



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

MONDAY, 22 MAY 2006

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Monday, 22 May 2006

Members: Senator Payne (*Chair*), Senator Crossin (*Deputy Chair*), Senators Bartlett, Kirk, Mason and Scullion

Senators in attendance: Senator Payne (*Chair*), Senators Bartlett, George Campbell, Carr, Hurley, Kirk, Ludwig, Lundy, McLucas, Nettle, Parry, Scullion and Webber

Committee met at 9.04 am

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

In Attendance

Senator Vanstone, Minister for Immigration and Multicultural Affairs

Department of Immigration and Multicultural Affairs

Senator Amanda Vanstone

Executive

Mr Andrew Metcalfe, Secretary

Mr Bob Correll PSM, Deputy Secretary

Mr Abul Rizvi PSM, Deputy Secretary

Ms Carmel McGregor, Deputy Secretary

Internal Products

Financial Services

Ms Louise Gray, First Assistant Secretary, Financial Strategy and Reporting Division

Human Resource Services, Internal Investigations and Property

Mr John Moorhouse, First Assistant Secretary, Client Services Division

Mr Des Storer, First Assistant Secretary, Ministerial, Corporate Support and Assurance Division

Parliamentary and Legal Services

Ms Robyn Bicket, Chief Lawyer, Legal Division

Ms Vicki Parker, Acting Assistant Secretary, Legal Framework Branch

Mr Des Storer, First Assistant Secretary, Ministerial, Corporate Support and Assurance Division

Dr Wendy Southern PSM, First Assistant Secretary, Strategic Policy Group

Ms Deborah Jacka, Assistant Secretary, Review Coordination Branch

Mr Peter Richards, Acting Assistant Secretary, Policy Coordination Branch

Information Technology and Office Services

Ms Cheryl Hannah, First Assistant Secretary, IT Services and Security Division

Mr Peter McKeon, First Assistant Secretary, Systems Delivery Division

Outcome 1: Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people**Output 1.1: Non-humanitarian entry and stay**

Mr Jamie Fox, First Assistant Secretary, Migration and Temporary Entry Division
Mr Gregory Mills PSM, Assistant Secretary, Migration Branch
Mr Paul Farrell, Assistant Secretary, Temporary Entry Branch
Mr Bernie Waters, Assistant Secretary, Business Branch
Ms Jacqueline Daly, Director, Business Employment Section

Output 1.2: Refugee and humanitarian entry and stay

Mr Peter Hughes PSM, First Assistant Secretary, Refugee, Humanitarian and International Division
Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch
Ms Arja Keski-Nummi, Assistant Secretary, Humanitarian Branch
Ms Rosemary Greaves, Assistant Secretary, International Cooperation Branch

Output 1.3: Enforcement of immigration law

Ms Lyn O'Connell, First Assistant Secretary, Detention Services Division
Mr Dermot Casey, Assistant Secretary, Detention Health Branch
Mr Steve Dreezer, Assistant Secretary, Detention Operations and Client Services Branch
Mr Todd Frew, Acting First Assistant Secretary, Border Security Division
Mr Robert Hoytink, Assistant Secretary, Border Intelligence and Unauthorised Arrivals Branch
Mr Stephen Allen, Assistant Secretary, Border Security Systems Branch
Mr Neil Mann, First Assistant Secretary, Compliance Policy and Case Coordination Division
Mr Peter White, Assistant Secretary, Character, Cancellations and Investigations Branch
Ms Robyn Bicket, Chief Lawyer, Legal Division
Mr John Eyers, Assistant Secretary, Litigation Branch
Mr John Rees, Acting Assistant Secretary, Entry Policy and Procedures Branch

Output 1.4: Safe haven

Mr Peter Hughes PSM, First Assistant Secretary, Refugee, Humanitarian and International Division
Ms Arja Keski-Nummi, Assistant Secretary, Humanitarian Branch

Output 1.5: Offshore asylum seeker management

Mr John Okely, Assistant Secretary, Offshore Asylum Seeker Management Branch

Outcome 2: A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably**Output 2.1: Settlement services**

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division
Ms Kate Pope, Assistant Secretary, Settlement Branch

Output 2.2: Translating and interpreting services

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division
Ms Mary-Anne Ellis, Assistant Secretary, Citizenship and Language Services Branch

Mr Chris Greatorex, Director, TIS National

Output 2.3: Australian citizenship

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Ms Mary-Anne Ellis, Assistant Secretary, Citizenship and Language Services Branch

Output 2.4: Appreciation of cultural diversity

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Dr Thu Nguyen-Hoan PSM, Assistant Secretary, Multicultural Affairs Branch

Migration Review Tribunal and Refugee Review Tribunal

Mr Steve Karas AO, Principal Member

Mr John Lynch, Registrar

Mr Rhys Jones, Deputy Registrar

The Migration Agents Registration Authority

Mr Len Holt, National President and Director, The Migration Institute of Australia Limited

Mr Ray Brown, Director, The Migration Institute of Australia Limited

Ms Venie Ann Moser, Acting Executive Officer, The Migration Institute of Australia Limited

CHAIR (Senator Payne)—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. The committee will today commence its examination of the Immigration and Multicultural Affairs portfolio, proceeding according to the order on the circulated agenda. The committee will begin proceedings with general questions to the executive of the department.

The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. The committee has agreed to the date of Friday, 14 July 2006 for receipt of answers to questions taken on notice and additional information. The committee requests that answers be provided to the secretariat in electronic format wherever possible.

I welcome Senator the Hon. Amanda Vanstone, the Minister for Immigration and Multicultural Affairs, and Mr Andrew Metcalfe, Secretary of the Department of Immigration and Multicultural Affairs, and other officers of the department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, 'Procedures to be observed by Senate committees for the protection of witnesses', and in particular to resolution 1(10), which states in part:

Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken.

I also draw attention to resolution 1(16), which states:

An officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

Witnesses are reminded that evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. For the record, I note that there are no outstanding responses to questions on notice from the additional estimates round of February 2006. I thank the minister, Mr Metcalfe and other departmental officers for those responses. Minister, do you or Mr Metcalfe wish to make an opening statement?

Senator Vanstone—Yes, I do, but a very brief one compared to statements made at earlier estimates hearings closer to the Rau and Alvarez matters when, I thought, a longer opening statement was required.

I am sure that senators would have noticed the very significant funding boost that DIMA got in the budget. That is just building on the money that was provided straight after the Palmer report. It was made clear at the time that we would be looking at what else needed to be done and that the funding would be provided because there was a very extensive renovation job to be done throughout the department.

There is a tremendous amount of work already under way—some of it completed, but a lot of work that takes significantly longer than the process of going to cabinet, getting the money and making the announcement. The actual implementation of change takes a lot of time. To briefly recap, the areas that particularly needed attention were, obviously, our IT systems, our records management, quality assurance on all of our decision making, case management, and better health service delivery for people in detention. We have looked at our detention infrastructure, and, as has become clear in the budget, we think we can do with a bit less than we might have planned. The contract has been reviewed, as we indicated that it would be. We indicated at the previous estimates, if not in between that time, that that will be redone, and done in two separate bits—one on detention and one on health services. And, of course, we needed more training. There is a whole range of things beyond those brief headings that are being done.

It does not happen very often that big departments go through a tremendous change process—the last one I can remember was the Customs department under the previous government—but I can assure you that this department is going through a very significant change process. I want to reiterate the government's commitment to making sure that it is a belt-and-braces job and done properly—that we are not simply seeking to patch up problems that might have been identified because of Rau and Alvarez. It is quite the opposite to that; we are in fact ripping up the rug—ripping off the bandaid, if you like—and doing a complete overhaul of the department.

In that context, it is appropriate to put on record my thanks to people in the department, starting with the secretary and the three new deputy secretaries—Bob Correll, Carmel McGregor and Abul Rizvi—for the enormous amount of work that they and the people who work to them have done in this area. Reforming a department is not fun work; there is resistance to change from people in the workplace. It is not an easy task and it is a long-term one, so it does not have immediate personal satisfaction rewards for the people involved, but

we are confident that we are well on the way to these changes being fully implemented. I am sure there will be some more pain along the way, but we will get there and this job will be properly done. We are committed to being an open and accountable organisation, and I think that has been demonstrated by a number of approaches we have taken since those two particular cases came forward.

There have been a number of reports released by the Ombudsman from the cases that were referred. I will not say much except that the media coverage suggests that new cases are found, as if this is some new thing. In fact, the Ombudsman is going through the old cases, and it is probably going to take until the end of this year for all of those reports to come forward. The advice I have from the Ombudsman is that he expects one more case to be dealt with on an individual basis and remaining cases to be dealt with by way of issue. For example, he may do reports on cases that are affected by mental health issues or on cases that are affected by recordkeeping issues—the sorts of things that you see reflected in the list of changes I have indicated we are making.

On the subject of media, I noticed some media coverage on Friday and over the weekend of a dress code policy for the department. Apparently, this is considered by some to be a complete manifest outrage and a removal of freedom of speech for Australians, but it is not dissimilar to a dress code that was put in place in Centrelink some nine or 10 years ago and has worked very well. Sometimes, I look at the media and wonder what they see as an important issue. So someone is not allowed to wear a beanie or, it might interest Senator Ludwig, shirts with union logos on them, and very low cut jeans might be out as well. If you want to be a very professional organisation, you have to convey that professionalism in a whole variety of ways, and a dress code is not uncommon in a whole variety of workplaces, particularly in the Public Service. I do not see any particular issue with what we are doing there.

The department has my very strong support for the changes it is making and for what it is doing. As I said, the process of ripping a bandaid off, pulling the rug up or looking under rocks—call it whatever you like—is not a fun job, but the people we have in charge of the department are committed to doing it and doing it properly so that when we finish this process we will be able to say that Immigration is, without a doubt, one of the best departments the Commonwealth has. It already does a tremendous job in a whole variety of areas and I would hope that that aspect is not overlooked by the public, who unfortunately get to see only the criticism of the mistakes. Mistakes should be criticised—I do not complain about that; of course they should be—but the tremendous work the department does should also be acknowledged.

CHAIR—Mr Metcalfe, do you have a statement?

Mr Metcalfe—I have just a short statement also. Madam Chair, members of the committee, at the last estimates hearing I gave you a comprehensive briefing on the progress the department has made in implementing its substantial reform and improvement program. I would like to give you a short update in relation to that. I note, as the minister has, that the pace of change in the department is rapid. As I did when I appeared before you last time, I have prepared a short document which sets out the key achievements against major areas of

activity. With your agreement, I would seek to table that document and, if possible, have that incorporated in *Hansard*. We have copies here.

CHAIR—Thank you. We will receive that as a tabled document.

Mr Metcalfe—The minister has mentioned to you the substantial investment the government has made in the department's reform and improvement program. Around \$790 million has now been provided in new and redirected funding. The new budget measures announced on 9 May were informed by a number of reviews of our activities that were recommended by Mr Palmer in his report from last July—reviews of our business information requirements, our IT platforms and governance, our records management, the detention services contract, long-term detention health services delivery, detention infrastructure and compliance activity. All of those reviews have now been completed and all of them pointed to the need for further changes if we are to meet the expectations placed upon us.

By far the largest proportion of the funding provided in the budget—nearly half a billion dollars over the forward estimates—is for our IT systems, which we are calling Systems for People. This substantial program of work will deliver the kind of support that DIMA staff need to do their jobs properly. It will provide better data quality, a single view of a client's dealings with us, less fragmentation of information and data and more flexible systems, all of which mean better decision making. There is also a commitment of \$42½ million over forward estimates in the budget to support risk based compliance strategies, including deterrence and prevention and quality assurance measures, and \$22.6 million of that sum will be used to increase case management resources and implement the national case management framework. That framework will ensure that cases involving vulnerable clients with exceptional circumstances are managed as well as we possibly can in a fair, lawful, reasonable and timely way.

A major initiative to complement the case management approach is the community care pilot, which was launched in Sydney and Melbourne last week. I am delighted that that has now occurred. The pilot, which is being delivered in partnership with the Australian Red Cross, will assist DIMA clients within the community who are being case managed and assessed as needing access to medical, welfare, mental health, housing and living assistance while awaiting their immigration outcome.

I have been clear to my staff over the last 10 months or so that our job is to implement change and deliver the government's migration, multicultural and citizenship policies. It depends on careful planning, strong leadership and good administration. I said on my first day as secretary in July last year that our longer-term planning would be informed by comprehensive staff and client surveys. Much of that work has now occurred and we are well forward in developing a new planning framework for next year and beyond, underpinned by a strong framework of values and an articulation of the kinds of behaviours expected of leaders in the department.

The department is very much in listening mode. I have regularly written to a large number of external stakeholders to update them on progress and seek their views. We have held informal feedback sessions with groups of clients and the feedback shows that in many areas we still have a long way to go in achieving excellence in client service delivery. But there are

reports of more positive experiences in recent times. The minister will shortly launch a client service improvement program—that will be launched here in Parliament House—which will bring together the many strands of the work that we are undertaking to ensure we provide much better client service. The program develops our themes of ‘Our commitment’, ‘Our presentation’, ‘Helping you’ and ‘Hearing you’. We have also listened to our staff. I was able to report earlier this year on the outcomes of the first all-staff survey in many years. It pointed to concerns about image, leadership and client services, all of which we are addressing very seriously.

Since I last spoke to the committee, the department has received a number of further reports from the Commonwealth Ombudsman and the Australian National Audit Office which are critical of our past actions. We have been rightly criticised for the mistakes that we made, but the findings have reconfirmed the direction that we had set in our reform and improvement program. I would also note that last Friday the Australian Transport Safety Bureau released its report on the loss of our vessel, the *Malu Sara*, last October. This was a tragic accident. Both the minister and I have extended our sympathies to both the immediate and extended families, friends and colleagues of the five people who were on the vessel. The department of course cooperated fully with the ATSB, and we acknowledge its findings. We have already implemented the ATSB’s safety recommendations and are strengthening our operations in North Queensland to ensure greater management controls.

In conclusion, this statement gives me the opportunity to repeat to you our department’s absolute determination to perform professionally, lawfully and reasonably. Our key themes of being an open and accountable organisation, having fair and reasonable dealings with clients and having well trained and well supported staff are crucial to our future. We are listening to the criticism. We are learning from our mistakes and we are very much focused on improvement.

CHAIR—Thank you for tabling that document. We will, as I indicated in the opening statement, begin with general questions to members of the executive. We will move through the outcomes and outputs within those, seeking, of course, guidance, as we usually do, from the department and executive as to what goes exactly where.

Senator LUDWIG—Senator Carr has expressed an interest in starting on a general question.

Senator CARR—I want to ask the officers a question concerning a Mr Mark McBurney. Apparently advice was provided to the department on Friday that I would be seeking advice on this matter.

CHAIR—Perhaps we need a little bit more information.

Senator CARR—I was just drawing attention to the fact that notice was given on this matter. Mr Mark McBurney is an American citizen. I understand he has Australian permanent residency. Are you aware of this case?

Mr Rizvi—Yes, we are aware of the case.

Senator CARR—I was wondering if you could assist the committee with further information. Did Mr McBurney approach you about a leak of information from DIMA to DFAT concerning his particular case?

Ms Jacka—Yes, Mr McBurney did approach the department regarding a leak of information.

Senator CARR—When was that?

Ms Jacka—I think it was in June 2005

Senator CARR—What action has the department taken on this matter?

Ms Jacka—The department has responded specifically to the Office of the Privacy Commissioner and their investigation of the matter. As well as that, we have responded to Mr McBurney directly on the issues that he has raised.

Senator CARR—When did you respond to Mr McBurney?

Ms Jacka—It should be going today.

Senator CARR—I see. When was the letter written?

Ms Jacka—It was written late last week.

Senator CARR—On Friday?

Ms Jacka—No.

Senator CARR—What day last week?

Ms Jacka—It started being drafted on Thursday of last week.

Senator CARR—Was the June date the date of his first complaint to the department?

Ms Jacka—That is the date that he first raised the issue with one of our state and territory officers.

Senator CARR—Am I correct in assuming that the information I have been given is correct—that Mr McBurney was concerned about a privacy issue involving personal information about him being passed to DFAT, which in turn passed the information on to the US embassy?

Ms Jacka—Certainly the issue he raised with us was the issue of the release of information to DFAT and whether or not that information was passed to the American embassy. I cannot comment on that aspect.

Senator CARR—Was that information concerning Mr McBurney's employment?

Ms Jacka—That is the issue he raised with us, yes.

Senator CARR—Is it departmental policy to provide information of this type to foreign embassies?

Ms Jacka—I need to go back a step.

Mr Rizvi—I think Ms Jacka indicated that what we did was provide the information to the Department of Foreign Affairs and Trade. It is in respect of that that we can comment. The passage of the information to another embassy was not a matter in which we were involved.

Senator CARR—Of course, that is a reasonable point that you make. I am interesting particularly in whether or not DIMIA provided that information to DFAT and you have agreed that you did provide that information.

Mr Rizvi—I might just comment about the general processes involved in this area. I understand Mr McBurney was a diplomat and on a diplomatic visa. To obtain a diplomatic visa the process involves essentially going through the Department of Foreign Affairs and Trade. In effect, they own that visa. We are essentially involved in the process of administration of that visa—that is, to make sure it is properly accounted for in our systems and reported on. All of the judgments involved are made by DFAT in respect of diplomatic visas. Where a person is in Australia on a diplomatic visa and then seeks to move to a different visa—perhaps a student visa or a permanent visa; a visa of whatever kind—we must go through a process of consulting with DFAT to ensure that they have no objections or difficulties with that because they control the diplomatic visa. What we have gone through are the normal administrative processes associated with a person obtaining a diplomatic visa and then the normal processes of interaction with DFAT where a person seeks to go onto a different visa.

Senator CARR—So, in this case, Mr McBurney actually applied for a visa; he did not travel on a diplomatic passport. Was he required to make a deliberative act to apply for a visa to Australia or was his access from the United States on a diplomatic passport routine?

Mr Rizvi—If he entered Australia on a diplomatic visa, that is a matter on which we must consult with DFAT.

Senator CARR—Did he do that or did he arrive without visa? Is there a requirement to obtain a formal visa to travel from the United States to Australia?

Mr Rizvi—Yes. In order to come to Australia, he would need a visa.

Senator CARR—So the action you have taken is not out of the ordinary.

Mr Rizvi—We do not believe our action was out of the ordinary. Where a person is travelling on a diplomatic passport or entering Australia on a diplomatic visa—and he initially entered Australia on 26 September 2001 on a diplomatic subclass 995 visa—it involves close consultation with the Department of Foreign Affairs and Trade.

Senator CARR—Can I ask why this has taken so long? In fact, Mr McBurney has not received your letter yet. Why has it taken so long to investigate this matter? He put his complaint to you in June 2005. It is now 22 May. Why does it take so long?

Ms Jacka—The issue was initially raised with a state and territory officer and unfortunately that issue did not come to the attention of my branch until later when the Office of the Privacy Commissioner wrote to us in relation to that complaint. Senator Carr, just to correct the record, I also did write to Mr McBurney myself on 10 May letting him know that we were looking into the matters he raised, although I had not answered his questions per se.

Senator CARR—That was 10 May this year wasn't it?

Ms Jacka—Yes.

Senator CARR—It does not substantially change the point of my question. It has been 10 months.

Ms Jacka—That is correct. The best thing I can do is tell you that as soon as it was raised with my branch, which has responsibility for privacy complaints, we undertook an investigation of the issues he has raised. We have responded to the Office on of the Privacy Commissioner and the specific questions that they have asked of us. And I apologised in my letter of 10 May to Mr McBurney for the delay

Senator CARR—Are you saying the reason there was a delay is because a more junior officer did not pass it on?

Ms Jacka—Essentially, that is correct.

Senator CARR—Did the complaint get lost? Is that what happened?

Ms Jacka—I would have to go back and ask about the specific questions. But my understanding is that he did initially raise it with one of our state and territory officers.

Senator CARR—Would it be fair to say that if Mr McBurney had not written to the Privacy Commissioner he may still be waiting for a response to the investigation?

Ms Jacka—That is possible.

Senator CARR—Are you able to advise the committee on what the nature of your response is?

Ms Jacka—The nature of the response deals essentially with two aspects. The first is that Mr McBurney indicated that he thought that we had released certain information about employment prospects or a job offer. We indicated to Mr McBurney in our response that we have no record of holding that information and therefore we could not have disclosed it. The second aspect deals with the issues that Mr Rizvi has already spoken to you about—the normal provision of information regarding diplomatic passports and their use.

Senator CARR—Do I take it then that the department's view is that you have not breached the Privacy Act?

Ms Jacka—We have put a preliminary view to Mr McBurney that that is the case. We have invited him to provide us with any further information that he might hold so that, if necessary, we can revisit that view. But, certainly, on the information available to us at this stage we do not believe that we have breached his privacy.

Senator CARR—Are you exempted from the Privacy Act? Is the department exempted from the Privacy Act, do you think?

Ms Jacka—No.

Senator CARR—It is not?

Ms Jacka—No. But the release of information was done under the operation of IPP11 1(d), which allows us to release information when required or authorised by law.

Senator CARR—And this policy is one you follow in all cases—this would normally follow for people who travel to Australia on a diplomatic passport with a diplomatic visa?

Mr Rizvi—The issue of diplomatic passports and diplomatic visas and the policies around those are essentially governed by the Department of Foreign Affairs and Trade. We become involved because there is a visa involved, but that is essentially from an administrative perspective. All of the policies around matters of diplomatic passports and diplomatic visas are the responsibility of the Department of Foreign Affairs and Trade.

Senator CARR—When was the complaint allocated to a compliance officer within the department?

Ms Jacka—I am not sure what you mean by a compliance officer.

Senator CARR—Who investigated Mr McBurney's complaint?

Ms Jacka—That was handled by one of our privacy officers.

Senator CARR—Yes.

Ms Jacka—On 26 September in 2005, the section received a general inquiry from the OPC without the details of Mr M's complaint. Later on, in January of this year, the Office of the Privacy Commissioner provided us with a complainant's name and the circumstances surrounding his complaint. It was at that time that my team were able to investigate the specific nature of the complaint.

Senator CARR—So that was January this year?

Ms Jacka—Yes.

Senator CARR—And it has still taken till 22 May to send him a letter?

Ms Jacka—Again, it is a complex matter in terms of the specific issues that he raised, and we wanted to be able to satisfy ourselves that we did not hold the information that he had suggested we held about an offer of employment. We wanted to be able to satisfy ourselves that such information was not held by the department. It was a considerable undertaking to ensure that satisfaction.

Senator CARR—Right. The nature of the other part of his complaint went to the question of the provision of information to DFAT, which I would have thought, given your answer today, would have been a pretty routine answer. Why did that take six months? That was in September last year. The complaint was initially lodged in June last year. I would have thought that would have been a fairly straightforward response, given your answer today.

Ms Jacka—Again, we needed to look at the individual circumstances, because whether or not there is a breach of privacy turns on the individual circumstances of each complaint made. As a consequence, we sought particular details from the Office of the Privacy Commissioner as to the exact nature of the complaint so we could investigate those issues. I take your point that perhaps we could have written to Mr McBurney earlier and at least dealt with one aspect of the question, but we wanted to look at the matter in a detailed way so we could satisfy ourselves that our preliminary view was correct.

Senator CARR—And your advice to Mr McBurney is that you did not provide the United States Department of State—sorry, DFAT, because you would not directly communicate with the United States department at all, would you?

Mr Rizvi—Certainly not on this matter—we would not communicate directly with another government.

Senator CARR—Or the US embassy—you did not contact them directly?

Mr Rizvi—There would be no reason in this instance for us to do so.

Senator CARR—I would expect not, but I just wanted to be clear that he can be assured on that point, that there was no direct contact between your department—

Mr Rizvi—There is no evidence on the papers we have here of any such contact.

Senator CARR—So the information concerning his employment in Australia and the fact that he had an appointment with the Victorian Department of Justice would have had to have been provided by DFAT, would it?

Ms Jacka—We are not in a position to answer that question, I am afraid.

Mr Rizvi—We cannot comment on that.

Senator CARR—I will have to ask them, I suppose, but you did not provide that information to DFAT, did you?

Ms Jacka—Simply because we did not hold it.

Senator CARR—That is fine. I just wanted to try to establish that that is the case. Thank you very much.

CHAIR—Senator Parry, let us go to your matter which pertains to the document Mr Metcalfe tabled, and then we will come back to Senator Ludwig.

Senator PARRY—Thank you, Madam Chair. Mr Metcalfe, in your opening statement you made reference to the hotline and offshore inquiries regarding the status of immigration. Could you give some feedback to the committee as to the success or otherwise of that operation and any feedback from police.

Mr Metcalfe—I might ask Mr Correll to take any more detailed comment on that.

Mr Correll—I can advise the current status of the hotline. It commenced on 20 February this year, initially servicing the Australian Federal Police and police services in New South Wales, Tasmania, South Australia and the Northern Territory. It commenced being used as a 24/7 service on 27 March 2006 by the New South Wales police service. The roll-out of the service is continuing incrementally. The Queensland and Victoria police services are expected to come online in late May 2006, followed by Western Australia in June 2006. So it has commenced and is in the process of roll-out.

Senator PARRY—Thank you.

Senator LUDWIG—Mr Metcalfe, I appreciate the attachment which provides the progress on implementing the Palmer program. There are a number of questions I might want to ask in respect of that but, rather than me asking them out of order or in general, would you mind just going through them and putting which output they belong to.

Mr Metcalfe—Yes, we can do that.

Senator LUDWIG—Then I can deal with them at the relevant time in the relevant output. That way your officers will be ready for them and not be required to be found to come to the table. That would be appreciated.

Mr Metcalfe—Okay. I will have that done and we will make that available to the committee over the course of the morning.

CHAIR—Thanks, Mr Metcalfe.

Senator LUDWIG—Unless some of them come up in output 1.1. I am not sure, but I do not think they do.

Mr Metcalfe—I think many are in 1.3 but not entirely. For example, some of the client services ones may permeate other outputs. But we can undertake that work and let you know.

Senator LUDWIG—Thank you. I have a more general question, in respect of the Cornelia Rau and Vivian Solon matter. The last time, whether it was in a committee or here, we got to a point where there was some work still outstanding. Could you provide a short update on the Cornelia Rau matter and whether that has been finalised or settled? In other words, I do not need to ask any more detailed questions in respect of it because you can say to me that it has been finalised to the satisfaction of the parties involved—at least, that part. There is still, obviously, the Ombudsman's report, the Comrie report.

