—Yes.

Mr Fox—The code gives some guidance as to the appropriate nature of gifts and, in the examples that are provided in the code, holy books are not mentioned. That is consistent with the paragraph in the code that you drew my attention to at the last estimates which says that citizenship ceremonies, being secular, should not be used for the distribution of material that is religious in nature.

Senator BARNETT—Do you realise that your analysis of the code is contrary to current practice, where for many years the offering of Bibles as gifts at citizenship ceremonies has occurred throughout the country? It is still done and is generally well received, and it should continue, in my view. I have written to the minister and I now hope that he will intervene in this matter to properly interpret the code so that the current practice can continue.

Mr Fox—Senator, I think you will find that the code that existed prior to 2003 did allow for the provision of holy books as gifts. There were changes made in 2003 and then subsequently in 2008.

Senator BARNETT—I am aware of the changes made in 2003 and in 2008. I have spoken to a former Minister for Immigration and Citizenship, who confirms that Bibles and holy books are often given as gifts. It is not compelled; they do not have to be accepted. They are offered as gifts, and that was common practice under his ministership. I put it to you that you are acting contrary to current practice. This is political correctness gone mad. We need freedom of religion, not freedom from religion, in this country. This is not a ridiculous American interpretation of separation of church and state. The way it operates in Australia today is a practical working-out of that. I will be asking the minister to properly and carefully respond to my letters and intervene so that there is a careful and appropriate interpretation of the code.

Can you please table the letter that the minister sent to councils following the update of the code in 2008. Do you have a copy of that letter or of the circular to councils?

Mr Fox—I do not have a copy of that letter with me.

Senator BARNETT—Could you make a copy available?

Mr Fox—Yes.

Senator BARNETT—Could you make available a copy of any other correspondence to councils which says what they should do pursuant to the code since 2008?

Mr Fox—Can I seek to clarify that. Since 2008?

Senator BARNETT—Yes.

Mr Fox—Yes, certainly, I can take that on notice.

Senator BARNETT—Finally, do you agree that, under your analysis, community groups and religious organisations should not be allowed to give Bibles or religious books, sacred books, as gifts at citizenship ceremonies? Is that your analysis of the code?

Mr Fox—I think the code is quite clear, Senator.

Senator BARNETT—Is that a yes or a no?

Mr Fox—The answer is that, as the code says, religious material such as holy books should not be given as gifts at citizenship ceremonies.

Senator BARNETT—By local councils, community groups or NGOs that happen to be at citizenship ceremonies—is that your analysis?

Mr Fox—The code is a guide for people conducting ceremonies rather than for participants. As to whether they should be there for people to take as a gift if they wish, the code in a separate section suggests that religious material should not be distributed in or around ceremonies. That is me paraphrasing; that is not a direct quote from the code.

Mr Metcalfe—I think we referred to that in responding to the question, Mr Fox.

Senator BARNETT—I put it to you, Mr Metcalfe, that you have not answered the question as to whether community groups, NGOs and religious organisations can provide sacred books as gifts at citizenship ceremonies. Is it a ‘yes’ or a ‘no’ answer?

Mr Metcalfe—I think what Mr Fox has been saying is that it is a ‘no’ answer and that that is based upon the code, which says—

CHAIR—Senator Barnett, it is 11 o’clock. You will need to put further questions—

Senator BARNETT—If it is a ‘no’, that is totally outrageous.

CHAIR—Are you finished, Senator Barnett?

Senator BARNETT—Yes.

CHAIR—That is good because we would like to finish the day as well, so if you have any further questions, rather than comments or opinions, I invite you to put those questions on notice.

Can I thank you, Mr Metcalfe, and all of the officers from your department for your attendance today. We will see you after the budget.

Mr Metcalfe—You certainly will. Thank you very much to all the senators.

Committee adjourned at 11.01 pm