Mr Metcalfe—In relation to Ms Rau, firstly, we are certainly very keen to resolve her claim for compensation in the most expeditious manner possible. Our preference is that that occur in a similar way to that which is occurring for Ms Alvarez in relation to an alternative dispute resolution process such as arbitration. I am advised that agreement is yet to be reached with all potential parties regarding the method of alternative dispute resolution that might be utilised. We are currently awaiting a response from Ms Rau's lawyers regarding an issue raised by one of the potential parties. In summary, we are keen to progress the matter in an effective and expeditious manner. The correct process is something that needs to be agreed by the parties, and we are currently awaiting a response from Ms Rau's lawyers on one issue.

Senator LUDWIG—Is there an estimated time for what happens if you do not get an agreement? What is the alternative?

Mr Metcalfe—I suppose at the end of the day it is Ms Rau who has the legitimate complaint and, ultimately, it will be her decision based on legal advice as to which process she may wish to employ—for example, simply instigating action in a court. I think the experience has been that these sorts of situations can best be dealt with through arbitration. As I have said, that is our preference. The ball is currently in her lawyers' court, and we have nothing to indicate that they are not interested in moving towards a position of agreeing to an arbitration but, as of yet, we have not received that final advice.

Senator LUDWIG—And in respect of the Solon matter?

Mr Metcalfe—The Ms Solon matter has, of course, been the subject of occasional comment by Mr Newhouse, her lawyer, notwithstanding a confidentiality agreement in place between the Commonwealth and her lawyers. However, making no further comment on that aspect, there have been a series of hearings. The arbitrator in this matter is a former Chief Justice of the High Court, Sir Anthony Mason, and the parties have been working as

cooperatively as possible—certainly, the Commonwealth has been working as cooperatively as possible. I think there are some further hearings due fairly soon. Ms Bicket may have some precise detail, and it is our hope and expectation that the matter will be resolved as soon as possible.

Senator LUDWIG—In terms of the three recommendations in the report on the Rau matter, have they all been finalised or is there a progress sheet on those recommendations?

Mr Metcalfe—On all of the recommendations from the Palmer report?

Senator LUDWIG—There is the Palmer report, the Comrie report and there is also the Foreign Affairs, Defence and Trade References Committee report in respect of the removal, search for and discovery of Ms Vivian Solon.

Mr Metcalfe—I think the government would probably regard the response to the Palmer report and indeed the Comrie report to have occurred, firstly, in relation to the Palmer report at the time of the announcement in July last year. You recall that one of the obligations placed upon me was to report to the minister and through the minister to the parliament in relation to the department's strategies for addressing those recommendations. From memory, that report was provided to government and announced around 5 October last year. At around the same time, the report from me to the minister was tabled by the minister in parliament. That response also covered the 11 or 12 recommendations made by Mr Comrie in relation to the Alvarez Solon matter. I would regard those issues as having been finalised.

There is an obligation on me to provide another report to the minister, and I think the minister has indicated that she will also table that report in September or October this year. We would not regard all of those matters as finalised, but I think we would regard the reporting as indicating a way forward. Many of the matters that I mentioned in my opening statement or in the attachment that we provided to the committee are areas of ongoing activity associated with the response to the Palmer report, and they are essentially the same issues that were identified as well. The timing and nature of the government's response to the parliamentary committee's report is an issue for the government, but I suspect that many of the issues covered in that report have already been the subject of government and departmental activity in relation to Palmer and Comrie.

Senator LUDWIG—I might come back to those particular recommendations individually, perhaps on notice, to see where they have been progressed to. I will wait to see what information you provide in the interim. Perhaps the minister will take it on board to provide additional information about where those recommendations are at and whether there is still work in progress or whether, insofar as the department is concerned, they have been completed.

Senator Vanstone—Obviously, we will listen to whatever you want to ask during the course of the estimates, but I will have a look and see whether it is feasible to put something to the Senate before September or October. There is an enormous amount being done. Some of it interrelates and overlaps. Where to put things in the presentation—

Senator LUDWIG—I understand, Minister, that that is a challenge.

Senator Vanstone—I am very proud of what we are doing. We are doing a lot of work and more is still to be done. I am sure you understand that. Governments can announce that there is going to be a cultural change, but getting heads to turn and think differently is another issue and takes longer, but we want to tell you as much as we can about it.

Senator LUDWIG—Thank you. There was an ongoing matter that confronted us, particularly in the Foreign Affairs, Defence and Trade References Committee but it was also raised by the department and the minister at the time of the committee estimates process past. In respect of Rau and Solon, particularly Solon—if I can get this right—the Ombudsman, Palmer and Comrie did not want us or the department to question particular officers about those matters. Is that no longer the case?

Mr Metcalfe—The Ombudsman has now reported, of course, and the Comrie report is a report undertaken by Mr Comrie on the Ombudsman's behalf, so ultimately it is a report from the Ombudsman. Essentially, the issue that you recall was that the Ombudsman and Mr Comrie were simultaneously working through issues that went to the performance of particular individuals and the committee was also seeking to have access to those individuals. Ultimately, the committee reported and I think its inquiry is now complete.

You will recall that one of the recommendations made by Mr Comrie and by the Ombudsman was that I consider action in relation to three individuals under the Public Service Act. I have reported previously to the committee that around the time of that report being made public one of those individuals retired on age grounds and therefore there are no issues that can be pursued in relation to the Public Service Act. In relation to the two other individuals, I have appointed a senior independent investigator to pursue the issues of whether there has been a breach of the APS code of conduct, and that work is ongoing.

Senator LUDWIG—Is there a likely finish date for that?

Mr Metcalfe—I would not put a particular time on it. The latest advice I have had is that it will be in the next two or three months. It has been quite a lengthy process, but the investigator concerned, Mr Dale Boucher—who is a former Australian Government Solicitor, legally qualified—has been very careful and methodical in obtaining information, and I am sure he will do a very thorough and proper job. I made it clear to him that it had to be done very properly and very carefully so that justice is properly served for all the people concerned.

Senator LUDWIG—Are those names on the public record?

Mr Metcalfe—They were not named publicly by the Ombudsman. I have not publicly named them. There has been some misinformed speculation in relation to some individuals. The Ombudsman and, I think, the minister may have pointed out that some people who were, in fact, doing the right thing were the subject of media speculation. So names have been in the public domain but the names of the two individuals have not been put in the public domain.

Senator Vanstone—I cannot recall the name of the particular person, and I would not seek to drag it up again anyway, but one person was named by the ABC and they did have some involvement in the Alvarez matter at the time. But that person—Mr Metcalfe can correct me if I have got this wrong—was one of the people who sought to have the matter looked at when the mistake was realised at a more junior level. Her role in seeking to get people to look at it

was, of course, something that was not revealed by the ABC because they simply did not know. As I recall, I wrote to her—

Mr Metcalfe—You did.

Senator Vanstone—indicating that at least the department and the government acknowledged that she had tried to do the right thing. It is just an example of where the media pick up on a name and use it. They are entitled to say, ‘Yes, she was involved at the time of the removal,’ but they are not justified in naming her above all others when she was the key one who, once the mistake was realised—it was not realised by her at the time—sought to have it remedied. I personally think that is a gross misuse of media power.

Senator LUDWIG—Is the report, when it is finally made, going to be a public report?

Mr Metcalfe—It would not normally be a public report. It is essentially internal action under my authority as chief executive in relation to the Public Service Act. I have appointed a senior delegate, Ms McGregor, as the decision maker in the matter. It is for that reason that I am talking about this, not her, because she needs to be—and to be seen to be—completely unbiased in this issue. It will be a report to her. She will make decisions based upon that. I have yet to consider whether I would make any aspect of that report public in any way, and I would probably want to seek legal advice in relation to that.

It would not normally be the practice to make such internal inquiries public—or to indicate that they had been completed or a certain action had been taken. But, given the public interest in this matter, I will take advice on that and let you know in due course.

Senator LUDWIG—Thank you. We might come back to that. There is another matter that has been in the media recently in relation to the Vivian Alvarez matter. I want to understand part of that, because what was challenging the Foreign Affairs, Defence and Trade References Committee was that they could not question the particular witnesses—or the department had not questioned them either, and there was no record of interviews available at that time. It related to the email and report at 2.21. It might be helpful if I read it into the record.

Mr Metcalfe—Is this the Senate committee report?

Senator LUDWIG—Yes. It states:

With regard to the Ms Solon case, it would appear according to Ms Daniels ‘that one officer made an instruction to an ACM [Australasian Correctional Management] officer to hold this person in immigration detention’. She told the committee that on 19 July 2001, an email advising of Ms Solon’s removal was sent to the relevant division head.

The reference for that is 32, committee *Hansard*, 6 September, page 5. I think S23 is the relevant number given to that email, which was a summary of Ms Alvarez’s recent history. It was sent to four people, including the then deputy secretary of the department, who has now, I understand, gone somewhere else. Has that person been interviewed about that particular email? It was an advice email, from my recollection, but it still went to the divisional head. It included a summary—that Ms Alvarez came to Immigration notice on 2 May. It outlines that she was found wandering the streets of Lismore; that she had injuries to her body. It went on to state that she was interviewed by the Filipino Consulate General on 16 July. If you read the

whole email in context—I am sure you would have it but I can make it available if you wish—

Mr Metcalfe—I have it, Senator.

Senator LUDWIG—you will see that it goes to a range of issues, but more particularly to the inability to understand what her status was—in other words, who she was. From the email, I do not think it was conclusively clear that she had been identified. My question relates to why, in that instance, a divisional head would not inquire further. I am not too sure how your processes work. We did not have the opportunity during that committee inquiry or during estimates to ask that particular question. If you look at the totality of that email, why wouldn't it put you on notice to ask additional questions? There does not appear to be, on the record, any further email back from the divisional head to inquire into or clarify any of the remarks contained in it. But that is a person who would understand how the detention regime works and how the legislation works.

Mr Metcalfe—I will make a couple of comments. Firstly, these matters were thoroughly investigated by the Ombudsman, by Mr Comrie, and I do not think it is possible for me to add anything further to the very extensive investigations that he undertook in relation to the matter. Hindsight indicates that clearly Ms Alvarez was an Australian and that a number of checks that should have been put in place or undertaken differently were not put in place, and that is the subject of very proper criticism of the department.

I have not discussed this issue with the former division head who, as you noted, is now working for another organisation. I must say, just on a personal basis, that that particular officer had worked for the department for some years and enjoyed, very properly, a reputation for being a very decent, hard working, honest Australian public servant. Therefore, I cannot shed any light on the fact that this email was sent, in the sense of what was done with it. Whether it was in fact read by the officer concerned, whether it was read before or after the actual removal had taken place, whether a senior officer would quite possibly always view the fact that removal was only occurring because there were proper grounds for the removal to occur, it did not occur to them to question whether or not the entire factual basis for the activity was correct or not.

This particular email was the subject of some recent media attention by Mr Newhouse—I do not quite know why. I mentioned earlier the confidentiality agreement that is in place and which we certainly intend to abide by. But I think it is proper just to note that that particular email is not new or news. It was provided to the Comrie inquiry on 2 May last year, it was provided to lawyers acting for Ms Alvarez Solon on 6 July last year and it was supplied to the Foreign Affairs, Defence and Trade References Committee on 5 August last year. So recent media attention indicating that there was something new is clearly incorrect.

Senator LUDWIG—In terms of—

Senator Vanstone—If I may, Senator Ludwig: the particular email you are referring to that was described in some media outlets—either by the media outlet or by Mr Newhouse; I think it was by Mr Newhouse—as being new is, precisely as Mr Metcalfe says, something that was available in the first instance. I concur with all the remarks Mr Metcalfe made about the relevant officer. As you may recall, I was overseas at the time this matter was discovered. Ms

Alvarez's estranged partner contacted my office and, as a consequence of that, the inquiries were made and the discovery was arrived at in my absence. The relevant officer was one of the first to ring me and indicate that, in the paper trail they had gone through, this email was there. So there has never been any suggestion by the department, least of all by the officer concerned, that this email was not sent. I should add, as I understand it, if I have my dates right and if I recall correctly what I was told subsequent to that phone call I think there was a break-out from Villawood on this day or the day before that had this relevant officer's attention.

Senator LUDWIG—The reason I ask about it is not so much because of the media interest of late; it is because in regard to a range of documents that were provided—I do not quibble with the issue that it was provided to the committee at the time; it was marked exhibit S23—the difficulty that was confronting the committee as I recall, although I cannot speak on behalf of the committee and just make this as an observation, was that the relevant officers were not available to comment on or to give advice to the committee as to what happened because of the Palmer or Comrie imposition. But that is no longer the case. We are now free to ask about the officers. I understand one of them is still working with the department. So it would still be available to us now to go back and ask whether or not there is a report, whether inquiries were made as to whether the email was received, whether it was actioned, in what way it was actioned and whether it was filed. I am happy for any of that to be taken on notice. Was the email in fact read by the recipients? If no action was taken, why wasn't it taken?

Mr Metcalfe—I think that the person who has examined these issues most closely is Mr Neil Comrie, a former Victorian chief commissioner of police. As you know, the department cooperated fully with him and the Ombudsman—and, indeed, with the Foreign Affairs, Defence and Trade Committee. We regard his report as being definitive and conclusive on the issues. He invited me to consider action in relation to three officers—just for the record, one of whom was not the former division head concerned—and that is what I am now doing.

Senator LUDWIG—So are you saying you are not going to provide the information I have asked for to the committee?

Mr Metcalfe—I do not think anyone has actually asked it of me yet.

Senator LUDWIG—I have. I just asked about those matters.

Mr Metcalfe—I heard the conversation more in a conversational sense, Senator.

Senator LUDWIG—Then I will rephrase.

Mr Metcalfe—If you want to ask some questions, I will—

Senator LUDWIG—I will rephrase it. Can you say whether those persons were interviewed in respect of the receipt of that email? Can you confirm whether they received that email? Can you indicate whether a reply was provided back to the sender of the email or to any other officer in respect of that email? Can you indicate whether there was any questioning of any of those officers associated with that email as to what action they decided to take or not to take in respect of it by your department?

Mr Metcalfe—I will take all that on notice, Senator, the reason being that I suspect that the answers to all of those questions lie with the Ombudsman and through the Ombudsman, Mr

Comrie, who in fact undertook the inquiry. We can check with the Ombudsman and with our own records—but the Ombudsman essentially had all the records—for a response to the questions you have asked.

Senator LUDWIG—So you have done no follow-up, post the Ombudsman's report, to establish any of the matters in the progressing of Ms Solon's case?

Mr Metcalfe—The follow-up I have done is as recommended by the Ombudsman.

Senator LUDWIG—So you had no internal investigation as well?

Mr Metcalfe—I had no need for an internal investigation when I had an external investigation.

Senator LUDWIG—Did you ask the Ombudsman or the Ombudsman's office why that issue was not raised in their report?

Mr Metcalfe—No, I did not. I regarded his report as being—

Senator Vanstone—Comprehensive.

Mr Metcalfe—comprehensive, independent and external, and it was not up to me to go beyond that and say: 'Did you do this? Did you do that?' He was given full, wide-ranging terms of reference and, I think, did a very professional job. Ultimately, the person who had access to all of the information, interviewed a large number of people, weighed the information, tested the evidence and gave people the opportunity to comment was Mr Comrie.

Senator LUDWIG—Thank you.

Senator NETTLE—With regard to the assistant secretary who received the email—

Mr Metcalfe—The then first assistant secretary.

Senator NETTLE—So they were an SES-level officer?

Mr Metcalfe—Senior SES officer.

Senator NETTLE—Okay. So they were the level of officer that is now required to sign off on deportations? Is that correct?

Mr Metcalfe—I instituted a procedure very soon after I commenced in my job—I think Mr Correll actually sent the instruction—that removals, any removals, should not occur without being agreed to by an SES band 1 officer. That is an assistant secretary in Canberra, one level below the level of the officer we are talking about here, or a state or territory director, many of whom are at the SES band 1 level and some of whom, in Darwin, for example, are immediately below that level. In other words, I wanted the most senior person in the state office to satisfy themselves that the removal was lawful and appropriate and, failing that—if that person were not available—for that to occur through a similarly classified individual in Canberra.

Senator NETTLE—So was that process that you instituted in response to the Comrie report also followed in the case of Vivian Solon and the decision given to a more senior officer?

Mr Metcalfe—The process was initiated, I suspect, in July or August last year. At that stage we did not have the Comrie report; it was still in the making. We received it in October.

But of course we had the Palmer report, and part of Mr Palmer's report did go to initial conclusions in relation to Ms Alvarez, or Ms Solon. It was quite clear to me, and indeed to the entire country, that Ms Alvarez had been removed improperly and unlawfully. While a number of measures had been put in place by my predecessor in relation to quality assurance in these areas, I decided to take the further step of making it a decision and a reassurance process to be personally undertaken by an SES officer.

Senator NETTLE—So was that process that you had put in place followed in the case of Vivian Solon—and followed even more thoroughly because the person who was notified was a level above that other level?

Mr Metcalfe—I see the point you are trying to make. In relation to Ms Solon, I do not know why this email of 19 July 2001—so this is something that happened five years ago—was sent. I have not inquired into that. That is a matter that Mr Comrie spent many months investigating. The way it appears before me now, in a series of dot points, does not imply that it was seeking a decision. It indicates at the bottom that it is referred for information. It is possibly due to the fact that we had an unusual and difficult case associated with contact from the Philippines embassy about a person who clearly was not well. It may have simply been drawing attention to the fact that something was happening in Brisbane in case there was contact from the Philippines embassy directly to Canberra or whatever. I am not sure of the context around this document in terms of other material, expectations or protocols at the time. If, for example, I had received this email, I would have thought: 'Yes, Queensland have a difficult issue here. They are clearly managing it. They've let me know about it.' I would not regard that as requiring the division head concerned to do anything other than simply note it. As I said to Senator Ludwig, I do not know whether she did or did not, whether she was there at the time or whether she had 150 other emails in her inbox or whatever. To the extent that we can provide responses to that, we have taken that on notice.

Senator NETTLE—Would you anticipate that emails would be sent to the level of assistant secretary in all cases?

Mr Metcalfe—No.

Senator NETTLE—Do you imagine this email was sent because of the exceptional nature of the case?

Mr Metcalfe—We are getting very speculative here. I do not think it is really appropriate for me to try and speculate upon something that happened almost five years ago and to read people's minds as to why they sent an email or not. But, looking at the face of this email, we clearly had a person who was unusual in the sense of her circumstances, her medical condition, contact from the deputy head of mission at the Philippines embassy and whatever. Beyond that, I cannot say what was in the mind of the sender or the receiver. To the extent that there is any knowledge of that, I expect that Mr Comrie would have investigated those matters. He did a very thorough job and I do not think he pulled any punches in his report.

Senator Vanstone—Senator Nettle, that point has been made by Mr Metcalfe twice now, but it bears some supporting remarks from the minister. I would not have expected the public or, frankly, the parliament to have been happy with an internal inquiry being conducted by DIMIA—as it then was—in respect of either the Rau or Alvarez matters. I think it is

appropriate that you have an expert, independent outside review of things. That is why, as I said, we sent all cases that could possibly have a problem with them off to the Ombudsman. And just because they were later found lawful does not mean—and I will keep repeating this—that they were improperly detained; it means that they were later found lawful or may have later become lawful. I do not think, really, we can cut this both ways. I think if you want to have good, strong, robust and independent inquiries, then you have to accept them and not shake your head—and I am not saying you personally; people generally—and say: ‘Hold on. That’s not good enough.’ That is a matter to raise with the Ombudsman. I think the Ombudsman has done a very good job. That is the purpose of the Ombudsman.

Senator NETTLE—I am not criticising the external inquiry at all. My question relates to the reason this level of officer was informed about the removal. As you say, the decision was made in the middle of last year to put this process in place as a mechanism for ensuring cases like Vivian Solon’s do not happen again. I am trying to understand. To me, in the case of Vivian Alvarez, a level of information was made available to a more senior officer and she was still deported. That is why I am asking the questions, to try and understand how a measure that you have put in place, which does not require the same level of scrutiny as what may have occurred in Vivian Solon’s case, is going to ensure that kind of tragedy does not occur again.

Mr Metcalfe—I completely understand your analysis, Senator, but I think there is a distinction, from what I can see. I quite deliberately put in place an arrangement last year in the full knowledge of what had happened to Vivian so that, in addition to all the other checks and balances that should probably occur in relation to the identification of individuals—the identification of whether there are mental health circumstances surrounding a particular person, their personal arrangements and their personal details—and in addition to all the proper, careful, prudent work that should be done before we reach a decision that someone is unlawful, should be detained and, indeed, removed from Australia, there be a final failsafe check. And that is what I would regard it as being. But I do regard it as a very important final aspect of quality assurance that that senior officer undertakes that work.

That protocol, as far as I know, was not in place in 2001. This email does not indicate to me that it was seeking a decision. I note that two senior officers, in fact, received this in Canberra, a first assistant secretary and an assistant secretary at the time. I could well have been the senior officer. I was the deputy secretary at the time. Someone could have put my name on top as well. Would I have done something about it? I would have seen that Queensland have a tricky removal. They appear to be dealing with it. They have let me know.

Senator NETTLE—Should they have investigated further?

Mr Metcalfe—Should who?

Senator NETTLE—The senior officers that received the email.

Mr Metcalfe—We have had an external inquiry and Mr Comrie has made his conclusions relation to that. In the cold light of hindsight, five years later, you would say, ‘Gee, it would have been good if they’d asked a question.’ But, as I have said, I do not know if this was even read by the officers concerned. It may have been read three days later. We live in a world where there are thousands of emails sent daily, and I suspect if you ask anyone at this table

how many emails they receive every day, it would be over 100. This was sent at 18.19, 20 past six in the evening, in relation to a removal that may have been going to occur the next day or the day after.

It does not strike me as being something that is seeking the positive agreement of the senior officer to continue with a removal. It does not, on its face, indicate that there were questions in the mind of the department in Brisbane as to the appropriateness of the removal. Otherwise you would say, ‘Why on earth are they sending it to me in the first place if they do not think it’s appropriate to remove the person?’ So I do not think anyone can suggest that this particular email indicates either complicity or inappropriate inaction by those senior officers in Canberra. I think that that would be drawing a very unfair long bow in relation to the issue and I think the Ombudsman has had the opportunity to fully investigate the matter.

Senator Vanstone—On a similar sort of thing, looking back in hindsight, Senator Nettle, you will remember the Rau matter and the very significant publicity given to it—which I have some familiarity with, you will appreciate. On the Monday after it was discovered who Ms Rau was, there were some interviews done in Adelaide by the Public Advocate, John Harley, which led the ABC to run stories that Mr Harley had pursued the immigration department for two months over Ms Rau, and then an interview was run on *The 7.30 Report* which made the same allegation and in fact ran allegations that had been put to Mr Harley about Ms Rau by advocates almost as though they were concluded facts by Mr Harley.

Mr Harley contacted my office the next day and indicated that the ABC had got it wrong. He had actually never approached the department at all about Ms Rau—not once. But of course, the Australian media being what it is and the good faith that is, generally speaking, largely put in the ABC, those allegations which had been repeated almost as though they were facts were run as facts for a very long period of time by a very wide range of media outlets because they had gone to the ABC website and taken a statement of fact on the ABC as being a fact.

Some time after that, with a bit of hindsight, a journalist from the *Advertiser* did an interview with Mr Harley. He is the Public Advocate in South Australia and he has the responsibility to represent people who, because of some mental health issue, temporary or permanent, need assistance in South Australia. Because of his role in South Australia, what had he done in terms of contacting the South Australian mental health authorities, given the close relationship they had with DIMA and responsibility for people with mental health issues?

Mr Harley’s response at the time was quite telling. He had, apparently informally, contacted the South Australian mental health authorities and had been quite happy at the time with the response that he had been given. So we can all look back at statements made or emails sent and wish that a million more questions had been asked at the time. I, for one, would like to ask Mr Harley lots of questions about how he sees his role and the importance of being frank with the media and what really did happen with the South Australian mental health authorities. It became clear in the Palmer report that what DIMIA, as it was at the time, had said in estimates committee hearings and elsewhere, about trying to get Ms Rau assistance through South Australian Mental Health, had in fact been true. I would like to go and rehash that; nothing would please me more. But you have to move on. This has had, in

my view, an appropriate overview by an appropriate body. I just cannot see the value in going further with it.

Senator NETTLE—You commented previously, Mr Metcalfe, that the email did not raise any indication that the department had concerns. It did raise the issue of the Philippines embassy having concerns. With respect to the questions that you are taking on notice, perhaps you could take on notice that question about whether the senior officer should also have investigated further—either to Mr Comrie or yourself, whoever is appropriate to answer that question.

Mr Metcalfe—Could you frame that question precisely, Senator?

CHAIR—We can come back to that.

Senator NETTLE—Should the senior officer have investigated further? That is the question.

CHAIR—I think Mr Metcalfe has indicated that he is not in a position to answer—I am not sure what word he used—hypothetical questions in relation to the actions of an officer when he was not involved in part of the process that has been externally investigated. Mr Metcalfe, the question has been placed on notice and you will answer it as you see fit.

Mr Metcalfe—Thank you, Chair.

Senator NETTLE—I have one more follow-up question from what Senator Ludwig was saying and I then have other general ones, but perhaps I can leave them until Senator Ludwig finishes his.

CHAIR—I remind senators that we do painstakingly go through the outcomes one by one, and the outputs therein one by one, which does usually cover most questions which are occasionally explored in the general. But the more time we take in the general, the less time we have for the outcomes.

Senator NETTLE—On the question about Cornelia Rau and compensation, is the compensation claim made against the Commonwealth as the only body for that compensation claim?

Mr Eyers—At this stage there has not been a formal claim made by Ms Rau's lawyers, so it has not been formulated with any precision. I would expect that it could well include parties other than the Commonwealth.

Senator NETTLE—Is there an indication from Ms Rau's lawyers that their claim, whether it be formal or not, is with the Commonwealth?

Mr Eyers—The Commonwealth will certainly be one of the parties, but I anticipate that there will be other parties.

Senator NETTLE—If there are other parties involved, such as the private provider of the services, is it the responsibility of the Commonwealth to make those negotiations with the private provider that they contracted? If the compensation claim is with the Commonwealth, is it the Commonwealth's responsibility to bring any parties that they see as being part of that to the table?

Mr Eyers—It depends on how the claim is formulated. Speaking hypothetically and generally, if a claim is made against any party, and the respondent then believes that there is a third party who also contributed to the cause of action, it is up to that respondent to join that third party to the cause of action. But it does depend on how the claim is formulated. In general, the private contractors are usually separately represented. They have been in other cases.

Senator NETTLE—So is it the responsibility of the Commonwealth for the overall detention process, including whichever private contractors they may engage in the process of delivering the detention service?

Mr Eyers—I do not understand the question.

Senator NETTLE—Has there been any indication from the lawyers that they have an intention of making a claim against anyone other than the Commonwealth?

Mr Metcalfe—I think Mr Eyers has already answered that question. I think he said that is an issue for the lawyers but there have been some indications that that may occur.

Senator NETTLE—Okay, and then my question is: does the Commonwealth have responsibility for the overall detention process and whichever private providers they may contract to deliver parts of that service?

Mr Metcalfe—Yes.

Senator NETTLE—So the Commonwealth would be ultimately responsible.

Mr Metcalfe—It is quite clear that we were the detaining authority. As you know, the day-to-day provision of services is contracted to a private organisation, and there would be a range of contracts and subcontracts in place. But ultimately the liability for entities within a particular set of circumstances will probably depend upon the circumstances. But, as I said earlier, we are awaiting a response from the lawyers in relation to issues around the proposed arbitration. We are anxious to assist and move this matter forward in the same way that the arbitration in relation to Ms Alvarez Solon has now well and truly proceeded—there have been several hearings before the former chief justice.

Senator NETTLE—So are there previous examples where the Commonwealth has done the negotiation with any private contractor and been the one entity responsible in the claim? Has it worked in a variety of different ways or always—

Mr Metcalfe—The central issue is a technical point about litigation or arbitration. While the Commonwealth is clearly the detaining authority, that does not absolve other parties, such as service providers, from areas of potential responsibility. It would very much depend, I think, on the particular circumstances and the particular areas that the applicant or the plaintiff, depending on the nature of the proceedings, might wish to pursue. Those companies are independent entities. They will have their own potential liabilities, and the way the litigation is conducted is ultimately an issue for the arbitrator, the court, to determine based upon application from the parties.

Senator NETTLE—So there is no standard previous way it has operated in other claims that the department has dealt with?

Mr Metcalfe—Not that I am aware of. Each is handled properly. There are broad rules as to the conduct of litigation or arbitration, and within that there are a range of possibilities depending on the circumstances.

Senator NETTLE—In the forward budgeting is there an amount of money that has been set aside for the resolution of these two particular compensation claims?

Mr Metcalfe—Ms Gray may be able to provide a more technical answer, but my understanding is that there is not provision made for the possible quantum of damages that might be awarded. Rather, it is an issue that goes to our insurance liability with Comcover and is reflected in our premiums. Certainly our premiums, I think it is fair to say, have increased on recent occasions. So it is not as if we can say, ‘We think the settlement will be X dollars, therefore we have made provision for that in the budget.’ Rather, it is a more complex issue these days, of assessments being made, including by our insurer.

Senator NETTLE—How much has the premium increased?

Mr Metcalfe—The premium covers the whole range of areas of risk, of course. It is not simply for these two matters. It is for the fact that we are an organisation of almost 6,000 people working around the world 24 hours a day. I think Ms Gray could probably assist us in relation to the particular response to your question.

Ms Gray—I do not actually have the amount of our Comcover premium, but we could probably get that. However, it is correct to say that these sorts of claims are covered by Comcover. As Mr Metcalfe mentioned, the premium is based on a number of factors, including, for example, detention centres and the requirements for coverage there. So, in looking at the amount, you would have to take that into account. The Comcover coverage that we have allows for compensation for plaintiff, legal costs of plaintiff and legal costs incurred by the department.

Senator NETTLE—Could you get the actual figure of the increase in the premium for us?

Mr Metcalfe—We will take that on notice.

Senator LUDWIG—Could you include that for the last five years so that we know how it has progressed?

Mr Metcalfe—From the 2001 financial year?

CHAIR—Yes.

Senator LUDWIG—I want to clear up a matter: there was not a suggestion from this side of the table that the external review was not needed; in fact, I think the ALP had called for a royal commission. What I was inquiring about was whether or not there was an internal investigation as well, and you have indicated that there was not.

Mr Metcalfe—I have indicated that there is an ongoing internal investigation in relation to two people, but that is being handled by an external individual. In relation to the sort of detail of questions that you were asking earlier, the answer is: no, we regarded the external inquiry as being the inquiry. Recommendations were made. They are being implemented.

Senator LUDWIG—In terms of procedure, was it usual with a removal for an email to be then forwarded to head office or divisional heads for advice? Was that part of the—

Mr Metcalfe—I will have to check that and let you know on notice. It is five years ago and what agreements were made in that division at that time, I am just not sure but we can take that on notice and let you know. What we clearly have here is what I would regard as an unusual set of circumstances—and I am being very speculative, so please take this on that basis. It may have been because of the approach from the Philippines embassy that it was seen as something that was worth raising to the levels in Canberra in case there was a direct approach from the ambassador, for example. That is pure speculation on my part, but I will take your question on notice and respond to you.

Senator LUDWIG—Thank you.

CHAIR—Because we want to avoid speculation, don't we, Mr Metcalfe?

Mr Metcalfe—That is right. I stand accused of speculation, so I am sorry.

Senator LUDWIG—The difficulty we suffered as a committee, as you recall, was that the Comrie report was going to provide the answer, and we are pleased that it did finally report. The reason we now ask, although it is five years later, is that this committee is a robust committee and no area should be closed to it from inquiry. In respect of the Comrie inquiry, it was closed for a while but it is now not closed. Unfortunately, that is why we are now reviewing the interest in some of those matters that could not be asked either during the reference committee, the budget estimates committee or any additional estimates committee.

Mr Metcalfe—It is not for me to provide the committee with advice, but there was a full, open, transparent, external inquiry by the Ombudsman using a former Victorian chief commissioner, a very senior policeman. There was a references committee which has reported and, I think, therefore there are no terms of reference in existence for that committee. This committee is an estimates committee and, presumably, we will talk about the budget.

Senator LUDWIG—We can still ask these questions here, Mr Metcalfe. I make that plain.

Mr Metcalfe—And I am answering them to the best of my ability.

Senator LUDWIG—If I recall, although the procedures in place in respect of Vivian Solon did not call for a final check-off before removal, they did call for a report and there was a missing document. Has that document ever been found?

Mr Metcalfe—Sorry, I am not familiar with that.

Senator LUDWIG—In terms of the removal process, when Ms Solon was removed, was there a requirement to have a report finalised provided to divisional heads or the department about the removal?

Mr Metcalfe—I will have to check as to what procedures were in place at the time. There certainly would have been authority within the Queensland office to put the removal in place. What documentation was routinely used in that office, I will have to check. I do not know the answer to that. Whether there was a routine referral to Canberra, I have already undertaken to check in relation to that that point but I suspect the answer was that that probably only occurred in unusual situations but I am being—

Senator LUDWIG—I am not asking you to speculate, Mr Metcalfe.

Mr Metcalfe—Thank you. To the extent that I can provide information, I certainly will do so.

Senator LUDWIG—And you have no independent recollection? I know that you have been working for the department; you were there five years ago.

Mr Metcalfe—I was a deputy secretary at the time.

Senator LUDWIG—Yes, as you indicated earlier.

Mr Metcalfe—I had a look back at what I was doing at that time. I certainly have no recollection of this matter whatsoever. That is not to say it was not mentioned to me—

Senator LUDWIG—Or the procedures involved.

Mr Metcalfe—Or the procedures involved. But it is a highly distributed level of activity in that compliance and removal activities occur within our state and territory offices on a daily basis. In that year, thousands of people were removed from Australia. So I have no independent recollection of this particular matter. I do recall that some thousands of unauthorised arrivals were coming to Australia at that very time and the department was incredibly occupied in managing that unprecedented surge in activity.

Senator LUDWIG—I might come back to some of these or put them on notice. I have more of an interest—

CHAIR—Are these questions still general?

Senator LUDWIG—They are still general. This is to the minister. I saw something in the press recently. You know you cannot always rely on what the press say, but I was wondering whether the minister might like an opportunity to respond. The article is entitled ‘I’m not budging: Vanstone’, from 22 May 2006. It says:

IMMIGRATION Minister Amanda Vanstone has scotched rumours she is considering swapping politics ...

Well, I will not go on.

CHAIR—Perhaps you might point to the line in the PBS to which it relates.

Senator LUDWIG—It is important for operational issues to know whether the minister is going to continue in her role.

CHAIR—Then you should go to the next part of the article, which says she is ‘absolutely not’ going anywhere. Moving right along!

Senator LUDWIG—But it continues. I just wondered if the minister wanted—

CHAIR—Senator Ludwig, we are not going to go down this road. Hopefully we are going to use the time to explore the portfolio budget estimates—but you never know your luck in a big city.

Senator LUDWIG—I think it is important for the minister to say whether or not these rumours are true.

CHAIR—Happily for me, what I think is important is more important than what you think is important, because I am the chair, and we are not going to go down this road. We are either going to continue in general questions—

Senator Vanstone—Now it's on!

CHAIR—We will get to 457s soon.

Senator LUDWIG—I have been met by silence from you, Senator Vanstone, for a change!

Senator Vanstone—I am just following the chair's ruling. I might, at another forum, Senator Ludwig, take an opportunity in respect of your question.

Senator LUDWIG—Thank you.

CHAIR—You know how careful we are about the primacy of the budget estimates, Senator Ludwig.

Senator LUDWIG—I will continue. I think you mentioned in your opening statement, Mr Metcalfe, the tragic loss of the *Malu*, but it does not come up under 'General'. I might ask you which area it would come up in particularly and then leave it at that. Or, depending on the chair, we might deal with it now.

Mr Metcalfe—I suspect we will deal with it at some time, Senator. It properly fits under output 1.3.1, Regulate entry and departure, in that the vessels concerned in border protection activities are covered there. If you wanted to go to the output then that is probably the appropriate place, but we are happy to talk about the issue at any time.

Senator LUDWIG—I understand.

CHAIR—Do you want to do it now, Senator Ludwig?

Senator LUDWIG—There potentially could be half an hour or more on questions in that area, so I think it might be more appropriate to deal with it in 1.3. There may have only been a couple but I think that, on reflection, it would likely take up a little bit more time than I had envisaged, so it might be better, given that there are people here, to go to output 1.1.1 shortly. I think that would be more sensible. But there was one more general question from me. Where would I ask questions about the computer IT system? I understand that you are drawing together your computer IT system.

Mr Metcalfe—I would probably articulate that under 'internal products'.

CHAIR—That is my favourite part of the consideration! It is probably now.

Senator LUDWIG—All right; that is what I thought. I am shortly ready to proceed to that.

Mr Metcalfe—Mr Correll is very pleased to tell you all about it.

CHAIR—Yes, I imagine. We will deal with that and then move on to outcome 1. Before we go to that particular set of questions on internal product, are there any more general questions?

Senator NETTLE—Yes; my question is on the new laws—the migration legislation—starting with what role the UNHCR has been approached to fulfil in the processing of asylum seekers.

Mr Metcalfe—I am happy to talk about this, Senator, but, Chair, it falls very neatly into output 1.2.

Senator NETTLE—All right, I am happy to do that then. Can I ask now about the current status of the three West Papuans who were recently detained on Horn Island? Where are they up to?

Mr Metcalfe—Those three individuals are still detained in the Torres Strait, and Australia is in discussions with Papua New Guinea about their return to PNG pursuant to a memorandum of understanding that we have on unauthorised arrivals. Those discussions are ongoing, and I do not have a particular status report on it.

Senator NETTLE—Where are they currently being held?

Mr Metcalfe—In the Torres Strait.

Senator NETTLE—And are they being held under guard?

Mr Metcalfe—GSL officers are there. They are detained under the Migration Act, and they are being appropriately confined to a certain area.

Senator NETTLE—Do you know how many guards are involved in that?

Mr Correll—I stand to be corrected, but I understand that six GSL guards are involved and located at the hotel on Horn Island.

Senator NETTLE—Do you know the cost of the provision of those guards?

Mr Correll—I do not have the answer at my fingertips. I would have to take that on notice.

Senator NETTLE—That is fine. Has there been an assessment made of the claims? What stage in the process are they at now?

Senator Vanstone—Somewhere in the 90-day assessment.

Senator NETTLE—So they are in the process of having their claims assessed?

Mr Metcalfe—They have not actually got into the assessment, because they arrived at an excised offshore place. Therefore, the issue for us is essentially: will they be returned to Papua New Guinea pursuant to the MOU that we have. This relates to the fact that we are satisfied that the people had spent some time in Papua New Guinea, which is a signatory to the refugees convention and would be the appropriate place for them to make any claims for refugee status. If ultimately it is decided that they not be returned to Papua New Guinea, the normal process would be that they be taken to an offshore processing place—most likely Nauru.

Senator NETTLE—So you have got information from them about their length of stay in PNG?

Mr Metcalfe—That is correct.

Senator NETTLE—And that did not come about as a part of an assessment of their claims?

Mr Metcalfe—We have not formally undertaken any assessment of their claims. We think there are some issues that need to be considered, but I would not regard that as an assessment of their claims. We have interviewed them as to who they are, where they have come from and why they have sought to come to Australia. That is a standard entry interview, and on the basis of that we have now entered into discussions with Papua New Guinea.

Senator NETTLE—Are you saying that they may be returned to PNG without having their claims assessed?

Mr Metcalfe—That is precisely correct. They are excise offshore entry persons, and Australia and PNG have had an MOU in place for some time that if a person goes to either country from the other country—having been there for more than seven days—seeking to invoke that country’s protection, then they should pursue that protection from where they have come from. This is to deter people from undertaking hazardous and unsafe voyages—and we have seen tragedies occur because of people undertaking unsafe voyages—and it is also to reduce what we call forum shopping, whereby people are actually looking for a migration outcome rather than a protection outcome.

Senator NETTLE—So they have made a claim for protection?

Mr Metcalfe—They have indicated to us that they would like protection. That is now being dealt with according to Australian law—one aspect of which is that they potentially can be returned to Papua New Guinea. That is subject to PNG’s agreement, and there is a discussion under way in relation to that.

Senator NETTLE—My understanding of other cases is that after that initial interview, which is not the proper interview, a decision is made about whether they have a prima facie claim for protection, and they go into one stream or another. Is that the case? Have they gone into a particular stream?

Mr Metcalfe—No; they cannot. The stream that they have gone into is that they are offshore entry persons and therefore will either be returned to Papua New Guinea, whence they came, to pursue any claims they may have there, given that PNG is a convention signatory, or go to an offshore processing place such as Nauru. If they have any claims then they will be considered according to the refugees convention in that place. So they are not in any process as such in Australia.

Senator NETTLE—So a decision about whether or not they will have their claim for protection assessed will be made on the basis of the outcome of discussions with Papua New Guinea.

Mr Metcalfe—That is correct.

Senator NETTLE—Rather than any requirement that we have to offer protection, it will be made on the basis of bilateral discussions we have with PNG.

Mr Metcalfe—If they have protection needs—and I am not saying that they have—they will be able to exercise those either in Papua New Guinea, whence they came, which is a signatory to the convention, or in Nauru, pursuant to our offshore processing arrangements.

Senator NETTLE—So if negotiations with PNG failed at that point they would be moved to Nauru for an assessment of their claim.

Mr Metcalfe—I would not regard it as failing. If, ultimately, Papua New Guinea did not believe that the MOU should be invoked in relation to these people then, yes, we would make arrangements for them to go to Nauru.

Senator NETTLE—In trying to understand whether the MOU with PNG gets invoked, has that occurred in the past? Is there a pattern whereby it is normally applied or not applied? How do we assess that?

Mr Metcalfe—I do not have personal experience of that. I will see if there is anyone available who may have some information about what may have occurred.

Senator Vanstone—I do not think it has happened while I have been minister, so that is since October 2003.

Mr Metcalfe—The answer is: not as far as we know.

Senator NETTLE—Has the MOU never been invoked or just not in the period of time that people are aware of?

Mr Metcalfe—The MOU has been in place since 2003, so knowledge in the room indicates that it has not been invoked. We are now seeking to have a discussion with PNG as to whether these circumstances would be appropriate for it to be so invoked.

Senator NETTLE—I want to ask you about the case of Siti Wainggai, who is in PNG and whose daughter and husband are in Australia. Does her case fit into the MOU with PNG? Does the MOU with PNG cover that sort of case?

Mr Metcalfe—No. The MOU covers the situations of people who arrive in either Australia or PNG having come from the other country and having been there for at least seven days. It essentially permits their return to that first country on the basis that they should seek protection there. Her situation, as I understand the media reporting, is that she is now in PNG having moved there from the Papuan province within Indonesia. So she is not covered by that MOU.

Senator NETTLE—Has the department received any representations for her or met any of her representatives regarding an asylum claim for her?

Mr Metcalfe—I will ask Mr Hughes, who is the relevant division head, to assist to the extent he can.

Mr Hughes—There would be no specific issue of an asylum claim because she is not on Australian territory; she is in Papua New Guinea. I am not aware that she has made any application to come to Australia.

Senator NETTLE—Has the department had any contact with representatives of the Indonesian government in relation to her case?

Mr Hughes—Not specifically that I am aware of. In what connection were you thinking?

Senator NETTLE—There have been suggestions made about her desire to be reunited with her child. Obviously that would need to involve Australia if that were to occur in Australia. In relation to the whole of her case, not a specific protection claim—because I accept she is not making that, because she is not in Australia—have representations been made by the Indonesian government to the department about her situation?

Mr Hughes—I would have to check that specifically to see if anything has ever been said to the department. I am just not absolutely certain that there has been no mention whatsoever. As far as I know there has not been, but I will confirm that for you.

Senator NETTLE—If you could check that, that would be appreciated. Has the department made any attempts to contact her?

Mr Hughes—No.

Senator NETTLE—Would the department like to see her reunited with her child?

Mr Hughes—I guess that is a matter for her and her husband to pursue. It is not something that I would pass a view on.

Senator NETTLE—In a previous answer to a question on notice that I put about West Papuans being turned back from Australia, two examples were given to me: a boatload in 1996 carrying 21 people and another 30 people were turned back in 1989. I would have thought that they would have fallen under the category of the MOU with PNG.

Mr Metcalfe—Sorry, Senator, could you tell us which question that was?

Senator NETTLE—Yes. I asked the question in the last estimates, in February. It was question on notice No. 24. I was told that two vessels carrying West Papuans had been turned back, one in September 1996 and one in January 1998. The answer said that the people on board the vessels sought Australia's protection. Interviews established that, although they were Indonesian nationals from the province of Papua, they had crossed into PNG from Indonesia, so they were returned to PNG. So I would have thought that they fell into the category of—

Mr Metcalfe—It sounds like they were treated in the same way. My advice is that the current MOU dates to 2003, but there may well have been earlier iterations of that understanding in place and it was on that basis. But if you want a bit more explanation in relation to that issue, as to the basis of that return to Papua New Guinea, we could take that on notice and provide that to you.

Senator NETTLE—The bits that I would be interested in include where they were interviewed. How was an assessment made that they had a connection to PNG which meant that they were returned there. Where did that interview take place? Who would have been responsible for making that decision? Would it have been a DIMA official on a customs boat? I would like an explanation of that process.

Mr Metcalfe—We will check the facts. I suspect it would have been interviews by departmental officials on dry land in the Torres Strait, but we will take that on notice and get that checked out.

Senator NETTLE—Also, could you find out whether or not they had any legal assistance or were offered any legal assistance in that process?

Mr Metcalfe—To the extent that we are aware of that, we will let you know.

Senator NETTLE—I have a question about whether the department has any information about West Papuan refugees living in PNG and the level of protection that they are able to be provided with. There have been reports about Indonesian military forces forcing people to cross the border, coming in and intimidating West Papuans in PNG, whether they are or are not in refugee camps. Is the department aware of such claims? Does the department have any

view or information about the level of protection that West Papuans are able to receive in Papua New Guinea?

Mr Hughes—There are many thousands of Indonesians from the province of Papua in Papua New Guinea. They are in a variety of different circumstances throughout the country. UNHCR is represented in Papua New Guinea and works closely with the PNG government, which is a convention signatory country, to look after the protection needs of any such Papuans. I do not have any information with me on the details of the particular claims that you are making, so I cannot fully answer that for you.

Senator NETTLE—In the last budget, money was provided to Indonesia for the processing of prospective asylum seekers in Lombok—\$14 million was allocated—and the explanation for that in the budget fact sheets from the department was that it was about ensuring that people did not come to Australia, that they were assessed there. Is there any intention to put forward a similar sort of proposal for PNG?

Mr Hughes—If I could just clarify that the money is not provided to Indonesia. It is provided to—

Senator NETTLE—IOM, yes.

Mr Hughes—IOM to provide direct assistance to the people concerned so that they can be cared for while any protection claims are being assessed by UNHCR. We do have a facility to do that in PNG also, through a memorandum of understanding that was signed late last year.

Senator NETTLE—Can you tell us the date that that was signed?

Mr Hughes—I cannot tell you the precise date, but it was in December 2005, and I recall Senator Bartlett asked some questions about it at the last estimates.

Senator NETTLE—And is that for a particular geographic area of PNG, or is it a more general memorandum of understanding?

Mr Hughes—It is in relation to anyone transiting PNG with a view to entering Australia unlawfully.

Senator NETTLE—In Lombok, it is specifically for people in Lombok. Is there a geographic location in PNG to which it refers?

Mr Hughes—The arrangements in Indonesia are not limited to any geographic location, and the memorandum of understanding with PNG that would allow us to fund the care of people transiting there is also not limited to any geographic part of PNG. It covers the country.

Senator NETTLE—Are any assessments occurring in PNG, or is there just the memorandum of understanding to allow them to occur?

Mr Hughes—The latter. I do not think the 2005 memorandum of understanding has been specifically utilised so far, but I will check that for you.

Senator NETTLE—That would be appreciated. I also had some questions about Mr Metcalfe's statement. They are questions on notice, so I could just say what they are.

CHAIR—You may recall, Senator, that Mr Metcalfe indicated that his department would be coming back to the committee during the morning with the various outcomes against each

of those statements. So, if they are to go on notice, perhaps it would be best to have that. Before we go to this question of internal product, do you have something, Senator Bartlett, that cannot be covered under outcomes and outputs?

Senator BARTLETT—I think everything we have heard already could have been covered under the outcomes, but it was—

CHAIR—I know. I just make the point because it makes me feel better! If you would like to go ahead.

Senator Vanstone—If I may, I agree, actually, with both of you: it would be better if things were done under outcomes. What Senator Bartlett says is right.

CHAIR—Go ahead, Senator Bartlett.

Senator BARTLETT—It was really just to follow up and perhaps get a neat, encapsulating conclusion to what was being asked about Papua New Guinea and the fact that they are a signatory to the refugee convention. Are you able to outline which parts of the refugee convention they have reservations about and if that affects our interaction with them with regard to refugees?

Mr Hughes—They do have reservations about certain parts of the convention. I would have to take the question on notice to outline in detail for you what they are—or perhaps I could get them to you later during estimates.

Senator BARTLETT—Yes. I would like an answer in the context of what that means for us in terms of dealing with them on refugee issues.

CHAIR—Thank you very much. Senator Ludwig, we will go to that question on internal product, if you wish.

Senator LUDWIG—There are a number of issues, but I also wanted to get an estimate of the overall cost of the IT program.

CHAIR—IT, did you say?

Senator LUDWIG—Yes, information technology.

CHAIR—I knew what it meant; I just did not hear you.

Senator LUDWIG—The IT program is going to draw together a range of databases, as I understand it. I am happy for the question to be taken on notice, in the sense that I can—

Mr Metcalfe—We have it all here, I think, Senator.

Senator LUDWIG—I indicate that the question is really about the process: the cost of the program and particularly whether the ANAO report has been taken into consideration for your eventual tendering of the process. If you recall, the ANAO report was quite scathing about the tender process. It was in relation to detention centres.

Mr Metcalfe—Yes.

Senator LUDWIG—But the comments, I suspect, can be broadly applied.

Mr Metcalfe—Yes. I will ask Deputy Secretary Bob Correll to answer most questions on this because he is also the chief information officer in the department and has been the crucial

player in drawing together the various reviews and in formulating those into proposals for government. He has done an excellent job, together with his staff, in getting us to this stage in what is a very important part of our reform program.

In response to your question, in my opening comments to the committee this morning I talked about the department listening, learning and improving. That is not confined to the particular areas that were the subject of criticism by Mr Palmer and Mr Comrie, even though they are particularly important. The Audit Office has issued a couple of recent audits. As you said, the office was critical of the department in some respects in relation to the detention services contract. We are now retendering for detention services, are very much bearing in mind the lessons learnt from the earlier process and indeed are applying the same lessons to the IT procurement activities, which are large and complex.

More generally, one of the many areas of activity within the department is significantly strengthening our procurement and contract management. I was a little surprised when I came back to the department when I was appointed to this job to see that we were, in terms of numbers of contracts, the second largest Commonwealth department. In terms of values of contracts, we are the fourth. We have identified improvements in this area as one of our key priorities. Certainly, I hope to see better performance over time. Having made those introductory comments, Mr Correll might like to answer some detailed questions.

Senator LUDWIG—Thank you. What I am trying to understand at this point in time is the total cost of the program and whether you are at the stage of the process yet of having a request for tender.

Mr Correll—The total cost of the program is around \$495 million over four years. They are the total costs involved in the Systems for People initiative. We are in the process at the present stage of finalising the engagement of a strategic partner to work with us on this program. That is part of a sourcing program that we have under way. Members of a relevant panel established under that sourcing program were invited some weeks ago to bring forward proposals to become strategic partners. The closing date for that has now gone past and we are in the process of detailed evaluation of those proposals. We expect to have a strategic partner on deck and working with us before the end of June.

Senator LUDWIG—Will that include the DVS pilot program or is that now completed? Will it be incorporated with that or separate?

Mr Correll—No. The Systems for People program will effectively subsume work done under earlier programs.

Senator LUDWIG—Including the document verification service?

Mr Correll—Yes.

Senator LUDWIG—Is that pilot finalised? The new system will subsume it. Am I correct?

Mr Correll—The new system will absorb that work and other work done under the previous GSE IT program that the department was working on.

Senator LUDWIG—Is the trial in the department of the \$6 million online document verification service, which would have been switched on back in February, now finished?

Mr Correll—I understand so. But its overall structure will be integrated into the broader Systems for People architecture.

Senator LUDWIG—How will that be done? I am not sure how that will work.

Mr Correll—The Systems for People program is not just an individual system as such. It effectively represents the whole strategic direction for the department's information technology. It will mean that all systems will be connected together under the Systems for People initiative. So it will link together work done under the previous GSE program, the DVS program and other work that has proceeded to date in areas like biometrics.

Senator LUDWIG—So Systems for People will utilise or sit on the architecture of the DVS? Is that a better way of putting it?

Mr Correll—The DVS will form part of the Systems for People architecture.

Senator LUDWIG—Was there an evaluation of the pilot program?

Mr Correll—There has been no evaluation conducted. The system is operating effectively at the present stage but the evaluation is unlikely to be finalised until towards the end of this financial year.

Senator LUDWIG—So the trial is continuing. When will the trial be completed?

Mr Correll—It is due to completed or it will be run through until the end of this financial year.

Senator LUDWIG—How will it then be incorporated into the new system? Will it be an ongoing pilot? It begs a question. You have not finished the pilot but you are going to subsume it into the new system. The question is whether it should be subsumed into the new system given that you do not have an evaluation of the pilot. If a decision has already been made to subsume it in any event, why would you continue with the pilot or bother with an evaluation?

Mr Correll—I think that one thing we can be absolutely certain of is that document verification is a critical business need and that was picked up as part of the business needs analysis that resulted in the Systems for People program. As a fundamental business need, the pilot will tell us with its evaluation whether a particular technical solution used during the pilot is the way we advance it under Systems for People or whether we use a different solution. But the functionality of document verification must be included within Systems for People.

Senator LUDWIG—All right. I might come back to that in a little while. I will turn to the issue of the \$495 million over four years. Is there a further breakdown of where that money comes from and how that is going to be spent over the four years? What are the components and the expected outcomes? In other words, what do you expect to get for your money? I am happy for you to take it on notice unless you have a document that points to that.

Mr Correll—The breakup of the funding is \$341 million in operating costs over the four years and \$153 million in capital costs. The timing of that, on both operating expense and capital expense components, is set out in the tables in the PBS documentation in table 2.2.2

for operating expenses and table 2.2.3 for capital expenses. That is the actual expected spread of expense year by year to 2009-10.

Senator LUDWIG—Is there a document—it might be in the request for tender or in the specifications of the computer architecture that you seek to employ to run your systems—which outlines what you are going to get for the money that you spend, what it will do and how it will perform at the end?

Mr Correll—Yes, there is an overall detailed brief that was provided to the panellists, many of whom have submitted proposals. In addition, there is an overall program management plan. Both of those documents include overall success criteria and the overall outcomes to be achieved.

Senator LUDWIG—Are those documents available to the committee?

Mr Correll—Yes, I believe those documents could be made available to the committee, subject to the minister's concurrence.

Senator LUDWIG—Thank you. I would be pleased to receive them. Is the list of panellists public?

Mr Correll—Yes.

Senator LUDWIG—Are these the people you will be calling partners?

Mr Correll—We are calling them strategic partners. One or more will be strategic partners, recognising that the panellists may form conglomerates in the way they bring forward proposals to the department.

Senator LUDWIG—But the department has not selected one yet?

Mr Correll—No. It is in the process of evaluating proposals at the present stage, but the plan is to have that selection finalised and notified before the end of June.

Senator LUDWIG—We might come back to that then. Are the passport readers in internal products? It has 1.1, 1.2 and 1.3. Is that take by pick? I am not sure.

Mr Correll—We can do that now, if you wish.

Senator LUDWIG—It appears that Perth officers trialled the passport reader technology to examine whether the data could be recorded with greater accuracy. Where are we up to with that? Is that part of the SmartGate or is that separate?

Mr Correll—It is not part of the SmartGate. It is basically providing passport readers to provide more efficient information capture processes for staff at counters. The trial of the passport readers has been successful in Perth, and at the present stage it is being evaluated for the roll-out across all of the sites, so it is in the process of full implementation.

Senator LUDWIG—How many sites will it be rolled out to? What is its use? Is it going to be used by Customs at their first counter? I am happy for you to take that on notice.

Mr Moorhouse—I will give you a little bit of background to this particular trial. It is the trial of document readers in relation to our provision of service to clients in Australia. The trial in Perth was seen as being successful, as Mr Correll indicated, and we are now in the process of rolling out the document readers to all of our onshore client service staff.

Senator LUDWIG—How many is that?

Mr Moorhouse—I do not have that number with me. I will have to take that on notice.

Senator LUDWIG—Perhaps you can help me understand. Where will they be in the program? When a person comes in with a passport or some sort of identification, they go to the Customs first line. Is it at that line or is it removed from there?

Mr Moorhouse—I think we are talking about different things.

Senator LUDWIG—Yes, that is why I wanted to know exactly—

Mr Moorhouse—The specific reference I was making, which I assumed you were dealing with when you referred to Perth, was in relation to document readers which capture the person's personal details—capture data, in effect, rather than requiring that data to be typed into our computer systems. The other thing that you may be referring to that is used by Customs is a more sophisticated system that involves the verification of the validity of a passport. But I am not really in a position to comment on that.

Senator LUDWIG—What the brief says is that the Perth office trialled passport reader technology to examine whether data could be recorded with greater accuracy; that accuracy was improved and processing times were reduced, increasing DIMA's ability to detect passport fraud; and that a wider roll-out is under way. So there are two parts. There are passport readers, which will detect fraudulent passports, and that is sophisticated software that I thought was used by Customs at their front line. They have more sophisticated software for a second check, if the first reader does not get it right. There is also the reader, which will be SmartGate, which will read your passport as you try to come in or go out of the country. That is ongoing technology. I am trying to work out where yours sits in the overall framework.

Mr Correll—I think we need to see them as discretely different things. The passport reading software that Customs use at the front line is the I-authenticate system. That, in turn, is something different again from the SmartGate system, which is reading the chip embedded in the new passport arrangements. This is a third thing altogether, and not related to those two. It is basically about a smarter and quicker way of capturing information in our client service front lines that are now operating. This is not in the Customs area; it is in our operational processing centres, so that we can get information into our database more quickly and accurately rather than manually keying it.

Senator LUDWIG—So this is in the case of a person coming to the counter of DIMA with a passport and you can then capture the data a bit quicker for processing?

Mr Correll—That is my understanding.

Senator LUDWIG—They might be applying for a visa or some other work?

Mr Metcalfe—Yes, they might be walking into our front office in Brisbane. Rather than us having to key all the data in, lifting it straight off the passport, as you know, has a couple of real advantages. One is that you capture it quickly and the other is that you hopefully avoid mistakes in keying data. Getting our data as pure as we possibly can and avoiding those multiple entries is one of the key issues we have to address.

Senator LUDWIG—What is the cost of that program?

Mr Moorhouse—I will have to take that on notice.

Senator LUDWIG—That trial has finished. Has there been a review of the trial or is there a trial outcome that is available to the committee?

Mr Moorhouse—It was essentially an internal process of evaluating the cost of the document readers against their value. I am not sure whether there is a formal report, but we can certainly provide the details of the evaluation of the cost and benefit to you.

Senator LUDWIG—That would be helpful. Has a final decision been made to roll out the software?

Mr Moorhouse—There has been a decision to roll out the software to all of our counter staff across Australia.

Senator LUDWIG—And you will provide the total cost of that?

Mr Moorhouse—Yes, Senator.

Senator LUDWIG—Is there an effective life?

Mr Moorhouse—I am not aware of that, Senator.

Senator KIRK—I have some questions in relation to a report that has been circulated that members of the senior management team have been allocated individual executive coaches.

Mr Metcalfe—This is Crikey, is it, Senator?

Senator KIRK—I believe that is where it came from, Mr Metcalfe.

Mr Metcalfe—Don't believe everything you read on Crikey; that is my advice!

Senator KIRK—I usually don't but I am particularly interested in this one.

Senator Vanstone—Or the newspapers. For Senator Ludwig's benefit, without being disrespectful in any way of the chair's ruling, you certainly should not believe half of what you read in the newspapers.

Senator KIRK—Thank you, Minister.

Mr Metcalfe—As far as I know, that article appeared on Crikey without any contact, reference or checking with the department. The short answer is no, although a number of senior executives do have what is known colloquially as an executive coach or one-on-one training. I am one of those people. I think the suggestion, if you read Crikey, is that hundreds of people are getting \$20,000 each for a coach. That is not true.

Senator KIRK—Perhaps you can give us the exact figure, then. You say that you yourself have an executive coach.

Mr Metcalfe—I do.

Senator KIRK—Who are the other members of the team who have an executive coach?

Mr Metcalfe—It is a big team. I can check and take on notice the number of people who may have one-on-one training available to them. It is something that I have encouraged quite a few staff to think about because of the need to have someone external to the organisation to provide advice, input and ideas in running a billion-dollar organisation with 6,000 staff across that organisation. You need to keep the edge. I certainly have an executive coach. I started

using him when I came into the job, at the recommendation of the secretary of the Prime Minister's department—it is his personal coach as well. I will take on notice the precise numbers and circumstances and we will provide you with something in detail. But I can assure you that it is not of the extent or cost that that article may have led you to believe.

Senator KIRK—So we have established that you have an executive coach. You say that there are others. Obviously all 6,000 members do not have an executive coach. Are we talking about 10 members of the team or 20—what sort of figure?

Mr Metcalfe—I will check. I think it would probably be at least 10 and possibly more than that. As I said, I have not individually asked people to let me know those circumstances. That is an issue that would be managed between that person and their direct report. But I imagine there are a few. It would be something that is seen as a means of providing leadership training to senior leaders in the department. I might just say, given the public interest in the issue, that I think I have probably seen my executive coach on about four occasions. That is about once every three months. He tends to see a number of other people when he is here in Canberra and so part of the cost for me is, pro rata, his travel from Melbourne. His hourly rate is under \$1,000. I would have thought that, across the year, my expenditure on this personal training would amount to somewhere around \$5,000.

Senator KIRK—So, when you see this personal trainer or executive coach, you usually only see him—I am assuming it is a him—for an hour at a time?

Mr Metcalfe—About an hour or an hour and a half. I recall seeing him about a week or so ago. He has been very helpful, given the extraordinary circumstances in which I came into the job and the extraordinary amount of change building new teams through the organisation. It is a him, and, as I said, I see him for about an hour every three months or so.

Senator KIRK—I am sure that, at \$1,000 an hour, he must be quite effective. You say that you have seen him on four occasions in the past 12 months?

Mr Metcalfe—Yes. I have been in the job for just over 10 months and my recollection is that I have seen him about four times.

Senator KIRK—Does this person provide executive coaching to the other individuals that you mentioned—the 10-plus individuals—or do they get to choose their own executive coach?

Mr Metcalfe—They need to choose their own training arrangements, in discussion with their supervisor. I am considering recommending to one or two colleagues that this particular executive coach might be appropriate for them, given his particular background and skills, but I am not aware that he is providing services to any other individual within the organisation at this stage.

Senator KIRK—There must be some sort of budget allocation for this, or some sort of upper limit. You have said that you have only needed to see this executive coach on four occasions in the last 10 months, but you must be keeping track somehow of how many other individuals are seeing the executive coach. Perhaps they need more coaching than you. Perhaps they need it once a week, not once every three months.

Mr Metcalfe—I hope they do not need it once a week. This need not be seen as a permanent or regular availability, but there might be particular times—dealing with a particular situation or a difficult situation—where it is helpful to have someone external and objective to provide advice, someone who has seen other organisations dealing with similar issues. I have already taken on notice to provide you with more detail.

Senator KIRK—So each individual gets to decide essentially for themselves whether or not they need this coaching?

Mr Metcalfe—I would expect that if, for example, any of the three deputy secretaries was thinking that they would benefit from coaching or one-on-one training, they would discuss it with me so that I was aware of who it was. Similarly, I would expect that those arrangements would cascade through the leadership within the organisation. So it is not just an individual going out, getting someone that suits them, and spending as much money on it as they want. There are controls, but they are devolved controls not centralised controls.

Senator KIRK—Have the deputy secretaries approached you in relation to getting executive coaching?

Mr Metcalfe—One has, and we have had some discussions. I am going to talk with the other two about whether it might be useful for them at this particular stage in the organisation's life, as we are building new teams and moving through an extremely ambitious change period. For very obvious external reasons—and we have talked about some of the cases this morning—the organisation is under a great deal of stress to improve; indeed, we had our first staff survey in many years in December last year, and staff right across the organisation saw leadership as a key area for improvement. There is no point in having a staff survey and asking people what they think if you do not do something about it.

Senator KIRK—You said you have had discussions with the deputy secretaries. Have they taken up—

Mr Metcalfe—This is a very public way of saying that I am planning to have discussions with them fairly soon. Through you, Senator, I am letting them know that I am planning to have discussions with them soon. It is no reflection upon their competence; it is simply keeping the edge.

Senator KIRK—I am interested then as to who the others are. There is you, and you have told me that there are 10-plus people who have engaged in this. So who are the others?

Mr Metcalfe—I must say that this is not something that I had really focused on in an aggregate sense until I saw that item last week. As a result of that, I thought that I would get some work done to find out the extent of activity across the organisation. I have said that I would imagine 10-plus, and I imagine that because we are a big organisation. We have got an SES of around 80 or so people. Others have mentioned to me from time to time that they have had an executive coach to assist them with particular challenges or issues that they are confronting. So I am guessing, and I will provide you with some definitive advice on notice. But I would be confident that, in each of those circumstances, it was an appropriate measure to support performance in a large, complex, busy organisation.

Again I am making the cardinal mistake of telling you something that you did not ask me about, but the department has very publicly indicated that it was keen to lift performance right across the so-called executive level. In public service terms, we have got a senior leadership of around 80 or so senior executive officers—mainly in Canberra but some in the states and territories and overseas. But in a department of almost 6,000 people, people who are the leader of a team actually extend right down through the organisation to the APS 4 level. One of the critical levels in an organisation is middle management, and we have got more than 1,000 people who are, in public service terms, Executive Level 1 and 2. For old-fashioned people, that is the old Clerk Class 11, Clerk Class 9 sort of level.

We very deliberately commenced an executive leadership program for that group, which runs for a week. So far, about 400 of those staff have moved through it. It will take until this time next year for the entire cohort. But if you are talking about an organisation which has been subject to very deserved criticism as to its culture, its values and its performance, then you have got to target the senior leadership and the middle management to make sure you have got people on board around the culture, the values and the performance—because those people at the middle management level ultimately set the culture. They are the people, right around the world and right around the country. So I am very pleased that one of the key responses to the Palmer report was to establish the executive leadership program, and I am pleased that we are moving through that group of people as quickly as we can, at around 25 people per week. But we have still got a way to go. I do not know if that somehow translated itself into the report in question, because that is a costly exercise, but it is one which is very important.

Senator KIRK—Perhaps we can go to that, then. I do not think we have discussed the leadership program, as you have described it. You say there are in excess of 80 people in the senior management team, plus another thousand or so in middle management who are going through this leadership program. How does that work? What is the cost of that? Is it a four-day training course?

Mr Metcalfe—The executive leadership program?

Senator KIRK—Yes.

Mr Metcalfe—Ms McGregor has some details. Just before I finish, Senator, I have been advised that one of the techniques coming out of the leadership program has been a follow-up. People are offered a once-only coaching session. I would see that not as an executive coach but as simply reinforcing some of the messages about performance and change and leadership. Again that may have contributed to this incorrect perception that there were lots of people having coaches.

Senator KIRK—So possibly there is in excess of 1,000 people having this once-only executive coaching.

Mr Metcalfe—There are lots of people in the organisation being trained. That is absolutely essential in such a big organisation and where performance has clearly been lacking in some areas. We have always invested a lot in training, but we are doing a lot more. We have appointed a national training manager. You know that one of the responses the government made to the Palmer report was to establish the college of immigration, which will cost \$50

million over the forward estimates. So there is lots of training occurring. I think it is a different concept when the senior leaders have personal access one-on-one to a person as opposed to staff, through the organisation, getting what they need, which is good training. Ms McGregor might have a bit more detail.

Ms McGregor—In response to your question, and following up from what Mr Metcalfe said, we have engaged a company to assist with the delivery of the executive leadership program. As of 1 May 2006, 391 executive level staff had attended the executive level program. As Mr Metcalfe indicated, it has components to it: a five-day residential program and then the offer of a one-on-one, once-only coaching session with coaches. The company engaged sources those coaches; they are not necessarily—and I do not think they are—the coach to which Mr Metcalfe refers. In addition, there are a couple of other diagnostic instruments that are used to give a person an understanding of their capability gaps and things they should focus on. To date, we have spent \$1,130,054 on that program.

Senator LUDWIG—Did you say how many people were trained?

Ms McGregor—Three hundred and ninety-one so far. Just to make a distinction, members of our senior executive service are invited to attend—one per course—to act as a mentor or course coach or to provide guidance, but we are also looking at the prospect of developing a particular program for our senior executive staff next financial year. We are currently in the design phase of that.

Senator LUDWIG—Whereabouts is the residential component?

Ms McGregor—It is near Canberra. The last one was Goolabri, but they are always at that—

Mr Metcalfe—Certainly I have been to a few at Goolabri, which is just north of Canberra. If you are familiar with the road heading to Sydney, it is literally just across the ACT border. There is a place called Eaglehawk, where there is a petrol station, and Rydges have a hotel out there. Goolabri is a little place just beyond that, in an area called Sutton Park. It is probably seven or eight kilometres from the ACT border.

Ms McGregor—We are going to run a couple of these programs in other capital cities.

Senator LUDWIG—Perhaps you could indicate in particular where the residential components will be located and the establishments at which they will be held. Going back to the coaching, how do you get to be a coach? Are they accredited?

Mr Metcalfe—I think there are forms of accreditation.

Senator LUDWIG—It is not bad money!

Ms McGregor—A lot of them are not as much as \$1,000 an hour, though.

Mr Metcalfe—This man is earning his money, I can tell you. The particular coach that I have sourced provides advice to a number of Commonwealth chief executives and comes from the Institute of Executive Coaching. As I said earlier, it was recommended to me upon taking up the job because of the issues that I would be facing. But we would certainly be looking at people who had a training and business management capability.

Senator LUDWIG—Can you indicate whether or not those engaged to date are accredited or certified, whether or not there are confidentiality agreements in place, whether or not there are contracts—and, if there are contracts, whether or not they include confidentiality agreements. Also, could you make them available to the committee? Can you indicate what kinds of issues are coached—assertiveness, responsiveness and those types of issues or broader issues? How are people selected for the coaching? I have asked a range of questions—I know time is short—but I am sure you can deal with them on notice.

Mr Metcalfe—We will take those on notice.

Senator LUDWIG—Could you also tell me whether or not there is any assessment as to whether the coaching is being deemed successful or unsuccessful and whether that is communicated to anyone else or to you, Mr Metcalfe, as the person in charge.

Mr Metcalfe—Certainly I see it as being a key aspect of the performance and learning agreement of individuals, so normally it would be to the satisfaction of the supervisor and the individual. We are increasingly looking at ways of ensuring there is what is called 360-degree feedback for people performing their jobs. The view of not only the boss but also the view of staff and others around them is required. Ultimately, I suppose, the minister is the judge of my performance. Certainly I suspect the issues that I have been dealing with are different to the issues that other people may deal with. I suspect there is a broad range of issues. Mine are very much focused on teambuilding, on managing large organisations through change and in effective communication with staff, those sorts of issues.

Senator LUDWIG—Can we find out who they are? Are they individuals or is it a company?

Ms McGregor—The company that is engaged to run the overall program sources the coaches. However, I suspect—and I can check this categorically—that usually they source them from the Australian Public Service Commission panel. There is a panel of coaches you can seek out.

Senator LUDWIG—Perhaps we can look at what that is, who they are and where they are accredited by and like. Are they shrinks; psychiatrists?

Ms McGregor—You can do formal training to become an executive coach but I am not quite sure of the certification process used for all of those. We can follow that up for you.

Senator LUDWIG—I take it there must be a contract with the supplying company. Do you also have the individual contracts that exist between the coaches and the organisation? Have you done any checks on what they entail—if you have not, then why not and, if you have, can you make those available?

Senator Vanstone—Senator Ludwig, did I hear you correctly? Did you ask whether these executive coaches were psychiatrists?

Senator LUDWIG—I do not know their training. Your department should.

Senator Vanstone—The prospect that something trained in psychiatry, with all kinds of medical degrees first and then a medical specialty, would be doing this work amazes me. But I could be wrong.

Mr Metcalfe—I am certainly not seeing a psychiatrist.

Senator LUDWIG—It is \$1,000 an hour, Minister.

Senator Vanstone—Not everybody works just for money, Senator Ludwig.

Senator LUDWIG—No, Minister Vanstone.

Senator Vanstone—Although, in relation to the medical profession, I do not know.

Mr Metcalfe—I recall that at a previous estimates hearing there was some discussion about other work I was doing in terms of trying to mould and change the culture of the organisation in positive ways—for example, through our adopting the tagline ‘people are our business’ and promoting that within the organisation. I was disappointed that certain people decided to make fun of that. I think the same could apply with the conversation we have just had. If you wanted to go out and say: ‘There’s a whole bunch of people in Immigration sitting round getting coached. They should just get on and do their job,’ then you could score a cheap political point. I invite committee members to reflect upon the deserved criticism this organisation has had, the mistakes that we have made and the very strong focus that I have to put on, with the minister’s guidance and support, getting the right set of values in the organisation. I have to deal with massive amounts of change and the fact that a lot of new people are coming into the organisation. Therefore, training—whether it is coursework training or one-on-one training—is an essential part of what we do, and we are doing it for a reason: because we need to do better.

Senator PARRY—Would you agree with the comment that modern business practice throughout the world employs executive coaching and businesses benefit from that?

Mr Metcalfe—You are certainly right, Senator.

Senator PARRY—Secondly, as a follow-up, personally have you benefited from your coaching?

Mr Metcalfe—I suppose that is for others to judge. I do not know whether I am a better person than I was a year ago. I am a bit tired than I was a year ago, I know that.

Senator Vanstone—Train up! There is more to come.

Mr Metcalfe—In all seriousness, I was appointed to this role, having been a public servant for 26 years. I had led large parts of organisations before but I had not led an organisation before. There is a difference in role between being a deputy or being a senior executive and being the chief executive of an organisation. Ultimately, the buck does stop with you. I have found the advice that I have been given, the reading materials that I have been provided with, and the opportunity to discuss issues with someone who did not have a stake in the outcome as being an essential support for me in doing a very difficult job.

[11.41 am]

CHAIR—We will move on to our first outcome, outcome 1, and output 1.1, Non-humanitarian entry and stay. I understand that a number of senators have an interest in asking questions in relation to visa subclass 457 in particular and I am sure there are further questions on other classes and other areas under this output. It may assist the working of the

committee if we go to discussion of 457 at this point and, to the extent possible, deal with questions in that area.

Senator CARR—Let me begin by asking the officers to provide me with some information concerning the company known as Hanssen Pty Ltd, the Western Australian construction company.

Mr Rizvi—I will ask Mr Fox to answer the question specifically in respect of Hanssen, but before he does I will make some general comments about individual cases and the issues associated with us discussing the individual cases at this stage. Some of the cases that you might raise, and that have been raised in the media, are the subject of investigations either by us individually or by us jointly with the Department of Employment and Workplace Relations, the relevant industrial relations departments, Work Safe or others. For those reasons there may be limits on how far we can go into an individual case. Some of the cases are also subject of current court action.

Senator CARR—Mr Rizvi, I appreciate the difficulties. You and I are not unfamiliar with the question of enforcement and I appreciate that where you find it necessary to advise the committee that something is subject to court action we do not trespass upon sub judice questions. I think we have established ground rules on these matters. But I think that you will also agree that it has been demonstrated over the years that questions this committee has raised have been of some considerable assistance to the work of the department in drawing to your attention some matters that otherwise you might not be aware of. Equally, they have been of assistance to other agencies within government that have been somewhat relaxed about enforcement measures. So, given those matters, I am sure we will find a happy medium here and you will be able to provide the committee with detailed answers to questions. In regard to the Filipino and Chinese workers brought in by the company, Hanssen Pty Ltd, for how many now have approvals been made for the company?

Mr Fox—Hanssens have had three sponsorships approved. They have had approval to nominate up to 80 skilled positions and they have had 18 visas granted to date.

Senator CARR—They indicated on *PM* on Friday, 12 May, that they were seeking 53 workers. Did the 80 that they have been approved include the 53 that they referred to on Friday, 12 May?

Mr Fox—Yes.

Senator CARR—So that is the total number of applications before the department?

Mr Rizvi—I might just explain how the visa works and then we can go to specifically what the numbers mean. The 457 visa is a three-step visa. The first is that the individual employer must become an approved sponsor. They must then nominate the positions they intend to fill, and then they lodge individual visa applications. So the numbers will vary depending on which stage in those three steps individual applications are up to. The 80 that Mr Fox referred to were at the second stage—that is, the nomination stage. The 18 was the number of visas already granted.

Senator CARR—So there may well be an additional 80 visas issued for this company?

Mr Rizvi—Up to a total of 80.

Senator CARR—Does that include the 18 or is that additional to the 18?

Mr Rizvi—That would include the 18.

Senator CARR—On what dates were these approvals granted?

Mr Fox—I do not think I have the dates on which those approvals for Hanssens were granted. I will have to take that one on notice.

Senator CARR—Thank you. You indicated that there is a three-step process. Does the company have a good record in providing training?

Mr Rizvi—The company is required to demonstrate that it does have a record in respect of training. To date, it has met that requirement. We understand that on 21 December 2005 Hanssens had eight apprentices on its books and one recent graduate.

Senator CARR—And on the strength of that they got approval for 80?

Mr Rizvi—They were able to demonstrate that they had a reasonable training record.

Senator CARR—That is the nature of the evidence, is it—the fact that they had eight apprentices on the book, of whom one had completed?

Mr Rizvi—No. That one graduate would be a recent graduate of a university.

Senator CARR—So it is not a graduate of the apprenticeship program?

Mr Rizvi—No. They had eight current apprentices. As to how many of their current Australian workers would be persons who have graduated through their apprenticeship program, I do not have data on that.

Senator CARR—Of the eight that are currently employed as apprentices—I take it that they are currently employed as apprentices; are they?

Mr Rizvi—This was the evidence as at 21 December 2005.

Senator CARR—Five months ago.

Mr Rizvi—Yes.

Senator CARR—Was that the last time you checked?

Mr Rizvi—That was the date at which the application was approved. Hanssen's sponsorship application was approved on 21 December 2005 and that was the situation at that time.

Senator CARR—I take it Mr Hanssen has now signed the employer undertaking required to become a sponsor.

Mr Rizvi—He has.

Senator CARR—Were you made aware of the comments made by Mr Dick Smith of that same company on Radio National's *PM* program on 12 May?

Mr Fox—I am aware of those comments.

Senator CARR—You are familiar with those comments?

Mr Fox—Yes. I heard those comments on the day that they were made.

Senator CARR—Mr Fox is quoted here as saying—

Mr Fox—Mr Smith, I think, Senator.

Senator CARR—He referred to the 53. You are saying that at that time there had already been a department decision to grant the 53 applications.

CHAIR—Senator Carr, the record should reflect that you were referring to a quote from Mr Smith then, not a quote from Mr Fox, I think.

Senator CARR—I am taking a quote from a memorandum—

CHAIR—I think you inadvertently said Fox but you meant Smith.

Senator CARR—I am talking to Mr Fox.

Mr Fox—But I did not make any quote about this.

Senator CARR—I am aware. I am asking you: are you aware of the quote from the *PM* program—

Mr Fox—Yes.

Senator CARR—which referred to an application before the department to bring in 53 more workers?

Mr Fox—I understand we have received an application to that effect.

Senator CARR—Yes. And I thought I asked Mr Rizvi whether the 80 included the 53.

Mr Rizvi—The number 80 refers to the nominated positions that they propose to fill. They must then lodge visa applications to fill those positions. The visa applications relate to the individuals who are seeking the visas.

Senator CARR—Okay. What I want to be clear about is: are we talking here about a total of 80 or 133?

Mr Rizvi—They have 80 nominations that they are able to fill. The total number of people they can bring in at this stage on a subclass 457 visa, subject to the approval of the individual visa applications, is 80.

Senator CARR—Okay. So the reference on the *PM* program on 12 May to 53 more workers is something that you are not familiar with?

Mr Rizvi—The 53, as I understand it, would be within the 80 nominations that have been approved.

Senator CARR—I just wanted to get that clear. So that is your understanding. You mentioned to me before that there were eight apprentices employed on 21 December. How many employees did the Hanssen company have at that time?

Mr Rizvi—At that time they had 200 Australians employed, four temporary business entrants—that is, subclass 457—and two working holiday makers. Within that group, they had 30 professionals and 160 tradespeople.

Senator CARR—So that is eight apprentices for 160 tradespeople?

Mr Rizvi—That was the situation as at 21 December.

Senator CARR—Would you regard that as a normal ratio of apprentices to tradesmen in the building industry for a company that size?

Mr Rizvi—I think that would vary from company to company. Certainly, from our perspective, eight was viewed as a reasonable number in that context. Whether or not it is entirely appropriate at that level is something that I would need to seek advice on from other agencies.

Senator CARR—Could you? I just wanted to know whether or not there was any ratio that the department applied, given that to grant the visa there is a condition of a person having a satisfactory training record. You say ‘reasonable’; what is the term you use?

Mr Rizvi—We do not have a rigid ratio of apprentices to workers that we apply.

Senator CARR—So there are no criteria to determine what is ‘reasonable’, good or positive in that—

Mr Rizvi—That is the type of thing that we would seek advice on from the Department of Employment and Workplace Relations.

Senator CARR—So did you seek advice from the department on that matter?

Mr Rizvi—In this particular instance, I am not aware whether we did or did not. I would have to take that on notice.

Senator CARR—Thank you. Is Mr Graham Kierath, the former industrial relations minister for Western Australia, still an employee of Hanssen? Is he one of those professional officers?

Mr Fox—We do not know if he is employed by them. We know that he attended a meeting that our department had with them, but I do not know whether he is actually an employee of theirs.

Senator CARR—When did he attend the meeting with the department?

Mr Fox—It was 9 January.

Senator CARR—Can you advise the committee of the capacity in which he attended that meeting?

Mr Fox—My advice is that he was an adviser to Hanssen at that meeting.

Senator CARR—But you cannot define what ‘adviser’ means?

Mr Fox—No, sorry.

Senator CARR—Since you have told me that you have listened to the interview on 12 May, are you able to advise the committee of what is regarded as the appropriate level of remuneration that a migrant under this visa should receive?

Mr Rizvi—An applicant under subclass 457 must be paid at least the Australian award wage or the minimum salary level set under the Migration Act, whichever of the two is the higher.

Senator CARR—So, in a situation where it is said that employees are actually receiving half of what others are receiving in the industry, do you think that fits within the criteria of reasonable pay?

Mr Rizvi—As I said, what they are required to be paid is at least the award or the minimum salary level set under the Migration Act, whichever is the greater.

Senator CARR—So, in the circumstances where people are actually paid \$40,000 a year when the going rate is \$80,000, you would think that would be appropriate?

Mr Rizvi—As I said, within the Migration Act, there are specific requirements that must be met. They must meet those requirements. Where an employer is bringing a new employee into the business or an organisation, they may well, at the point of being a new starter, be paid less than a more experienced worker in that organisation. For example, the most common users of the subclass 457 visa are organisations who employ doctors and nurses. Most of the doctors and nurses coming in on a subclass 457 visa are paid not the average salary of a doctor or nurse in Australia but rather the salary that might relate to a new entrant. In this particular instance, where the individuals are new entrants, they may well start on a slightly lower salary and they may well, over time, work their way up.

Senator CARR—So you are saying that the persons who were employed on these visas were all new entrants, were they?

Mr Rizvi—They were certainly new entrants to the Australian labour market.

Senator CARR—That is an obvious statement of fact, but is that the basis on which they were recruited to the firm? What are their ages, for instance? Can you tell us what their ages are?

Mr Rizvi—I do not have that data with me.

Senator CARR—Could you tell me what they are? Take it on notice. I am interested to know. Under these visas, are the persons brought in under these visas required to work for only one employer?

Mr Rizvi—They are required to work for the sponsor who has sponsored them. However, at any stage they are free to move to another employer as long as that employer is prepared to sponsor them. Many subclass 457 visa holders do move from employer to employer in that way.

Senator CARR—Mr Dick Smith, who is the administration manager of Hanssen's, says that 'if they want to change employers then they have to go home'. I quote directly from the transcript.

Mr Rizvi—That is untrue; it is incorrect.

Mr Fox—I heard that statement as well and recall thinking at the time that that was not correct.

Senator CARR—Have you drawn that to his attention?

Mr Fox—No, I have not.

Senator CARR—Is this company under investigation?

Mr Fox—The allegations about some underpayments were made fairly recently. You referred to media reports about union concerns commencing from 12 May. We have notified the Department of Employment and Workplace Relations and the relevant department in Western Australia. They are looking into those allegations.

Senator CARR—Could you go back to this wages question. Mr Rizvi, does your manual refer to the ‘going rate’? Is that not a direct quote from your manual as to what the policy position of the department is in the manual as to what the remuneration should be?

Mr Rizvi—No, under subclass 457, the remuneration is required to be either the award or the minimum salary level stipulated in the Migration Act, whichever is the higher.

Senator CARR—Do you think your manual should be changed and that should be reflected in the manual rather than the words ‘going rate’?

Mr Rizvi—We would have to look at the manual which you are referring to.

Senator CARR—I understand it says ‘going rate’. The going rate would presumably be the market rate.

Mr Rizvi—I presume that would be the market rate.

Senator Vanstone—For a new entrant.

Senator CARR—Therefore, if you are able to employ persons whom the employer thinks can only work for them, at half the going rate, you can understand why the company might find that an attractive proposition.

Mr Rizvi—I can understand that. Whether the company fully understands the 457 visa and how it operates is another matter, and that is certainly something that is being investigated, including by the Department of Consumer and Employment Protection.

Senator CARR—Who did you say they were being investigated by?

Mr Rizvi—The Department of Consumer and Employment Protection, as well as the Department of Employment and Workplace Relations.

Mr Fox—The former is the Western Australian authority.

Senator CARR—And they are investigating these claims?

Mr Fox—We have referred the claims to them and we understand they are investigating them.

Senator CARR—How many people are employed in the building industry under this visa category at the moment?

Mr Fox—For the year to date, until 30 April 2006, there have been 2,950 jobs in the construction industry that have been nominated for filling with the 457 visa.

Senator CARR—How many of those have been filled?

Mr Fox—I don’t have that with me, Senator. I will take it on notice.

Senator CARR—What date did you say that was?

Mr Fox—That is up to 30 April 2006.

Senator CARR—How many more are in the pipeline seeking approval?

Mr Rizvi—Those are the nominations, and that establishes an upper ceiling on the numbers of applications that can be lodged against those nominations.

Senator CARR—For the previous year, what was the number of applications in the building and construction industry?

Mr Fox—I don't have that information with me, Senator. I will take it on notice.

Senator CARR—Would you say that the numbers have gone up?

Mr Rizvi—The overall numbers in subclass 457 have been steadily increasing over the last few years. We estimate that the total number of people who might be visaed under subclass 457 in 2005-06 would be around 70,000. That includes dependants and spouses. The overall number of principal applicants in that group would be around 40,000.

Senator CARR—How much of an increase is that on the previous year?

Mr Fox—In the 2004-05 year there were just under 50,000 visas issued.

Senator CARR—Was that 40,000 so far for this year?

Mr Rizvi—No, the 70,000 is the aggregate that we estimate is likely to come out this year, based on the indications we have received.

Senator CARR—And the 50,000 you referred to?

Mr Rizvi—That was last year's total number of visas issued.

Senator CARR—How many principals? If it was 40,000 this year, what was it for the previous year?

Mr Fox—The figure for principals in 2004-05 was 28,042.

Senator CARR—So it has gone from 28,042 to 40,000 in a year?

Mr Rizvi—We estimate it will be about 40,000 by the end of this financial year.

Senator CARR—How many of those are employed by labour hire companies?

Mr Rizvi—We would not have the breakdown by labour hire companies at this stage. We would have to take that on notice.

Senator CARR—Could you do that?

Mr Rizvi—Yes.

Senator CARR—Obviously you will be able to give me a breakdown by industries?

Mr Rizvi—Industries by labour hire companies?

Senator CARR—Obviously, if you can—

Mr Rizvi—We could do both industries and labour hire companies. We could cross-cut both of them—

Senator CARR—Thank you, and could you also do the 40,000 and 28,000—where the shifts have been?

Mr Rizvi—Yes.

Senator CARR—That should not be too hard to produce from your records, should it?

Mr Rizvi—No.

Senator CARR—I turn to the meat industry. Are you aware of a company by the name of Wagstaffs in Cranbourne?

Mr Fox—No, I am not aware of that company.

Senator CARR—They do not have any visa applications with you at the moment?

Mr Fox—They may do, Senator. I do not have any information on that company with me. It is not one that has been brought to our attention.

Senator CARR—It is not in your briefing files?

Mr Fox—Meatworkers, did you say?

Senator CARR—Yes. I am told that they have about 25 Chinese workers on 457 visas. Can you tell me whether that is correct?

Mr Fox—They have 25 nominations approved.

Senator CARR—How many currently have been filled?

Mr Fox—20.

Senator CARR—When were they approved?

Mr Fox—I do not have the date. I can tell you the date that their nomination was approved, but I do not have the visa approval date.

Senator CARR—When was their nomination approved?

Mr Fox—That was 28 November 2005.

Senator CARR—How many of those persons were employed as labourers?

Mr Fox—I do not have that detail.

Senator CARR—They are all supposed to be skilled workers, aren't they?

Mr Rizvi—Under this visa class, where the regional concessions have not been utilised, the worker must be in an occupation in ASCO group 1 through to 4. ASCO goes down to group 9. I think labourers—no skills—

Senator CARR—They would not fit the category, would they?

Mr Rizvi—would be in ASCO group 9.

Senator CARR—If they were deployed in a job other than that specified in their application, that would be a breach of the employer's undertakings, wouldn't it?

Mr Rizvi—If they are working in an unskilled job when they were nominated to operate in a skilled job, that would be a breach of the undertaking, yes.

Senator CARR—It has been put to me that workers in this particular company are housed in accommodation provided by the company, with four or five to a house. They are each charged \$100 per week for that house. Do you have any advice on the accommodation charges under the application?

Mr Fox—I have no advice on that.

Senator CARR—Is the employer required to provide you with advice on what arrangements are entered into for remuneration?

Mr Rizvi—The employer is required to demonstrate to us that they are going to pay the worker, as I said, the minimum salary level. The minimum salary level must be unencumbered. It cannot have in it, for example, a portion for accommodation. It must be straight salary.

Senator CARR—I referred before to the going rate. Under the procedures advice manual for regional certifying bodies—just so that you are clear about where that quote directly came from—that certification process, as you say, has to be unencumbered. So there is no accommodation, no money for health care and no other deductions to be taken from wages.

Mr Rizvi—The wage must meet the minimum salary level without any of those deductions. The employer, of course, can provide other services if they wish, such as accommodation et cetera, but that must not be deducted directly or must not form part of the minimum salary level, as set out in the requirements of the Migration Act.

Senator CARR—So if their wages had those deductions and they were under the award then that would be a breach of the undertaking?

Mr Rizvi—I think we have to look at this in two parts. Where a person gets paid the minimum salary level—that is, around \$42,000 currently—and then enters into an arrangement with that employer for accommodation and that is freely entered into, then that is fine; that is a choice they make. They can just as easily go to another real estate agent and rent a property wherever suits their needs. But the minimum salary must meet the minimum salary requirement, without it having subsets which relate to accommodation.

Senator WEBBER—Picking up on what you were saying before, would the department be concerned if they had no choice about the accommodation, if that were all part of the package, and the accommodation was not up to standard? Is that something that would concern you? Would you investigate it if we brought it to your attention?

Mr Rizvi—That would certainly concern us. If we were aware of that we would certainly investigate it.

Senator WEBBER—Have I got some cases in Western Australia for you, then!

Senator CARR—So in the circumstances where workers, through Wagstaff in Cranbourne, are required to pay \$100 a week each for a \$500 company house, that rent might be regarded as a little excessive for Cranbourne at this time. Would you not agree?

Mr Rizvi—I could not comment on the rental situation in Cranbourne. I cannot comment on the quality of the housing that is there. That would be something that you would need to investigate to see what the actual circumstances were.

Senator CARR—And in circumstances where the company pays between \$10,000 and \$20,000 in fees to a migration agent for each worker to be recruited, would that be in breach of any undertakings?

Mr Rizvi—A payment from the employer to the migration agent?

Senator CARR—Yes.

Mr Rizvi—I suspect we are probably talking about an offshore migration agent, so it is an arrangement made between an Australian employer and an overseas agent. That is not something over which the Migration Act has any controls.

Senator CARR—I see. What if the cost of training and other costs incurred in China were deducted from the workers' wages?

Mr Rizvi—Those costs cannot be deducted from the wages, if that forms part of the minimum salary level calculation.

Senator CARR—Would that be regarded as a breach of the undertakings by the employer?

Mr Rizvi—If the deduction was made in the way you calculate the minimum salary level then yes, that would be a breach.

Senator CARR—By whom are the costs associated with travel to and from Australia met?

Mr Rizvi—They are generally met by the employer. But, once again, they are not part of the minimum salary level calculation.

Senator CARR—Do you think the guidelines are sufficiently clear on that point as to who will meet the costs of travel and training?

Mr Rizvi—That is something that we do seek to impress upon employers. You are right: certainly there are allegations and instances where we have found that the employers have done the wrong thing in that regard.

Senator CARR—In how many instances have you found there to be a case in regard to that matter?

Mr Rizvi—In regard to that specific matter?

Senator CARR—Yes.

Mr Rizvi—I would have to take that on notice. I have overall figures on the numbers of employers where we have found breaches of the undertakings. I also have statistics on the numbers of allegations we are currently investigating.

Senator CARR—How many breaches have you found?

Mr Fox—In 2004-05 there were 19 cases where sanctions were imposed.

Senator CARR—Can we have a list of those?

Mr Fox—I do not have a list of those 19 cases.

Senator CARR—You do not have it with you?

Mr Fox—I do not have it with me.

Mr Rizvi—We have some figures here on sanction activity to date in 2005-06—to 30 April 2006. Thirty-one notices of intention to consider cancellation were issued. Two sponsorships were cancelled. One sponsorship bar was imposed. There were 23 cases where the sponsor was counselled and then scheduled for further monitoring and 15 cases where visa cancellation was commenced.

Senator CARR—Can we have a list of those particular cases?

Mr Rizvi—Are you after the individual employers who were sanctioned?

Senator CARR—Yes, I am.

Mr Rizvi—We will take that on notice, Senator, and provide what we can.

Senator CARR—Thank you very much. In the case of the cancellation of visas, I take it that the workers concerned were sent home.

Mr Rizvi—Yes. The process we follow in those instances is that, where a sponsor has been sanctioned, we give the employee opportunity to find a new sponsor, and we are flexible about how long that might take. However, if the employee is unable, within a reasonable period of time, to find an alternative sponsor then, because of the nature of the temporary visa, they would be required to depart. Once they had departed we would cancel the visa.

Senator CARR—What is regarded as a reasonable time, in your estimation?

Mr Rizvi—We initially provide the employee with 28 days. If the employee considers that they need further time, we will consider that.

Senator CARR—What assistance is provided to workers in this category to find alternative sponsors?

Mr Rizvi—Senator, we do not become involved in the process of helping people find their employment—

Senator CARR—Are they referred to a trade union, for instance, to provide alternative employers?

Mr Rizvi—It would be up to the individual to seek whatever assistance they consider they require.

Senator CARR—So they are on their own, basically.

Mr Rizvi—They do not get assistance from the department of immigration in respect of that matter.

Senator CARR—Who do they get assistance from, in your experience?

Mr Rizvi—They can often seek assistance from a range of areas. Often they have sought assistance from unions. Unions have helped them find additional—

Senator CARR—But you do not provide them with a list of people to turn to?

Mr Rizvi—They certainly can access, for example, job advertisements that are available.

Senator CARR—Yes. They can buy the newspaper and do all those things, but do you provide them with any advice as to where they can go for assistance?

Mr Rizvi—We do not become specifically involved in that process, Senator.

Senator WEBBER—What happens in a case where the person is no longer working there because of an employment dispute and that matter is going through some form of industrial process? Do you take that into account or do the 28 days still apply?

Mr Rizvi—We would certainly take that into account. We certainly would not move to cancel the visa of a 457 visa holder where they were going through a court process such as that.

Senator WEBBER—Often those people would be hoping to get their job back, so they would not necessarily be looking for other work.

Mr Rizvi—That is a choice they make. They may wish to remain with the employer that they are currently sponsored by or they may wish to move to another one.

Senator WEBBER—But if it were a matter before, say, a state industrial relations commission, you would be prepared to allow them to stay until that matter was resolved?

Mr Rizvi—Whilst they remained employed with that employer and they were going through that dispute process, we would not move to cancel their visa.

Senator WEBBER—But it may be that they are not employed and that it has not been a lawful termination, so that is the matter before the industrial relations commission.

Mr Rizvi—That is certainly true. The individual would need some means of supporting themselves whilst that process went on. Usually that means of support would be alternative employment.

Senator WEBBER—Indeed, but if that could be taken care of, would the department allow it to go longer than 28 days? I know of at least three cases in Western Australia in which people have been removed from the country before the matter has got to the commission.

Mr Rizvi—We would be happy to look at those cases.

Senator WEBBER—And I can go back to people who have approached me and say that, for those cases that are still pending, you would be prepared to look at it favourably as long as they have income support?

Mr Rizvi—As long as they can support themselves. I do not think they have access to social security.

Senator Vanstone—I am sure they do not.

Senator WEBBER—I mean a more generic income support than what Australian citizens get.

Senator Vanstone—I do not want to interrupt the flow of this but this is a very useful visa for the business community. The variety of occasions on which it is used is almost galactic, really. You might have people come in for a couple of weeks. There was a case raised at a company called Halliburton. It got front page coverage in the *Advertiser* that there were some Indonesian people here being paid \$20 to \$40 a day to dig ditches. In fact, they were skilled workers. Their salary was quite significant and the \$20 to \$60 or \$80 a day were the bonuses that they could get. My point here is that they were only needed for a couple of weeks and then they went back.

There was another issue raised about some people who came to GMH who might have been on a 456 visa but should have been on a 457. They were a part of a subcontracted arrangement for the installation of a paint workshop or system for Holden but done by the company that they had subcontracted the task to. That was over a period of months. Other

people come longer term—for example, up to four years. Some will seek an extension and some will want to go from there to permanent migration.

The visa has the flexibility to meet the needs of business. If an employer suddenly gets a new contract, they can get new people in to help meet that contract, make the business more profitable and therefore secure Australian jobs because the company remains more profitable. So the last people who want to see this visa misused are us. As a consequence of that, Mr Fox or other people in the department have contacted the unions in various ways and made it very clear that we are very keen to find out if there is anybody misusing it and that we are equally keen to deal with them if they are, because they will be ruining what is a very effective and functional visa, which has operated for a long time, for people who do not misuse it.

We have no intention of allowing that to happen, so if you have examples of people who you believe, for example, have gone back on their undertakings in relation to deductions, we would like to know about it. We have told the union movement that. We are happy to work on these matters, because it is not in the interests of a proper migration system that this visa is misused, as it is equally not in the interests of people who come under the visas to be in any way not given an Aussie fair go.

Senator CARR—Can I come back to the number of sanctions you have issued. How many of those sanctions were issued against employers with multiple breaches?

Mr Rizvi—I would have to take that on notice. I only have the overall statistics. I do not have the statistics on the specific sanctions, on which employer and what were the specific breaches.

Senator CARR—What was the total number of complaints you have had?

Mr Rizvi—At the moment we are investigating 33 separate allegations.

Senator CARR—Are you able to provide me with advice on the nature of those 33?

Mr Fox—In terms of what allegations have been made?

Senator CARR—Yes.

Mr Fox—They vary. That is 33 different cases. They might vary from allegations of underpayment or payments that do not match what was promised when people arrived, or they might relate to deductions being made, as you mentioned earlier. They vary from case to case.

Senator CARR—Okay. Are they made by individuals directly—that is, people who hold 457 visas—or are they made by other parties on their behalf?

Mr Fox—Again, it can be a combination. Some have been direct representations from the visa holder. Others have been from unions representing them. Others have been from agents who have drawn them to our attention.

Senator CARR—These are agents that are actually complaining about employers?

Mr Fox—It has happened.

Senator CARR—That is good. Can I come back to the question of the Cranbourne meatworks, Wagstaffs. I indicated to you before that there was a case where the company was

paying fees. It has been put to me that it may well be that workers directly have been paying fees of between \$10,000 and \$20,000 to migration agents to secure a visa. Are you aware of that?

Mr Fox—That particular company are not the subject of those 33 allegations that we mentioned.

Senator CARR—So this is a new set of matters.

Mr Fox—I am not aware of any allegations against that company.

Senator CARR—I am told that a labour hire company has been the source of the workers at the Cranbourne meatworks and that the labour hire company is receiving payment of \$3,000 to \$5,000 per worker to help them fill in their applications, bring them to Australia, organise any language classes, organise health insurance and deal with DIMA. Is that what you would normally expect and is that the level of fees you would normally expect from an agent to do that?

Mr Rizvi—Where an agent is contracted by an employer and those are the services provided, \$3,000 to \$5,000 per person for the range of services provided there is probably not out of the ballpark.

Senator CARR—So you think that would be a reasonable level of fee?

Mr Rizvi—That is my understanding of what the market—

Senator CARR—Is the official employment contract the sponsorship with the meat industry or is it with an agent?

Mr Rizvi—The act requires that the sponsorship be with the direct employer. In some instances, recruitment companies or labour hire firms do take on the role of the direct employer, and where they do take on that role they also take on the employer obligations. In other instances, the direct employer is the company itself, and in those instances it is the company that takes on the undertakings and obligations.

Senator CARR—It has been put to me that workers employed by Wagstaffs under 457 visas have had deducted from their wages money for accommodation, money for the agents in China, money for training, money for taxation, which you would expect, and an eight per cent ongoing fee to the labour hire company that provided the services to Cranbourne, to the point where workers are receiving approximately \$50 cash per week. Are you aware of such claims?

Mr Rizvi—As we said, Wagstaffs is not one of the ones that we are currently investigating. But now that you have made those allegations we will pursue that.

Senator CARR—Thank you very much. I would appreciate it if those matters could be inquired into. Are there any plans to change the nature of these visas from skilled workers to unskilled workers?

Senator Vanstone—No.

Mr Rizvi—No.

Senator CARR—None whatsoever?

Senator Vanstone—That is right—no.

Senator CARR—I refer to a report in the *Australian* concerning the meat industry in Western Australia, for instance, on 4 April 2005 and a meeting between the meat industry and federal ministers. Minister, were you one of those federal ministers that had a meeting with the meat industry to discuss changing the visa?

Senator Vanstone—I do not have the report that you are referring to in front of me, but I have recently—that is, this year; it was about two months ago, but we can get the date for you—had a meeting with Teys Brothers. There were a number of people, one of whom may have been a meat industry representative as opposed to a Teys person particularly. I had one meeting with them. The suggestion of 457s being used for unskilled people is not on.

Senator CARR—I have a quote from Mr Watson, who is involved with an abattoir in Bunbury in Western Australia. He is the human resources manager for the plant in that town. He says:

If they—

that is, the workers—

don't work out or do the things required of them, you just inform Immigration and they go home.

Mr Rizvi, is that correct?

Mr Rizvi—No, that is not correct. Where those sorts of issues arise, we will investigate and we will give the individual workers every opportunity to find an alternative sponsor.

Senator CARR—But you will not actually advise them on how they can find an alternative sponsor?

Mr Rizvi—That is not our role.

Senator CARR—Whose role is it then?

Mr Rizvi—Certainly they have access to the same range of job market opportunities—newspapers, internet et cetera—that are available to other people who might be in Australia on a temporary visa.

Senator WEBBER—In doing that, is the department aware of how many people in regional Western Australia are unemployed meatworkers? There is a considerable number.

Mr Rizvi—I am not aware of the details of the specific number of meatworkers unemployed in Western Australia. The question that would arise in that context is, of course, about the skill levels of the individual meatworkers and whether they equate to the relevant needs of the meat industry in Western Australia. I cannot comment on whether those would specifically match up or not.

Senator WEBBER—Is being a meat packer a skilled job?

Mr Rizvi—My understanding is that a meat packer is not in ASCO groups 1 to 4. A meat packer is in ASCO group 9, I am advised.

Senator CARR—So they are labourers?

Mr Rizvi—Yes.

Senator CARR—It is the same problem. Who explains to the worker being threatened with deportation that they have these rights—that they have alternative sources of advice and that they do not have to accept what the boss says, that if they do not do what they are told they will go home?

Mr Rizvi—We undertake monitoring of the 457 scheme, including initially through seeking information from employers. On a targeted basis, we site visit approximately 25 per cent of the employers, once again based on where we believe the risks are. As part of that, we will, where there is an indication that there is a need to, interview the workers involved. That provides them with an opportunity to raise those issues with us. The individual workers are also alerted to the obligations that the employers have entered into on their behalf and, if anything goes wrong with respect to those obligations, they can always report that to the Department of Immigration and Multicultural Affairs.

Senator CARR—I see. Let me just get this clear. You provide the workers with written advice of what the employers have entered into?

Mr Rizvi—Yes, as part of the approval letter that is provided to them.

Senator CARR—In which language?

Mr Rizvi—It is in English.

Senator CARR—So, for instance, the workers from Ghana at the Bunbury plant, whom I referred to before, had advice provided to them in English, did they?

Mr Rizvi—The applications would have been lodged in English. The advice would have been provided in English.

Senator CARR—When you speak to them and they have the opportunity to complain about the way they are treated, in which language are those meetings conducted?

Mr Fox—They are conducted in English, but we would make available interpreter services if needed.

Senator CARR—How many people familiar with the relevant language for the Ghanaian workers would you be able to draw upon to do that task?

Mr Rizvi—I would have to look at how many workers from Ghana have entered under the subclass 457 visa. Ghana is not a prominent source country for 457 visas. But within the translator and interpreter service, we do have available interpreters from a very wide range of language backgrounds. I am sure Ghana would be covered in that range that is available.

Senator CARR—Were the Brazilians at Teys Brothers provided with advice in Portuguese?

Mr Rizvi—They were provided with advice in English but I understand that Teys Brothers' Brazilian workers have also been provided by Teys Brothers with English language courses to assist them to improve their English language ability and work well with the rest of the Teys Brothers work force.

Senator CARR—How many prosecutions have you launched for breaches of employer undertakings?

Mr Rizvi—Where allegations are made that an individual employer has breached undertakings or breached other Australian laws, we will work with the relevant agency in Australia to pursue that and investigate that matter. Where, for example, a worker has been underpaid, generally the department of employment or the relevant state industrial relations agency will pursue that matter to ensure that the workers are recompensed for any shortfall that took place. Where an employer disputes that particular matter, that can then proceed to court, and there are some cases which are currently in the courts in that way. Where a breach such as that is confirmed, and the advice we receive from the agency is that the breach has been confirmed, we will then issue that agency with a notice of intention to impose a sanction. Depending on the response we get from the agency, we will then proceed to either apply the sanction or not.

Senator CARR—I will ask again: how many prosecutions have you launched?

Mr Rizvi—It is not a matter of prosecution, Senator, because whenever we have applied the sanctions we have not been taken to court in respect of the sanctions.

Senator CARR—Isn't it the case, as we found, for instance, in the early days of the rorts in the student visa arena, that you actually deport the evidence? Aren't you sending people home, so there is no evidence to be dealt with in a court of law?

Mr Rizvi—No, Senator. With the vast bulk of 457s where these sorts of issues arise, they are given every opportunity to find an alternative employer, and many of them do find alternative employment.

Senator CARR—How many have found it? Are you able to tell me that?

Mr Rizvi—How many find alternative—

Senator CARR—How many have found alternative sponsors?

Mr Rizvi—Within the whole 457 cohort, how many find alternative sponsors after they have arrived with one sponsor and then move to another sponsor?

Senator CARR—You must be able to tell me how many have switched sponsors. Of the 40,000, for instance, how many have switched sponsors?

Mr Rizvi—I can advise that between 15 and 20 per cent go on to become permanent residents and obtain a permanent visa. With respect to the percentage who change sponsorship within a year, I would have to take on notice what percentage that is.

Senator CARR—Thank you. You say you are going to launch compliance visits for 25 per cent of the applications—is that right?

Mr Rizvi—Twenty-five per cent of the sponsors are site visited over a 12- to 18-month period.

Senator CARR—That means that this year, given that there are 40,000 principals, you will be visiting plants that employ 10,000 people?

Mr Rizvi—No, we would visit worksites, and the number of employers involved in this visa is around 8,000, so it would be 25 per cent of the 8,000 employers which would be visited.

Senator CARR—But we can't guarantee that they will actually be employing 10,000 people? They could be small employers?

Mr Rizvi—They could be small employers; they could be large employers—that is right.

Senator CARR—How many people do you have engaged in compliance?

Mr Rizvi—In the monitoring function?

Senator CARR—Yes.

Mr Rizvi—I would have to take on notice the specific number we have employed in the business monitoring function.

Senator CARR—If you have an increase from 28,000 to 40,000 presumably you would double the number of compliance officers?

Mr Rizvi—We will be increasing the resources available to business employer monitoring, yes.

Senator CARR—By how much?

Mr Rizvi—I would have to take on notice precisely where that is up to.

Senator CARR—But you surely must know the extraordinary expansion of the program, given its size.

Mr Rizvi—We are going through the internal budget process for 2006-07 and we will be looking at that in some detail in that context.

Senator CARR—What concerns me when I read the guidelines is that the department may take action where there have been breaches of undertakings to cancel its approval as a sponsor. It may take action for a specific period or specific areas. It may cancel visas and take any failure to comply with these undertakings into account with regard to future applications. Given that the emphasis is on the 'may', under what circumstances will you actually take action?

Mr Rizvi—We will take action if there is evidence to prove a breach. Whilst we receive many allegations, obtaining the evidence to prove a breach is another matter.

Senator CARR—Especially if you have deported the evidence.

Mr Rizvi—As I said, we do not deport many of these people. We give them an opportunity to find an alternative employer.

Senator CARR—But you do not tell them how to.

Senator WEBBER—And, if they do not speak English, it is hard.

Mr Rizvi—That is right, but we do not deport them.

Senator LUDWIG—Would the same conditions apply to the subsequent employer?

Mr Rizvi—That is correct. Any new employer would have to take on the obligations of being a subclass 457 sponsor.

Senator LUDWIG—Of course, if they apply for permanent residency and it is granted, the obligation ceases at the point.

Mr Rizvi—If they are granted permanent residence, they become Australians and then they acquire the same rights and responsibilities that you and I have.

Senator CARR—Do you give the employer warning that you are coming for a site visit?

Mr Fox—Usually, yes, but sometimes they are unannounced visits.

Senator CARR—How many times have they been unannounced?

Mr Fox—We do not have the data on that.

Senator CARR—In the case of the meatworkers that I have referred to, it was put to me that there have been visits but there was plenty of warning given and that on the day of the inspection workers who were not trained in the use of knives were given knives so that they could appear to be doing skilled work when your officers were present. Would that be possible?

Mr Rizvi—It is possible in the sense that DIMA officers will not be experts in the skill levels of each individual occupation. Where we have concerns that the individuals are not skilled or may not be doing skilled work, we will seek assistance from relevant agencies or an appropriate skills assessing body.

Senator CARR—How many officers do you have who do this enforcement work?

Mr Rizvi—We took that on notice earlier.

Senator CARR—No, you took on notice how many you were going to employ. You must know how many you have now.

Mr Rizvi—I do not have that specific number with me. If I can take that on notice, we can provide that.

Senator CARR—Do you refer any of the complaints to the Office of Workplace Services?

Mr Rizvi—Yes, we do.

Senator CARR—How many have you referred to OWS?

Mr Fox—I do not have the exact number. I would have to take that on notice.

Mr Rizvi—We would be cutting over to the new organisation, so some of the referrals we made would have been to the Department of Employment and Workplace Relations and others would have been referred to other agencies—for example, state industrial relations organisations. Sometimes, we refer to the Australian Taxation Office. We also sometimes refer to Worksafe Australia. It depends on the nature of the issues that have arisen.

Senator CARR—If you could provide me with advice on how many referrals you have made and what action has been taken on those, I would appreciate it. I am interested to know, in your assessment of applicants, what you mean by ‘good record’, which I understand is within the guidelines at the moment. We have already referred to the concept of a good record as trainers in a particular case. In any industry, are there any specific formulas laid down as to what the employers’ requirements are for training?

Mr Rizvi—We have been in discussion with the department of employment for some time about the record of training issue, and we have discussed various formulas that might be applied. The difficulty with each of the formulas that we have discussed so far is that they are

dependent on such a wide range of factors that, using formulas in that strict sort of way, it becomes very difficult, especially given the wide range of industries that use this visa, the wide range of relative sizes of the companies involved and the wide range of regions in which they operate. But we do continue to talk to the department of employment to get better guidance on how to assess the employment requirement.

Senator CARR—So at this time you do not have any definition of what is a good employer?

Mr Rizvi—We have a definition of what is a good training record. That is something that we have been working on with the department of employment. They have suggested a number of possible formulae in this area, but using those formulae in a hard and fast way is very difficult, given the diverse nature of employers involved in using the 457 visa.

Senator CARR—How long has this program been operating?

Mr Rizvi—The subclass 457 visa was established in around 1996. Prior to that it operated under a different guise.

Senator CARR—In a 10-year period you have not been able to develop a definition?

Mr Rizvi—As I said, it is something on which we have continued to have dialogue with the department of employment, but we have not been able to agree on the most appropriate and usable formula in this area. As a result, we have tended to use more general guidelines rather than a very specific formula.

Senator CARR—In 10 years you have not been able to reach agreement.

Mr Rizvi—I think it highlights the difficulty of the issue. It has not been because of a lack of a desire but rather the complexity of what is a good training record.

Senator CARR—When an employer is deemed to have a good training record, how is that verified?

Mr Rizvi—We look at a range of factors, including expenditure on training, numbers of apprentices, numbers of trainees, interns—those sorts of issues.

Senator CARR—How many employers have failed to meet that test?

Mr Rizvi—Out of the approximately 8,000 applications for employer sponsorship that we received in 2004-05, some 650 were refused a sponsorship. Around 75 per cent of those were refused on the grounds that their training record was not adequate.

Senator CARR—Who determined whether or not their training record was adequate?

Mr Rizvi—That is determined by the decision maker in the department of immigration—sometimes with advice from the Department of Employment and Workplace Relations.

Senator CARR—Are you able to give me a list of the cases where refusals were made?

Mr Rizvi—Out of the 654?

Senator CARR—Yes.

Mr Rizvi—We might have to take that one on notice.

Senator CARR—If you cannot provide the individual companies, could you provide the industries of the 654 and the grounds on which they were refused.

Mr Rizvi—They would have been refused because they did not have an adequate commitment to training.

Senator CARR—I understand that, but I would like to know specifically the basis on which you made the decision that they were not adequate.

Mr Rizvi—We could give some examples of that sort without identifying individual employers.

Senator CARR—Thank you. With regard to the assessment of qualifications and skills under the 457 visa program, how are assessments made?

Mr Rizvi—We will receive documents from the employer relating to the individual's employment history, and we will receive documents relating to their educational background. We will assess that in terms of relative risk. For example, if we receive documentation relating to a nurse working with, say, a hospital in New South Wales, we would be unlikely to investigate that any further. We would accept the documents essentially at face value.

Where the company involved might be in a higher risk area—say the construction industry—we would pursue that by referring the matter to our overseas post to investigate the veracity of the claims made. In other instances, we might refer the matter to a skills assessing body to get advice from them as to whether the person meets the skill level required for that occupation.

Senator CARR—Are the assessment requirements equivalent to those applying under the general skilled migration program?

Mr Rizvi—It does not operate in exactly the same way. Within this program, there is a greater level of flexibility applied in respect of persons who may not have formal educational qualifications but who may have experience. In the general skilled migration program, most of the skills assessing bodies tend to focus on educational qualifications. That may be because the structure of occupations in this category is somewhat different to the structure of occupations in the general skilled migration area.

Senator CARR—When you come to assessing an employer's training record the educational qualifications may be a criterion?

Mr Rizvi—I am sorry; the educational qualifications relate to the applicant.

Senator CARR—I am talking about the quality of the training provided. Surely DIMA would have expert staff available who can assess that.

Mr Rizvi—The training would have been provided to the individual offshore before they obtained their visa.

Senator CARR—No. The requirement under this program is that the employer has a good training record.

Mr Rizvi—That is correct.

Senator CARR—You will have officers that can assess that, won't you?

Mr Rizvi—We have officers who do assess that. But, as I said, it is a complex issue and often we will end up referring the matter—

Senator CARR—But are they qualified—

Senator Vanstone—Chair, Mr Rizvi was in the middle of his answer.

CHAIR—He is trying to answer, I understand that.

Senator Vanstone—It has happened a couple of times. I do understand the frustrations, Senator Carr. Sometimes you are asking a question and you do not think the answerer has got the point that you are making and you want to cut them off. But it is not fair. Officers are entitled to give their answers. Then, if you are not satisfied, ask the question again, rephrase it or point to the particular issue you want addressed.

CHAIR—Mr Rizvi, could you complete that answer, and then we will go back to a question from Senator Carr.

Mr Rizvi—Our officers who work in the business employment area have a reasonable level of experience in assessing training requirement but they are not experts in training requirements for every occupation in Australia. Where they have difficulties in assessing the training record of an employer, we will refer that for advice to the Department of Employment and Workplace Relations. As I said, in other instances where there are further doubts, we will refer it to an expert skills-assessing body for definitive advice.

Senator CARR—Is that expert advice Trades Recognition Australia?

Mr Rizvi—It could be Trades Recognition Australia. It could be a range of other skills-assessing bodies.

Senator CARR—Such as?

Mr Rizvi—It could be, for example, Engineering Australia, the engineering institute of Australia in respect of engineers. It might be the National Institute of Accountants in respect of accountants. It might be the Australian nursing group in respect of nurses.

Senator CARR—With regard to the meat industry is it MINTRAC?

Mr Rizvi—It could be MINTRAC.

Senator CARR—Have you referred to—

Mr Rizvi—Yes, we have referred some matters to MINTRAC for advice.

Senator CARR—Can you advise me when?

Mr Rizvi—It was relatively recently that we referred matters to MINTRAC.

Senator CARR—What were the circumstances?

Mr Rizvi—The circumstances related to some meatworkers in South Australia where allegations had been made that the meatworkers may not have been skilled.

Senator CARR—So you asked MINTRAC to verify the employer's claims that he was providing training

Mr Rizvi—We asked MINTRAC to verify that the individuals concerned had the skills that it was alleged they had.

Senator CARR—What did MINTRAC say?

Mr Fox—We have received a report from MINTRAC which we have sent to the company. We have asked them to comment on the findings MINTRAC made. I am not sure that we should go into detail on that.

Senator CARR—Why is that?

Mr Fox—Because we have asked the company to comment on it. They have not yet come back to us with any information. They will get back to us by 26 May.

Senator CARR—Mr Fox, why is this a confidential report? MINTRAC is a tripartite body. It is not exactly a secret body.

Mr Fox—No, it is not. But, if claims are being made, we consider that we should give the company an opportunity to respond to them before we air them in the public arena.

Senator CARR—I see. So when is the company required to respond by?

Mr Fox—By 26 May.

Senator CARR—So, after that date, you will not mind providing that report to the committee.

Mr Fox—We will take it on notice.

Senator CARR—It may not be a negative report. I do not know what it says. I am not going to presume that it is negative. Are you presuming it is negative?

Mr Fox—No. I am just saying that I do not want to comment on the findings until the company has had an opportunity to comment on them.

Senator CARR—Will that report be made available to the committee after 26 May?

Mr Fox—We will take that on notice.

Senator CARR—In regard to the TRA, that is in DEWR, isn't it?

Mr Fox—Yes.

Senator CARR—Is it DEWR that determines the assessing criteria for skills and qualifications for 457?

Mr Rizvi—In respect of the trades over which they have expertise, that is correct.

Senator CARR—Is that the organisation that assesses applicants for the general skilled migration program?

Mr Rizvi—For relevant occupations, yes.

Senator CARR—Are they authorised to assess workers for occupations for all of 457?

Mr Rizvi—The process for a 457 operates somewhat differently to general skilled migration, which is, of course, a permanent residence visa. In respect of the 457, a key issue is the question of speed. More often than not, the employers are seeking to fill very urgently positions which are critical to their business. The 457 visa is a temporary visa, hence it does not have the same criteria that apply to permanent residents. Where the individual has entered

Australia and then seeks to apply for permanent residence, a different set of criteria will have to be met.

Senator CARR—Is it more onerous or robust?

Mr Rizvi—It is more streamlined.

Senator CARR—I am sorry—more streamlined?

Mr Rizvi—Yes—457 is more streamlined.

Senator CARR—So you can cut a few corners—is that how you do it?

Mr Rizvi—It is about balancing the needs of employers with the need to ensure the integrity of the program.

Senator CARR—That is what I am asking about. To what extent have you cut corners and actually endangered the integrity of the program?

Mr Rizvi—We believe it is a matter of getting the balance right. In a context where skilled unemployment in Australia is less than two per cent, there are widespread skills shortages and capacity constraints are very significant, it is important that employers can access the skilled workers they need without having to undergo significant costs and time delays.

Senator CARR—One of the key issues in this debate, isn't it, is whether there is a genuine skill shortage in some of these areas or whether it is a fabricated shortage whereby employers are able to bring people in at half the rates of pay and then put people in an indentured labour situation where they are threatened with deportation if they complain. That is exactly the core of the issue here.

Mr Rizvi—That is the issue that is being raised. I would argue that a number of those aspects are allegations which in fact do not stand up to the evidence. For example, the individuals are not indentured labour. They have the capacity to move from one employer to another. They have the capacity to apply for permanent residence. They are in a situation quite distinct from the guest worker situations of North America and Europe.

Senator CARR—We are just trying to establish how they get to know about these things. You have said that information is provided to them in English which explains that they can transfer to another employer.

Mr Rizvi—The letter of approval provides them with the obligations of the employer and the undertakings the employer has made. It ensures that they have access to the contract of employment that they have entered into.

Senator CARR—Could you provide the committee with a copy of the letter that explains to these guest workers their rights?

Mr Rizvi—We can certainly provide a copy of the approval letter as well as a copy of the attachments that are provided with it.

Senator CARR—Can I have a copy of the letter that actually explains the rights that these workers have in Australia to transfer to another employer? Would that be possible?

Mr Rizvi—That information is publicly available.

Senator CARR—No—

Mr Rizvi—It is available through our forms and through the website. Indeed, given the volume of employees under the 457 visa who do transfer firstly to permanent residence—it is between 15 per cent and 20 per cent—and, on top of that, the percentage that transfers from one employer to another, the evidence would show that there is a high level of awareness of that capacity.

Senator CARR—All I would like to have is a copy of the letter provided to the workers concerned by your department which explains this to them.

Mr Rizvi—We do not explicitly provide in that letter that the individual can change from one employer to another. That information is available on the application forms and on the website.

Senator CARR—I see. So a worker from China can go to the website and find out about these rights, can they? Is that what you are saying?

Mr Rizvi—And from our forms, yes.

Senator CARR—But you do not provide them with any direct correspondence to that effect?

Mr Rizvi—We do not advise them that they have the capacity explicitly to change from one employer to another. But, as I said, many of them do. Indeed, between 15 per cent and 20 per cent of them go on to apply for and obtain permanent residence in Australia.

Senator CARR—Who does the assessment process for workers under the 457 applications?

Mr Rizvi—The application is received by one of our state offices and it would be assessed by department of immigration officers in Australia.

Senator CARR—Are they qualified to know whether or not the claims made on those applications are accurate?

Mr Rizvi—They are qualified to identify—and they are assisted through the system to identify—on a risk basis, cases which require further examination and investigation. They will do that in a number of ways, including referring cases to our overseas post for further examination and investigation. They may well also refer the matter to the Department of Employment and Workplace Relations, or they may refer it to a skills-assessing body.

Senator CARR—Thank you. Mr Rizvi, what proof of qualifications or experience is actually attached to the application form, given that you are saying it has to be a streamlined and speedy process?

Mr Rizvi—We seek documentary evidence in respect of employment experience as well as educational background in order to assess the skill levels of the applicant or to begin that process of assessing their skill levels.

Senator CARR—You said you seek proof. What is the nature of the proof you seek?

Mr Rizvi—For example, if a person says that they are an engineer, we might seek a copy of their academic transcript.

Senator CARR—Would you seek a statement of results for a meatworker?

Mr Rizvi—We are often provided with a document indicating whether they meet Australian standards in respect of meatworkers, yes.

Senator CARR—So what is the nature of the proof that is required—that they meet Australian standards?

Mr Rizvi—I think it is a certificate III.

Senator CARR—A certificate III, which you can get when you are about 15 at high school here?

Mr Rizvi—That is the requirement for a slaughterperson, which is an ASCO 4 occupation in Australia.

Senator CARR—For a slaughterman?

Mr Rizvi—A slaughterperson.

Senator CARR—Okay. For a slaughterperson, that is the minimum requirement you are asking for now, an AQF III?

Mr Rizvi—That is the minimum requirement according to the industry standards. We do not determine the industry standards.

Senator CARR—But that is it, AQF III?

Mr Rizvi—That is correct.

Senator CARR—With an AQF III, you can claim that you are a skilled worker and get a 457 visa?

Mr Rizvi—That is correct.

Senator CARR—And MINTRAC signed off on that?

Mr Rizvi—That is the Australian standard.

Senator CARR—MINTRAC signed off on that?

Mr Rizvi—MINTRAC are examining the skill levels of the individuals concerned. As we said, we are going through a process of natural justice with the employer in respect of the MINTRAC report.

Senator CARR—So the workers who have undertaken training in China through an Australian registered training organisation—who verifies the accuracy of their records?

Mr Rizvi—We will receive the certificate from the individual employer. The employer may have obtained it from an Australian registered training organisation. Where we have concerns about that evidence, as I said, we will refer the matter to our overseas post to check the veracity of the evidence provided. Where we still have concerns, we may well ask a skills-assessing body to check the evidence.

Senator CARR—Okay. The South West TAFE in Warrnambool in Victoria is reported to have provided a number of programs for Chinese workers seeking 457 visas to work in meatworks in South Australia and Victoria. Is that the same registered training organisation that provided the paperwork for workers in the South Australian plants that you have investigated?

Mr Fox—I do not know the answer to that. I am aware that the Warrnambool TAFE are doing that work, but I am not aware if they also provided certification to those workers.

Senator CARR—Can you advise the committee of what assessments and training would be required for Warrnambool TAFE to meet the criteria to undertake that work?

Mr Rizvi—Warrnambool TAFE is the registered training organisation. What they are providing to us, on behalf of the employer, is evidence that they have assessed the workers and they have met those requirements. If we have concerns about what Warrnambool TAFE may or may not have done—and I am not necessarily saying that we do—we would refer that matter to our overseas post to investigate the backgrounds of the workers involved to verify what we are being told on the certificate.

Senator CARR—If Warrnambool TAFE says that a certificate II is all that is required for a slaughterman, you would accept that as well?

Mr Rizvi—No, because the industry standard, as stipulated in ASCO, is certificate III.

Senator CARR—So if they have done that then there would be a breach of the arrangements—the undertakings?

Mr Rizvi—If they gave us a document which said the person only met certificate II then that does not meet the industry requirement.

Proceedings suspended from 1.00 pm to 2.02 pm

CHAIR—The committee will recommence. We were discussing matters relating to visa class 457, so we will continue with that and questions from Senator Carr. I am aware that there are other senators who also want to pursue those issues.

Senator CARR—Mr Rizvi, am I correct in understanding that the only classification of worker in the meat industry who meets the skill requirements of this program is a slaughterman? A slaughterperson, I should say.

Senator WEBBER—Slaughterperson is much better.

Senator CARR—Are there a lot of women slaughterpersons in the meat industry?

Mr Rizvi—I am not aware of the gender break-up of the meat industry.

Senator CARR—There are a lot women in the meat industry, but I wonder how many are slaughterpersons.

CHAIR—That is probably not a question for the department at this stage.

Senator CARR—I wonder whether or not this sort of political language that is used is appropriate. They are known as slaughtermen, aren't they?

Mr Rizvi—I think the ASCO dictionary refers to them as slaughterpersons.

Senator CARR—The ASCO dictionary is a constant source of reference for me on that matter. Are they the only classification in the meat industry?

Mr Rizvi—I do not know whether there are others.

Senator CARR—Boners, for instance?

Mr Rizvi—I think boners are a lower classification.

Senator CARR—Are they? Slicers?

Mr Rizvi—I am told that boners and slicers are ASCO 9, butchers are ASCO 4, slaughterpersons are ASCO 4, smallgoods makers are ASCO 4 and meat tradesperson supervisors are also ASCO 4.

Senator CARR—So all the persons coming into the meat industry under 457 meet one of those four classifications, do they?

Mr Rizvi—The vast bulk would be in those classifications. There is a regional concession available where an employer in regional Australia is able to demonstrate to a regional certifying body—for example, in South Australia that is the South Australian government—that the employer is unable to find persons suitably skilled at ASCO levels 5, 6 and 7. Then they can bring in workers at those levels as long as they have that certification from the relevant regional certifying body.

Senator CARR—So, under those circumstances, would an AQF II be satisfactory?

Mr Rizvi—I would have to check the specific qualification requirements of meat industry workers at ASCO levels 5, 6 and 7. I am advised that there may not be any in those classifications.

Senator CARR—There should not be. Is that qualification assessed at the time at which the visa holder enters Australia?

Mr Rizvi—No, the qualification can be assessed at two points. It can be assessed at the time the visa application is lodged. So we will receive the paperwork in respect of the individual and we can then make a decision as to what further investigations we would undertake to test the veracity of the claims made in that documentation.

Senator CARR—Has there been an occasion in the meat industry where you have required further verification?

Mr Rizvi—We do refer them to our overseas posts.

Senator CARR—How many times have you done that?

Mr Rizvi—We would have to take that on notice specifically as to how many times that has occurred.

Senator CARR—Can you think of a circumstance where an AQF II would be a minimum requirement for entry under this visa class?

Mr Fox—No, I am not aware of any that would meet that criterion because that is what the trade asked.

Senator CARR—I am just trying to get the logic of the argument. Does the exemption reduce the requirement in regard to AQF III?

Mr Rizvi—The exemption allows the employer to bring in a person at ASCO levels 5, 6 or 7. I understand in the meat industry there are no occupations specific to the meat industry at those levels, but it is possible for someone to bring them in at ASCO 5, 6 or 7. There is not necessarily an equivalent between ASCO levels and cert levels. The two do not necessarily

match up. There is not necessarily a case that if you are an ASCO 7 that that requires a cert II course.

Senator CARR—Obviously, we will pursue that when we have your answers back. I have received information that some workers are being classified by South West TAFE at AQF II for employment in Australian abattoirs under this visa class, but you are telling me that is not possible.

Mr Rizvi—We will have to take that on notice. I am not aware of any such cases.

Senator CARR—That is the point. I would like you to clarify the record because either I have been misinformed or there has been a slip somewhere in the administration.

Mr Fox—I was going to ask a reverse question, if I could. That probably falls under the category that Mr Rizvi mentioned earlier of something we would like to look into and make sure that is the case. We would be quite happy to investigate those matters that have come to your attention.

Senator CARR—Yes, particularly if the company concerned is making a lot of money out of it. The 457 applicants would meet DIMA criteria at the time at which they enter Australia. Is there no way that they can be given an opportunity to upgrade their skills after they have entered Australia and still be in compliance with the visa program?

Mr Rizvi—At the time they apply for their visa, we would assess their skill level. At that point, on the basis of the evidence available to us, we must be satisfied that they meet that skill level.

Senator CARR—The situation in South Australia, as I understand it, is that it is now claimed that workers involved in this program employed by meatworks in South Australia have been retrained and now meet the criteria.

Mr Rizvi—Under a subclass 457 visa, a person has the right to undertake further study and training. There is nothing preventing the person entering into further study and training after arrival on a 457 visa.

Senator CARR—That is not my point. I would hope that they would undertake that. That is not the question; particularly if you are suggesting to me that they are all told that they have this opportunity to stay on. My question goes to the issue of whether your administrative systems are robust enough to pick up whether people are qualified to be part of that program at the point of entry.

Mr Rizvi—Our systems seek to verify the person's skill level to the best of our ability prior to the grant of the visa. That is not to say there may be instances we may have missed. That can happen. To the extent we are able to test those matters, we seek to do so.

Senator CARR—I want to get it clearly on the record that it is not good enough for an employer to say, five months after the persons have been employed in the meatworks, that they now meet the requirements. They are to meet the requirements at the time of entry.

Mr Rizvi—They should meet the requirements.

Senator CARR—They cannot get into the country without a visa.

Mr Rizvi—That is right. They should not have got a visa if they did not have the relevant skill level at the time the visa was granted.

Senator CARR—From your investigations into the complaints in South Australia, are you satisfied that everyone who came in on a 457 visa was eligible to enter on that program?

Mr Rizvi—That is precisely what we have sought MINTRAC's assistance to test. There have been allegations that the individuals were not skilled. We have sought MINTRAC's assistance to test that allegation and we have a report from MINTRAC.

Senator CARR—It was put to me, Mr Rizvi, that the problem with MINTRAC's report is that it tells you that they are qualified now. It does not tell you whether or not they were qualified at the time of entry.

Mr Rizvi—MINTRAC can only make an assessment at the time they make their assessment.

Senator CARR—It is a pointless exercise, though, is it not? If you are trying to validate a program five months after the entry, surely your systems would have demonstrated five months ago that these persons were or were not qualified?

Mr Rizvi—We would have assessed their qualifications at that stage and the decision maker would have been satisfied to the best of their abilities that the persons did meet the industry standard.

Senator CARR—Do you recall the incidents we had in regard to the student visas from the Beijing post some years ago?

Mr Rizvi—I recall them very well.

Senator CARR—What was the rate of fraud you identified at that time?

Mr Rizvi—There was a very high rate of fraud out of the Beijing post at that time.

Senator CARR—Can you recall what it was? Was it 50 per cent?

Mr Rizvi—It was a high rate.

Senator CARR—It was a very high rate. Are you satisfied that that is not the case now?

Mr Rizvi—No, we are not satisfied that that is not the case now. We do, for that very reason, refer the matters to our Beijing post and it seeks to test those matters to the best of its ability.

Senator CARR—So it was demonstrated in regard to the student visa applications that there was an extremely high rate of fraud in the paperwork through the Beijing post. How do we know that the same rate of fraud does not apply to the 457 visa applications from the same post?

Mr Rizvi—We acknowledge the risks are certainly there. It is for that reason that the post makes its best endeavours to test the evidence.

Senator CARR—On how many occasions have you found there to be fraud in regard to applications for 457 visas from the Beijing post?

Mr Rizvi—I would have to take that on notice, but that is something that the Beijing post looks at very closely.

Senator CARR—So you would be able to identify the number of rejects that you have had on the basis of fraud?

Mr Rizvi—We would be able to identify the number of instances where we have been able to prove fraud.

Senator CARR—Or suspicion of fraud?

Mr Rizvi—Suspicion of fraud is a different matter to proving fraud.

Senator CARR—Yes, it is, and we know how difficult it is to prove fraud.

Mr Rizvi—Exactly. At the end of the day, our decisions must be based on evidence, not on suspicion.

Senator CARR—How many rejections have there been from the Beijing post?

Mr Rizvi—I do not have statistics on the rejection rate out of the Beijing post.

Mr Fox—All of the 457 visas are now processed onshore.

Senator CARR—When was the change in that regard?

Mr Rizvi—Senator, if I could explain, the applications are lodged here but the verification work is done by the Beijing post. The cases are referred from here to the Beijing post to do the verification work.

Senator CARR—So the verification is on the documents?

Mr Rizvi—The verification is in relation to the document as to whether it is genuine and also in respect of the claims that might be made in terms of experience. Our Beijing post might, for example, contact the relevant employer to test the veracity of the experience claims.

Senator CARR—Indeed. Is the same process applied in Shanghai?

Mr Rizvi—That is a global issue. The onshore officers can refer to whichever post is relevant.

Senator CARR—In recent years, what is the rate of fraud that you have discovered at the Shanghai post in regard to student visas?

Mr Rizvi—I would have to take that on notice, but I can say that the rate of fraud we are now detecting in the student visa caseload is significantly down on what we were detecting earlier.

Senator CARR—That is partly because of the work of this committee, I would suggest to you, Mr Rizvi. That is the nature of the parliamentary process. How many cases have you found in recent times in Shanghai?

Mr Rizvi—I do not have those figures with me. We would have to take that on notice.

Senator CARR—Is the same pattern likely to be exhibited? Is it a reasonable conclusion for me to draw that if there is document fraud occurring in one class of visa, namely the student visa, then there is the potential for the same rate to apply in the 457 visa applications?

Mr Rizvi—I think the potential is there. Whether it has actually taken place or not is a different matter.

Senator CARR—Have you heard of an Australian company known as World Workers Pty Ltd?

Mr Fox—Yes, I have heard of that company.

Senator CARR—Is it a labour hire company operating in China?

Mr Fox—I am not sure where it operates. I know it is one of the companies that have provided workers for the 457 visa regime.

Senator CARR—Does it have a current director and company secretary known as Mr Anh Oan?

Mr Fox—I do not know that.

Senator CARR—Was the company established in 2004?

Mr Fox—I cannot answer that question.

Senator CARR—You can take all this on notice, I presume. Yes. Has it been involved in the recruitment of meatworkers under 457?

Mr Fox—Yes.

Senator CARR—Can you tell me how many?

Mr Fox—How many companies it has been associated with?

Senator CARR—How many applications it has been involved with.

Mr Fox—I would need to take that on notice.

Senator CARR—How many companies has it been contracted to?

Mr Fox—Similarly.

Senator CARR—Thank you. Are you aware of an import-export company that deals largely with China known as Austlinx International Pty Ltd?

Mr Fox—No, I am not familiar with that.

Senator CARR—I ask you to confirm for me that the current secretary of that company is Mr Rodney Cartwright of Colac, Victoria. Is the company engaged in the import and export of rubber products, handbags, luggage, computer bags, bedding, clothing and various other products, as well as operating in education and recruitment?

Mr Fox—I do not know that.

Senator CARR—Can you confirm whether either of these companies have contracted or have business arrangements with the South West TAFE regarding recruitment and skill assessment of meatworkers in China?

Mr Fox—I am not sure that we will have the answers to that question.

Senator CARR—Have you undertaken any probity or other checks on labour hire companies involved in overseas recruitment associated with 457 visas?

Mr Rizvi—Where a labour hire company is putting itself forward as a sponsor under subclass 457, we are required to check whether that particular company is a lawfully operating business in Australia. So we would do the ASIC checks and those sorts of things. Where the labour hire company is operating on behalf of an employer and is not putting itself forward as a sponsor, and the labour hire company is an offshore labour hire company—that is, a labour hire company not operating out of Australia—then we would not necessarily have the knowledge of the relationship between the employer and the overseas labour hire company.

Senator CARR—Have you had opportunities to inquire into any labour hire companies? There was a great list of complaints that you have indicated—

Mr Rizvi—We do get complaints in respect of labour hire companies and we do examine those.

Senator CARR—Are there any current inquiries being undertaken with regard to labour hire companies?

Mr Fox—The allegations that we are inquiring into relate to the employer in Australia. I think it is right that each of those relates to an end user rather than the labour hire company that provided them with the labour.

Senator CARR—Part of the difficulty may well be that your arrangement is with the end user, so to speak—I think that was the term you just used.

Mr Fox—Yes, I did.

Senator CARR—I want to table here a contract involving World Workers. This is an Australian registered company, an ASIC registered company, the directors of which I have referred to, which purports to carry on business with companies involved in the meat industry. Do you have any sponsorship arrangements between World Workers and anyone else? Are they on your list of sponsors?

Mr Rizvi—We will take that on notice and check the database again, but at this stage we are not aware of them being a sponsor.

Senator CARR—Your preliminary advice would be that they are not?

Mr Rizvi—That would be our understanding, but we would want to check our database.

Senator CARR—The contract says they operate as an employment agent and they provide workers under 457. According to the contract, they assist persons with visa applications, provide an introductory service into Australia and pay the return travel of any sponsored person who fails to meet expectations. These are the words on the contract. And they notify you—that is, the immigration department—within five working days of a sponsored person ceasing employment. And you are telling me you have had no relationship with them at all?

Mr Rizvi—No, I think what we said was that, to the best of our knowledge, they are not a sponsor under subclass 457, but we need to check the database. We are not saying we have no relationship with them.

Senator CARR—Perhaps I should ask you another question: what relationship do you have with this company?

Mr Rizvi—We would need to check what relationships we have, though those would exist with our state offices. We would need to check with those offices what relationships exist with this company.

Senator CARR—They also say that they pay all fees and expenses charged by the Commonwealth of Australia with respect to sponsored persons, including but not limited to: locating and detaining a sponsored person, removing a sponsored person from Australia, and processing any application for a protection visa. Are you aware of that?

Mr Rizvi—I am not aware of that claim.

Senator CARR—They also say that they take responsibility for return to the home country of any employee by World Workers, should they fail to meet expectations. I am wondering how that fits with the claims you were providing to the committee before—that workers have the right to transfer to another sponsored employer should the relationship break down between them and an employer.

Mr Rizvi—This is a claim being made by an organisation—

Senator CARR—Yes, it is.

Mr Rizvi—which we would need to investigate and test.

Senator CARR—Yes.

Mr Rizvi—The point I was making is based on the evidence that between 15 and 20 per cent of 457 visa holders go on to become permanent residents, and a percentage well in excess of that transfer from one employer to another employer after having been in Australia. So clearly the transfer is going on at a quite considerable rate.

Senator CARR—This contract would suggest that for the other 80 per cent who do not get transferred into permanent residence, they face this group of people, and relationships like them, presumably, whereby they are the supervising agent for those workers.

Mr Rizvi—That is what they are claiming to be doing. Whether, at the end of the day, the individual workers involved actually do successfully transfer from one employer to another or not is a different matter.

Senator CARR—They say here that, subject to a signed authority from a sponsored person, there is a deduction of eight per cent from the wages of a sponsored person on a weekly basis, which amount is paid to World Workers as their professional service fee on behalf of the sponsored person. Would that not be a breach of undertakings?

Mr Rizvi—On the face of what you have just quoted, it sounds like a breach.

Senator CARR—I am just wondering: if your audit arrangements are so thorough, how come you have not picked these things up before?

Mr Rizvi—We pick up many organisations in this context, and we investigate them. We investigate many allegations in this area. However, the percentage of allegations relative to the number of employers involved in 457 is actually quite small.

CHAIR—Senator Carr, I think it actually puts Mr Rizvi in a very difficult position to be responding to those questions. I understand that the questions are regarded as important, but

when you have the information and he is trying to respond across the table in this sort of environment, I think that is a very difficult situation to put the officer in.

Senator CARR—I appreciate that, and I said that I intend to table the document. What I am doing is quoting from a document which was a contract entered into between a company in the meat industry and a labour hire company. It purports to be—this is what it is put to me as—a standard format contract which a number of companies have entered into, which tends to give a different impression of the relationship between the sponsored workers and those officially described on the department's website. It would seem to lend weight to the concerns that people have about the way in which workers are treated under this program. I seek leave to table that document now.

CHAIR—Thank you, Senator Carr.

Senator CARR—With regard to occupations that cannot be approved under 457, we have specified that labourers cannot be employed under 457. Is that right?

Mr Rizvi—That is correct.

Senator CARR—There were complaints made about labourers working for Halliburton in South Australia. Are you aware of those claims? They were digging ditches.

Mr Rizvi—Yes, we are aware of the claims.

Senator CARR—Would that be consistent with the proper use of 457 visas?

Mr Rizvi—If the allegations were true, it certainly would not be. But we investigated the allegations and they were not true.

Senator CARR—They were not true?

Mr Rizvi—They were not true.

Senator CARR—What was the nature of your inquiries in that regard?

Mr Rizvi—We undertook inquiries with the company. Investigations were also undertaken by the Department of Employment and Workplace Relations and by the relevant state body. All those bodies found that the workers involved were in fact skilled. They were doing skilled work and being paid wages of around \$50,000 to \$60,000 per annum. The references to \$40 a day to dig ditches referred to the daily bonuses they were receiving.

Mr Fox—We are advised that, technically, it was a remote locality allowance.

Senator CARR—So the comments went just to the allowance; they did not go to their full wages. Is that what you are saying?

Mr Fox—Yes.

Senator Vanstone—Senator Carr, did you happen to see the front page of the *Advertiser* initially?

Senator CARR—I will tell you what I did see: an article in the paper this morning, Minister, which says that you will not be there for very long. Should I rely on that?

Senator Vanstone—I think Senator Ludwig was happy to have a discussion about that. I have already informed him that you should not believe what you read in the paper half the time.

Senator CARR—I do not believe everything I read in the *Advertiser*, that is true.

Senator Vanstone—I was just wondering if you saw the front page article, the alleged expose of these ditch diggers on \$40 to \$60 a day.

Senator CARR—No, I did not see that article.

Senator Vanstone—You might have a look at the article because it has a photograph of two people, one of whom has his face pixilated out. One wonders why. We do not see the pixilation of a face very often in print media in Australia. I thought you might know the person whose face was pixilated out.

Senator CARR—Why don't you tell me why I should know this person?

Senator Vanstone—I thought you might be able to cast some light on who in fact it was and why the *Advertiser* would go to the bother of pixilating that person's face out.

Senator CARR—Why would I be able to cast any light on what the Murdoch press does? Why would I possibly have any knowledge of why they would do that, Minister?

Senator Vanstone—Because the person may be related to someone known to you, that is why.

Senator CARR—Perhaps you need some more experience on this side of the table.

CHAIR—Senator Carr, any further questions?

Senator Vanstone—I thought they may have been related to someone known to you.

Senator CARR—Related to me?

Senator Vanstone—No, related to someone known to you.

Senator CARR—I thought, 'Jesus Christ, it's no-one in my family.'

Senator Vanstone—They may in fact, of course, be the source of the incorrect information provided to the *Advertiser*, which was protected by pixilating the person's face out. There was a very interesting story there.

Senator CARR—Thank you.

CHAIR—Questions?

Senator CARR—I am fascinated by it. In regard to the claims I think you referred to before about the GMH in Adelaide, you indicated that there had been some error in the application of 456 visas. Is that right?

Mr Rizvi—They should have entered on 457 visas.

Senator CARR—Why was this error made? Have you been able to establish that yet?

Mr Rizvi—Yes. A 456 visa for when a person is coming to Australia to undertake work is only available in very limited circumstances. The limited circumstances are that the nature of the work is one off, it is an emergency and a visa needs to be done in a very short period of

time. In this particular instance, the work was not of an emergency nature in that it had been planned for some time; hence they should not have been granted 456 visas. If the individuals had applied under 457 visas, they would have been approved under that visa. We sought to correct that once we became aware of the fact that they were on the wrong visa.

Senator CARR—I understand that. You have corrected that. I read the remarks to that effect. But how was the mistake actually made? How come they got the wrong visa?

Mr Rizvi—It appears to be a situation where the company involved dealt with the visa matters very late. Indeed, it was so late that it became for them an emergency to get these people into the country. In order to get the individual workers into the country to enable the plant to be built and put in place very quickly, the post decided to grant them a 456 visa. Once we became aware that the post had granted them a 456 visa, we contacted the post and said, ‘This has to be corrected. They should not have been granted those.’

Senator CARR—Are you saying they did it in a hurry, and they made a mistake because it was done in haste?

Mr Rizvi—It was done very quickly or it was done very late by the individual company that was involved. If they had started the process earlier it would not have been an emergency circumstance.

Senator Vanstone—It is a tragic but true fact of life that in all walks of life—not just in the immigration department—mistakes are made. For example, an Australian citizen was overseas and refused entry back into Australia by the previous Labor government. Then subsequently, admittedly, the same Australian citizen was refused entry by this government. Why? Because of an error that was made. That is part of being human. If you could remove human error from the world, you would have hardly any problems to deal with.

Senator CARR—So that is just human error; is that what you are saying?

Mr Rizvi—Yes.

Senator CARR—It is as simple as that. There was a report on *The 7.30 Report* on 18 May concerning Korean welders employed in Western Australia. Are you familiar with that matter?

Mr Rizvi—Yes.

Senator CARR—This is Hamish Fitzsimmons’s report. I am wondering if you could confirm the claims made. I am sure you will be able to confirm that it was claimed on the program that the workers concerned approached the department on three occasions about their complaints. Can you confirm that that claim was made and that the complaints actually occurred?

Mr Fox—I am aware of the claims, but I am not—

Senator CARR—Can you tell me: have these workers approached the department?

Mr Fox—We have had ongoing discussions with workers and with the AMWU on that matter.

Senator CARR—Have complaints been raised concerning the wage levels, health insurance and accommodation of these particular workers?

Mr Fox—Yes.

Senator CARR—What action have you taken with regard to those complaints?

Mr Fox—We have met a number of times with Jock Ferguson from the AMWU to discuss that matter. We have referred some of the specific issues to the Western Australian department DOCEP, that we mentioned earlier, and it is looking into that. The medical insurance issue has been rectified by the sponsor. One of the—

Senator CARR—Sorry, can I just take these one of the time. You have referred some of these matters—wage levels, presumably—to the state department.

Mr Fox—Yes, that is right. We also found that there was confusion about the wage levels, where the workers had not anticipated that tax instalments would be deducted from their wages. In fact, we found that they are being paid above the minimum salary level. They are actually being paid in the order of \$54,000 a year.

Senator CARR—We have had this issue before, about what the appropriate level is. Is it the going rate or is it the minimum?

Mr Fox—The salary that they are being paid is what the sponsor advised us they would be paid, which is in the order of \$54,000. This is clearly above the minimum—

Senator CARR—That is the minimum under the metal trades award?

Mr Fox—I understand that it is significantly above the award.

Senator CARR—So it is the going rate; is that would you are saying?

Mr Fox—It is the rate that the employer is prepared to pay these employees.

Senator CARR—I just want to be clear about this. How was the rate struck? Was it on the basis of what the market was paying in Western Australia at this point, or was it based on some relationship to an award and, if so, which award?

Mr Rizvi—As I said earlier, the law requires the individuals be paid either the award or the minimum salary level, whichever is the higher. Where an employer and an employee negotiate a wage above both of those, that is a matter between the employer and the employee.

Senator CARR—Okay, so on this occasion you say it was an agreement struck between individual workers and the employer. Is that the claim the department is making?

Mr Fox—That is what we are advised, yes.

Senator CARR—So those wage level matters have been referred to the state?

Mr Fox—The issue that we have referred to the state is not so much the base salary level but whether there is unpaid overtime, and also allegations that they are being forced to buy cars, for example, as part of their employment conditions.

Senator CARR—And go to church? Is there a requirement that they attend church?

Senator WEBBER—The church of their employer. I am sure the AMWU has raised that with the department too.

Mr Fox—I am not aware of that claim.

Senator CARR—Is that part of the visa requirement, that you attend church?

Mr Fox—I am not aware of that claim.

Senator Vanstone—I can assure you it certainly is not a part of the visa requirement, nor is it appropriate.

Senator CARR—You shock me.

Senator Vanstone—I thought you would be shocked.

Senator CARR—But you are not aware of that complaint?

Mr Fox—No.

Senator CARR—Okay. The health insurance?

Mr Fox—That has been fixed, we are told. There was a lack of health insurance when they arrived. That has now been rectified by the sponsor.

Senator CARR—Who is paying for that?

Mr Fox—I am told that the sponsor is paying.

Senator WEBBER—Are we sure that the sponsor is only deducting the right amount out of the salary to cover the health insurance? There have been problems with large amounts of money being deducted from these peoples' salaries to cover health insurance but the private health insurance costs significantly less.

Mr Fox—With respect to this particular complaint we are comfortable that that is the case. I cannot speak for other ones but with this particular one, yes.

Senator CARR—Accommodation was the other area of complaint.

Mr Fox—I do not have that as an issue that has been raised with us.

Senator CARR—In regard to the pay rates, there is a claim here that they were guaranteed to get a job for \$75,000 a year. What was the figure you quoted before?

Mr Fox—I am told it is in the order of \$54,000.

Senator CARR—Are you able to assist the committee as to why there is a discrepancy of that magnitude?

Mr Fox—It may be that with overtime they may be getting up towards that salary level, but certainly it is my understanding is that the base salary is in the order of \$54,000.

Senator CARR—Yes, but one of the workers concerned says they are only getting paid \$16 an hour.

Mr Fox—That is after tax.

Senator CARR—So you think that taxation is the issue?

Mr Fox—I think I mentioned earlier that there was some confusion with those workers about whether their salary was pre-tax or post-tax.

Senator CARR—Right. So the \$54,000 figure you quoted before, that was net, was it?

Mr Fox—No, that would be gross.

Senator CARR—Gross?

Mr Fox—Yes.

Senator CARR—Which is a very different figure from \$75,000 gross, isn't it?

Mr Fox—My understanding is that there was some confusion about whether their base salary would include the overtime rates or not.

Senator CARR—That was about \$21,000 worth of misunderstanding.

Mr Fox—My understanding is that the advertisement said they could earn somewhere between \$45,000 and \$70,000. Some people took the jobs assuming that that meant that their base salary would be \$70,000 whereas, in fact, that was not the case. Also, I think, those misleading claims are being looked at by the Western Australian department. If those claims were misleading, then the Western Australian department—

Senator CARR—So the allegation is false advertising?

Mr Fox—It may be, yes.

Senator CARR—I see. Is there any suggestion that the sponsorship arrangements will change?

Mr Rizvi—That would depend on the outcome of the investigations that are going on. As Mr Fox has indicated, DOCEP is looking at the IR breaches, the Taxation Office is looking at the taxation matters and any change from our perspective with the sponsorship arrangements would be subject to the outcome of those investigations.

Senator CARR—Will workers be given an opportunity to find another sponsor if you end the sponsorship arrangement?

Mr Rizvi—If they wish to move on to another sponsor they will be given the opportunity to do so.

Senator CARR—Is there any suggestion by the employer that he wishes to end the sponsorship arrangement?

Mr Fox—Not that I am aware of.

Senator CARR—Does the employer have the capacity to withdraw from a sponsorship arrangement?

Mr Rizvi—They can withdraw from a sponsorship arrangement. However, they have certain obligations that they would still have to meet.

Senator CARR—And there has been no suggestion of the employers withdrawing?

Mr Fox—Not that I am aware of. If there had been that suggestion in discussions with our Western Australian office, I have not been made aware of those.

Senator CARR—In regard to MaxiTRANS in Ballarat, which is another case that I understand has received some public attention, have you had an inquiry into them?

Mr Fox—Yes, we have.

Senator CARR—Who was that complaint from?

Mr Rizvi—I am not sure in respect of MaxiTRANS, Senator, whether we have received a complaint from either the employer or employees.

Senator CARR—So you do not have a complaint?

Senator Vanstone—He did not say that; he said he was not sure.

Mr Rizvi—We have only received media reports in respect of MaxiTRANS. There is no formal allegation from the employer, agents or the 457 visa holders.

Senator CARR—I take it that if I raise matters with you then it constitutes a formal complaint?

Mr Rizvi—If you wish to raise one, yes.

Senator CARR—I will raise some issues with you that have been put to me: MaxiTRANS has retrenched 35 workers who were about to start apprenticeships in favour of Chinese workers under 457. Has the department undertaken any assessment of the training record of this company?

Senator Vanstone—I will say something while Mr Rizvi looks at this work. I had the opportunity to cast my eye over some remarks made by the member for Ballarat and, as I recall the *Hansard* where she raised this matter, she acknowledged that the people who no longer had jobs at MaxiTRANS were in fact casual semiskilled workers. She did not make the case at all that these people were preparing for apprenticeships. My latest advice was that MaxiTRANS had something like 30 apprentices.

There was an issue raised when the welders first arrived; I think that was last year. Some young person was wheeled out to allege that the Chinese people had come and taken his job, whereas MaxiTRANS required skilled and experienced welders, and they got them. This young man was in a group of people who were looking for an apprenticeship I think through a group training company. At the time, MaxiTRANS decided that they had enough apprentices—I think their intake was 25 at the time—and that they would review the people available to take on an apprenticeship later in the year or this year.

If that information is correct, the suggestion that someone from overseas who is at a particular skill level working in your firm should lose their job if you no longer have a requirement for semiskilled casual labourers is, to me, somewhat nonsensical, because a casual semiskilled labourer does entirely different work to that which a qualified and skilled tradesman does. I think it is unfortunate that the skill that is required in welding—I suppose anyone can hold a welding wand, stick on one of those hats and make blue light—

Senator CARR—Is that right?

Senator Vanstone—Yes, but let me go on. In other words, anyone can put on the appearance of being a welder but it is actually a very skilled job. In my view, it should not be diminished to one that is equated with the skills that can be offered by any semiskilled person who happens to be doing casual work in a factory at the time. Anyone who goes, for example, under the ocean or onto the ocean in any sort of maritime vessel that has welding will certainly want the most qualified welders doing that work. As I say, anyone can put on the appearance of it, but it is a skilled trade and it should not be considered synonymous with semiskilled work.

Senator CARR—Minister, I think we could spend a considerable amount of time taking issue with your description of the situation at MaxiTRANS. I would just like to know whether or not the department, when it did its assessment of the training record of that company, took into account whether or not the company was intending to freeze its apprenticeship program, which I do not believe is in dispute. This actually occurred.

Mr Rizvi—What I can provide is the information I have here.

Senator CARR—Yes.

Mr Rizvi—On its sponsorship application form which was lodged on 30 November 2004, the company provided information relevant to its employment of Australians and its training record. Of course, these numbers go up and down over time as the company moves through various phases of its operation. It provided the following: annual turnover in the most recent financial year—\$1.6 million; number of Australian employees—577; 70 professionals, 150 tradespersons, five recent graduates, 44 apprentices and 75 other trainees, mostly working towards a certificate III outcome.

Senator CARR—What was the number for that last category?

Mr Rizvi—Seventy-five.

Senator CARR—Seventy-five doing an AQF 3?

Mr Rizvi—That is right. I think the annual turnover figure shown there may be the annual profit figure that I mentioned, because for the gross expenditure on salaries for the most recent financial year, the figure I have here is \$39 million. The figure for overall expenditure on training is \$1.2 million. Of course, that situation has changed as time has gone by, and the advice I have is that the number of apprentices MaxiTRANS has on its books now is greater than the number that it had when the sponsorship application was approved.

Senator CARR—In a report in the *Melbourne Age* on 9 May, the human resources manager, Mr Ian Else, is quoted as saying that they had cut 35 to 37 unskilled or semi-skilled jobs due to ‘uncertainty and a softening of the market’ and that while the company at that point had employed 68 apprentices in five years, it now had 35 on the books, which is somewhat less than you have quoted here.

Mr Rizvi—The figure they provided in their application form was 44 apprentices.

Senator Vanstone—Some of them might have completed.

Senator CARR—There could be a number of explanations. I am just saying that is on the public record as what the company is now claiming. What I do not believe is disputed is that they have now frozen that program, yet they are maintaining this visa employment of welders.

Mr Rizvi—Senator, are you saying that they have frozen their apprenticeship program?

Senator CARR—Their apprenticeship program. The article in the *Age* of 9 May says ‘while freezing its apprenticeship program’.

Mr Rizvi—We have not received advice from Mr Else that they have frozen their apprenticeship program.

Senator CARR—I am referring to what is on the public record. The article quotes Mr Else on numerous occasions. I know the minister would be only too happy to point out that newspapers are quite capable of getting things wrong.

Senator Vanstone—Not the *Age*, certainly! You could not be suggesting that, could you, Senator Carr?

Senator CARR—They did talk about your retirement. I know that was wrong because you have told us that is wrong. They talked about a reshuffle and you have told us that is wrong. They said that Minister Kemp is leaving. That is what it says in the *Age* and the minister is telling me that is wrong!

Senator Vanstone—The *Age* says lots of things.

Mr Rizvi—Senator, what we can do is follow up your concerns with MaxiTRANS and check the number of apprentices they currently have.

Senator CARR—Thank you. I am interested to know whether or not there have been any complaints concerning the wage levels of Chinese workers employed under 457 visas. Have there been any complaints concerning unpaid overtime? I suppose you will say to me that since there is no complaint to the department, you won't have any complaint about unpaid overtime. Are you aware of any public complaint being made about the payment of unpaid overtime and the occupational health and safety standards in the plant?

Mr Fox—We have not received any complaint to that effect but we have done our normal monitoring with MaxiTRANS and we have referred some issues along the lines that you have described to the Office of Workplace Services.

Senator CARR—When did you do that?

Mr Fox—On 24 March.

Senator CARR—Have you heard anything back from the Office of Workplace Services?

Mr Fox—Yes, they have advised us that the 457 holders are receiving the correct wages, including for overtime.

Senator CARR—Is there any detail of the nature of their inquiries?

Mr Fox—I don't, Senator. That is a matter for OWS.

Senator CARR—Do I have to take that up with them?

Senator GEORGE CAMPBELL—Mr Fox, does that mean that those Chinese welders are receiving the same remuneration as Australian welders in the same classification or does it simply mean they are being paid the minimum wage?

Mr Fox—The advice we have is that they are being paid according to the MaxiTRANS certified agreement.

Senator GEORGE CAMPBELL—So they are being paid the same wages and are under the same conditions as the Australian based welders?

Mr Fox—That is right.

Mr Rizvi—I think we can go no further than saying that, according to the Office of Workplace Services, they are being paid according to the MaxiTRANS certified agreement, including in respect of overtime.

Senator GEORGE CAMPBELL—Well, if they are being paid in accordance with the agreement, they must be being paid the same as other welders employed by MaxiTRANS. I presume the agreement covers all employees of the company.

Mr Metcalfe—We are just being very careful about saying what we know as opposed to what we have not been told. I suspect the Office of Workplace Services might be able to provide more detail which may well go to the point that you are making. We are just being careful not to assume things we have not been told.

Senator CARR—I would ask: have there been any inquiries into occupational health and safety matters, particularly whether or not signs are also in Chinese?

Mr Fox—Not on the information that I have available.

CHAIR—Would you like to put those questions on notice, Senator Carr?

Senator CARR—Yes, I would ask if inquiries could be made in that regard.

Senator Vanstone—Can I make a point, Chair. I just want to put on record my own disgust at the constant reference to the ethnicity of particular workers. If there is an issue about temporary skilled workers coming in, it is fair enough to raise that, but not to continually feed xenophobic paranoia by referring to Chinese workers, especially in a place like Ballarat where the Chinese have such a long history of contribution. I am just hoping that the ethnicity of these people is not relevant. What is relevant is whether the visa conditions are complied with; that is of course relevant. But the constant use of words like ‘Australians losing jobs because of Chinese’ is a most unsatisfactory proposition to be using an estimates committee to run. I have no problem with a query about temporary skilled workers and any issue associated with that. If we went through the union movement and took out everybody who has an accent, there would not be too many people left.

Senator GEORGE CAMPBELL—Including me.

Senator Vanstone—Including you, Senator Campbell! We are a nation of immigrants. Unless you are a full-blood Indigenous Australian you have got migrant blood in your veins. Ethnicity should not be an issue.

CHAIR—You may record those concerns, Minister. I am not in a position to advise senators as to how they wish to express themselves, notwithstanding the fact that it might be opportune on occasions. But that is not the case, so I invite Senator Carr to continue his questions.

Senator CARR—I cannot understand why you are so unhappy, Minister. I have referred today to people from Ghana, from the Ukraine, from China, from the Philippines—there has been a range of them. I do not think there is anything wrong with saying that this is where people have come from. Are you suggesting there is something inappropriate in my correctly identifying the countries these people have come from?

Senator Vanstone—I have said all I need to say on that.

Senator CARR—Yes.

Senator GEORGE CAMPBELL—The issue is not the country they come from; it is how they are being treated when they get here.

Senator Vanstone—I quite agree.

Senator CARR—And that is precisely—

Senator GEORGE CAMPBELL—That is the issue.

Senator Vanstone—Yes.

Senator CARR—Can I ask you then: is it true that the number of people on 457 visas who are of an Indian background has grown by 112 per cent?

Mr Fox—We do not know. We have not done that assessment. We noticed that figure in the press release that was issued last week, but we are not aware of where that figure came from.

Senator CARR—The number of people from African countries has grown by 53 per cent, whereas the number of people from Singapore has dropped 26 per cent and, from the Americas, 14 per cent.

Senator Vanstone—Madam Chair, I can offer some information in respect of this. I saw the graph that I think Senator Carr is referring to. What this graph seeks to do is paint a picture that everyone who comes from a country that has a low average income could not possibly have a skill and must have been paid a very low income. You can come from the Philippines, you can come from China, you can come from India—countries that do have low average incomes—but still be an extremely skilled person and entitled to a skilled wage. I remind senators that China of course has a manned spacecraft, so there is no lack of skilled people in China. Yes, they have a low average income, but a whole nation's average income has nothing to do with the particular skills held by individuals. I come back to the point that this visa is for people with a particular skills set. If they meet those skills requirements and have a sponsor then they can proceed. The average national income of the country from which they come is not particularly relevant.

Senator CARR—I will put those questions on notice.

Mr Metcalfe—Senator, we can provide you with a break-up of country of origin.

Senator CARR—Could you, please. What I am interested to know is what the movement is from 1996—it is a 10-year program—from, say, the United Kingdom, the USA, Japan, South Africa, China and Canada.

Mr Rizvi—I can give you a few of those right now.

Senator CARR—I thought you might.

Mr Rizvi—In 1996-97, the top five source countries for 457 visas were: the United Kingdom, 23 per cent; the United States, 15 per cent; Japan, 12 per cent; South Africa, five per cent; and China, five per cent. It stayed about the same, or very similar, for 1997-98. In 1998-99 it was once again quite similar. In 1999-2000, the big shift was the entry of India into the top five, at eight per cent. That was primarily driven by IT software workers. China dropped down to four per cent. It dropped down to sixth for the first time. The year after,

India pushed up again and became the second largest source country for 457 visas. The top six, however, remained the United Kingdom at 23 per cent, India at eight per cent, the USA at eight per cent, Japan at six per cent, South Africa at six per cent and China at four per cent. Ireland was also at four per cent. The year after that, it was once again reasonably stable, although China started to drop down a bit. The UK pushed up to 29 per cent. In the year after, 2002-03, the big change was that the UK continued to push up and became 31 per cent but, other than that, the order stayed the same. In the year after, the order stayed the same but the UK fell down to 30 per cent, India pushed up to 10 per cent and China was still not in the top six. In the year after—that is, 2004-05—China once again re-entered the top six at four per cent, but the UK fell back to 26 per cent. The top six remained once again stable.

Senator CARR—Thank you for that. So it gives the lie to the notion that this is about race or racism; it is about the treatment of workers in this country by crook employers in this country. That is the issue, Minister, and it is your government's industrial relations laws which are allowing this to happen. That is the issue.

Senator Vanstone—Madam Chair, the senator is entitled to his views.

CHAIR—He is making a statement.

Senator Vanstone—He may be upset by the fact that I have drawn attention to his constant—

Senator CARR—No, I am upset about you accusing us of racism when you have a program here designed to undermine the working conditions of Australian workers. That is what I am upset about.

CHAIR—Senator Carr, we do not yell in this meeting.

Senator Vanstone—He may be upset by my reference to his constant placement as a prefix in front of 'a skilled welder' the word 'Chinese'. And well may he be embarrassed. It was his shadow spokesperson who queried why we were bringing people from Beirut, Bombay and Beijing—having forgotten that Bombay is now Mumbai, not being past the colonial period. This has been a constant reference by the opposition, referring to foreign workers all the time, and I think it needs to be exposed for exactly what it is. I have not, for example, seen any complaints about English people being brought out here to take any skilled jobs when they are in fact the largest ethnic group that are users of this visa. I have not seen one complaint from the opposition about those workers yet—not one.

CHAIR—Are there further questions on this area?

Senator CARR—There is a series of figures I would not mind checking with the department as to their statistical breakdown. We are getting some research work done in the library, and it seems to be different from the figures you are quoting here. There may be a simple explanation for that. I wonder if you can confirm for me the number of long-stay 457 visas from 1996 through to 2004. You gave a figure before for 2004-05 of—

Mr Fox—Just under 50,000.

Mr Rizvi—I think we gave the figure for 2005-06 year to date.

Senator CARR—Yes, that is right. For 2004-05, I have 49,855. Is that the same figure you are using?

Mr Fox—That is correct. I think I said just under 50,000.

Senator CARR—I see. Again with subclass 456, if I could get those figures in a table so we can double-check that. The figures are confusing when talking about the total number of persons entering the country because they include families, not just workers.

Mr Fox—That is right.

Mr Rizvi—The figure that Mr Fox just quoted was for persons under 457. It included their families.

Senator CARR—Could I get a table that shows the number of people directly employed and the number of dependants? Will that give me the total?

Mr Rizvi—Yes.

Senator CARR—If I could have that breakdown and if I could get the same for the short-stay visas 456.

Mr Metcalfe—If you are getting some work also done by the library, I am sure that they will be in touch with us to obtain the raw information. If that contact is made, we will endeavour to ensure that we are all on the same page, so to speak.

Senator CARR—They are very good. It is just that I was confused about the different sets of figures. If I could get them on one document, it will help clarify those matters.

Mr Metcalfe—For sure, yes.

Mr Fox—On the 456 category, I do not think our data goes down to dependants because that is for the temporary business worker. We will not be able to give you that.

Senator CARR—Is that because it is unlikely they will bring their family?

Mr Fox—Correct.

Mr Rizvi—The nature of the application is different. Under subclass 457s, you can include family in your application, whereas for business visitors it is on an individual basis. The other thing about 456s that I should highlight is that it is worth looking at the length of time 456 visa holders are in Australia. Whilst the number of 456 visa holders is going up very rapidly—and we expect it may reach around 400,000 this year—over 70 per cent of those people stay in Australia for a period of less than 10 days and over 90 per cent stay in Australia for a period of less than 20 days. So they are very different to 457s.

Senator CARR—Yes, they are very different instruments.

Senator GEORGE CAMPBELL—On that issue of these statistics, I want to bring your attention back to the graph that was talked about. It has nothing to do with ethnicity; it is simply pointing out where the fastest growing number of 457 employees is coming from. It is sourced to your department and the World Bank, so I presume the figures are basically correct.

Mr Fox—We were not consulted in the preparation of that data.

Senator Vanstone—Have we worked out how they put that together?

Senator GEORGE CAMPBELL—I assumed that it was legitimate because it has your name on it and the World Bank's name on it.

Senator Vanstone—I might have made the same mistake. The fact that it has DIMA's name on it just means someone has been to the website or to some of the documents we produce. It does not mean that they have understood the figures that they are looking at. For example, I know you have been here all morning so you would have heard Mr Rizvi on a number of occasions point out the difference between nominations approved and visas actually granted. Some people make that mistake. They look at 457s in a particular year and they do not look at the fine print to see what particular issue is being reported on. Equally, people can look at the number of people on 457s coming in, which might include a partner and children, but it is not indicative of the number of skilled workers coming in. The reason I raise this is that I had a conversation with a journalist last week who had made exactly these errors and the first response was, 'But I got it from your website.' I said, 'Yes, sure, but what did you get?' Unless we have agreed to the formatting of the information, the mere fact that we are the source of it does not mean that it is necessarily correct. It may be, but it may also be put together by people who just do not understand the different categories that we report on. That is the difficulty.

Senator GEORGE CAMPBELL—Maybe that is a problem with your website too that you need to look at it, if it is providing information that can be interpreted differently.

Senator Vanstone—That happens only if people do not look at the detail.

Senator GEORGE CAMPBELL—If you put information on your website, you should ensure that it is only capable of one interpretation, not several. I think that is something you ought to look at. But that does not get past the point I want to raise.

Senator Vanstone—No. But there is no way you can guarantee that people will not misuse information or misunderstand it.

Senator GEORGE CAMPBELL—We know that. We sit and listen to your government day in day out.

Senator Vanstone—I appreciate that is your view, Senator Campbell.

Senator GEORGE CAMPBELL—They are a classic example of the misuse of information.

Senator Vanstone—I appreciate that is your view, not mine.

Senator GEORGE CAMPBELL—I would not expect it to be your view, Minister. Mr Rizvi, can you take this question on notice? Are those five categories, the fastest growing, correct? They may well differ from the figures you give us in terms of where people sit in the hierarchy. They could be low down but still fast growing in terms of the provisions. If that is the case, can you provide for the committee the industries in which each of those areas are being employed and the geographic location in which they are being employed?

Mr Rizvi—We would have to take that on notice, but we could provide all of that.

Senator GEORGE CAMPBELL—If you are providing all of these other statistics, you might as well take that on notice as well.

Mr Rizvi—In terms of geographic locations, what we will know is where the employer says they were going to be working. Many employers straddle many states. They tend to move workers around, so we will not always know precisely where they are. We will know what they told us at the point the sponsorship was approved.

Senator GEORGE CAMPBELL—Whatever the latest information is that you have, I presume. You cannot give us any more than that. Are you finished, Senator Carr?

Senator CARR—Yes.

CHAIR—I wanted to clarify something with you, Senator Carr. I think you began a sentence—something along the lines of, ‘I’ll put further questions on notice.’ Is that what you were saying?

Senator CARR—I did say that, I thought.

CHAIR—Thank you.

Senator GEORGE CAMPBELL—Mr Rizvi, I think you took an answer to a question from Senator Carr on notice. He asked you to identify the number of officers involved in compliance with 457 visas. Are you aware of how many officers from Workplace Services are also involved in compliance issues on 457 visas?

Mr Rizvi—We would have to talk to them to get that number.

Senator GEORGE CAMPBELL—That is okay. I can ask them directly next week. I just wanted to know whether or not you knew. Are the officers in the department who are employed on compliance issues in respect of 457 visas issued with specific written instructions as to what to look for when they deal with compliance issues?

Mr Rizvi—We provide them with guidelines on how to undertake site visits and interviews.

Senator GEORGE CAMPBELL—Are those guidelines public?

Mr Rizvi—Yes, we can make those available.

Senator GEORGE CAMPBELL—Can you make them available to the committee?

Mr Rizvi—Many of the guidelines, of course, cut across. They will not necessarily just be for 457s. They will say: ‘Here is how to do a site visit. Here is how to do an interview.’ They will not go down to, ‘Here is how to do an interview in respect of a 457 visa holder,’ otherwise we would end up with thousands and thousands of guidelines.

Senator GEORGE CAMPBELL—So you have a general set of guidelines for these officers looking at issues related to compliance on visa applications, whether they are 456s or 457s or whatever.

Mr Rizvi—That is correct. We would then overlay that with regular training and conferences amongst these officers so that they could share experiences and best practice.

Senator GEORGE CAMPBELL—Do you have specific material relating to 457s?

Mr Rizvi—We will provide what we have.

Senator GEORGE CAMPBELL—Thank you. To what extent is Workplace Services involved in monitoring minimum wages and conditions of imported workers?

Mr Rizvi—We seek to work very closely with the now Office of Workplace Services—previously we used to work with the Department of Employment and Workplace Relations—particularly where the issues that arise become technical and related to awards and industrial relations laws and we are not in a position to make judgments on those matters. We refer to DEWR and, now, the Office of Workplace Services as well as the relevant state industrial relations bodies, where it is appropriate, to investigate matters. Often we will do these things jointly.

Senator GEORGE CAMPBELL—You will do them jointly.

Mr Rizvi—Often we will work very closely together. Sometimes we do joint site visits where that becomes necessary.

Senator GEORGE CAMPBELL—I think you said, in response to a question from Senator Carr, that you visit approximately 25 per cent of the sites annually.

Mr Rizvi—That is what we seek to do.

Senator GEORGE CAMPBELL—For what percentage of those visits would you find breaches?

Mr Rizvi—The percentage would be very small.

Senator GEORGE CAMPBELL—It tends to be small.

Mr Rizvi—Yes. It would be very small.

Senator GEORGE CAMPBELL—Can you identify for us what very small means?

Mr Rizvi—'Very small' means in the order one per cent or less. If you look at who the main users of the 457 visa are and the nature of the workers coming in, I think that is pretty understandable. For example, the biggest users of 457 visas happen to be state and territory health authorities bringing in nurses and doctors.

Senator GEORGE CAMPBELL—What percentage are they?

Mr Rizvi—Nurses, doctors and health professionals more generally represent in excess of 10 per cent.

Senator GEORGE CAMPBELL—Ten per cent?

Senator Vanstone—The state Department of Health in New South Wales is, on my last advice, the largest single user of this visa. Last I heard, no-one was suggesting that the Department of Health in New South Wales was setting out to undermine Australian workers.

Senator GEORGE CAMPBELL—I presume if they are not then you will not hear any complaints, will you?

Senator Vanstone—We hope not to. We would rather not have complaints. But, if someone is doing the wrong thing, we would rather have the complaints than them get away with it.

Senator GEORGE CAMPBELL—When you do find breaches, Mr Rizvi, what is the ultimate sanction?

Mr Rizvi—The first thing we seek to do when a breach has occurred, particularly in relation to payment of wages, is to work with the relevant industrial relations organisation to ensure that the workers get whatever they are due in terms of any back pay or any short payments that have occurred. The employers may be subject to sanctions under other people's legislation. That may also take place. For example, one matter that Senator Lundy has been involved in is currently in the courts. We will have to wait and see the outcome of that process.

Mr Metcalfe—I hasten to add that Senator Lundy was a person who relayed some complaints. She was not involved as an employer or something like that.

Mr Rizvi—No.

Senator Vanstone—Just as a matter of interest, my advice on that particular matter was that Senator Lundy raised some complaints after the workers had raised them themselves. My advice is that Senator Lundy raised these matters in February and the relevant departments had already received complaints in October and were investigating them.

Mr Rizvi—The sanctions we have available range from a warning letter—that would be for the most minor breach—through to cancellation of the sponsorship, through to barring of further sponsorship for a period, through to barring of sponsorship for a very long period, preventing the employer from bringing in or recruiting any other overseas skilled workers through 457 visas.

Senator GEORGE CAMPBELL—So it is possible for an employer to sponsor employees to this country, breach our laws and still be able to sponsor people in the future?

Mr Rizvi—If the breach was not sufficiently serious to incur a barring sanction, that is correct.

Senator GEORGE CAMPBELL—How do you define 'insufficiently serious'? Do you have set ratings which you categorise the breaches against? If I bring someone in, not give them minimum wages or conditions and mistreat them, does that warrant barring for all time or being put in the sin bin?

Mr Rizvi—It would depend on the severity of the breach. If there were a few dollars involved, it was an honest mistake and the employer corrected the mistake very quickly then I do not think that would be worthy of barring that employer or cancelling their sponsorship. If the breach involved many thousands of dollars then that is a serious matter and, yes, we would take that very seriously and an appropriate barring sanction would be applied.

Senator GEORGE CAMPBELL—But it is possible for employers to breach the laws and still be able, immediately or some time in the future, to re-engage in sponsorship?

Senator Vanstone—Madam Chairman, Senator Campbell has put that question to Mr Rizvi a couple of times. Mr Rizvi has answered on each occasion by saying that it would depend on the severity of the breach. For a very minor breach, you would simply have the matter fixed up. He has answered that question.

Senator GEORGE CAMPBELL—Yes, that is right. I am just asking for confirmation that it is possible for an employer to be able to sponsor in the future.

Senator Vanstone—It is just asking the same question.

Senator GEORGE CAMPBELL—Even if they are barred today for a breach, Minister, they could theoretically in 12 months or two years time—whenever the life of the bar is up—again become sponsors.

CHAIR—Mr Rizvi is nodding, so I am assuming the answer is yes.

Senator GEORGE CAMPBELL—I assume that is a yes.

Mr Rizvi—It depends on the severity of the breach.

Mr Fox—If they did reapply to become a sponsor, we would look very closely at their track record with employees in the intervening period. Let us say they had been in the sin bin, as you suggested, for two years: we might look at whether they had had any other breaches of industrial relations laws in the meantime before deciding whether to reinvigorate that sponsorship. As Mr Rizvi said, it is possible, and it depends on the severity of the matter, but we would certainly look very closely at their performance record before deciding whether to reopen their ability to sponsor foreign workers.

Senator GEORGE CAMPBELL—Would you also look at their employment record in respect of Australian residents employed by these companies?

Mr Fox—Yes, that is what I meant, Senator.

Senator GEORGE CAMPBELL—Not just in terms of—

Mr Fox—They would not necessarily have had any foreigners.

Senator GEORGE CAMPBELL—Mr Rizvi, when you do site visits, I assume your officers are not particularly trained in identifying classifications of workers. How do you determine that the people who are sponsored in a particular trade or classification are actually working in that trade or classification?

Mr Rizvi—There are a number of indicators that you can look at, including through the interviews that you might conduct, and certainly looking at the salaries that the individuals are paid. If the salaries are very significantly out of line with those of skilled workers, that obviously raises issues. But at the end of the day, in order to sustain a sanction—

Senator GEORGE CAMPBELL—Can I interrupt you there. As I understand it, the only requirement is for them to pay them a minimum wage. So it is possible that you could have skilled welders working for company X who are being paid substantially less than skilled welders who are Australian residents.

Mr Rizvi—I think the comparison should be between new entrants to the labour market who are skilled welders and new entrants to the Australian labour market from other parts of Australia who are skilled welders.

Senator GEORGE CAMPBELL—But it is still possible that you could have company X employing Australian residents, new entrants to the workforce, on Y dollars and the sponsored welders from whatever country being paid X dollars?

Mr Rizvi—I think there could be a differential. But I think you would also find that very soon the relevant employer in Australia would lose those skilled welders to another employer if they insisted on paying them at a significantly lower level.

Senator GEORGE CAMPBELL—They may or may not. It depends on the geographical location, the period they are sponsored for et cetera.

Mr Rizvi—Sure.

Senator GEORGE CAMPBELL—I am merely making this point: how can you use that as a determinant—the wage levels—if in fact the law allows them to do that?

Mr Rizvi—It is not so much a determinant; it is an indicator of a possible concern. So we look at a range of indicators of that sort. If that suggests an area of concern, we would then seek the assistance of the relevant expert agency.

Senator GEORGE CAMPBELL—Which is?

Mr Rizvi—Which would be now the Office of Workplace Services.

Senator GEORGE CAMPBELL—Why would their officers be any more skilled in identifying classifications that people are engaged on than your officers?

Mr Rizvi—They would have a better understanding of the award system and the industrial relations system than we would.

Senator GEORGE CAMPBELL—Would they have a specific understanding of the work being undertaken?

Mr Rizvi—If it comes down to a question of skills and payment of salaries, we may well seek the assistance of a skills assessing body—for example, MINTRAC in the case of the meatworkers.

Senator GEORGE CAMPBELL—That process of identification could take some considerable period of time?

Mr Rizvi—It could. This is a complex matter.

Senator GEORGE CAMPBELL—It would allow the opportunity for an employer who may be employing people in different classifications to make the necessary adjustments before he is required to put them under scrutiny?

Mr Rizvi—If an employer seeks to then correct anything they have done wrong, that can only be a good thing.

Senator GEORGE CAMPBELL—It may even be short term. Mr Rizvi, how many 457 visa workers overstay their visa and just disappear into the community?

Mr Rizvi—The overstay rate for 457s is very low. I cannot locate it right now; I will take it on notice. But the figure is very low—around one per cent.

Senator GEORGE CAMPBELL—What about for 456s?

Mr Rizvi—The overstay rate would also be around one per cent for 456s.

Senator GEORGE CAMPBELL—You can take that on notice.

Mr Rizvi—Of course, it varies considerably depending on the source country.

Senator GEORGE CAMPBELL—I understand that the department prepares business outcome reports for 457 visas on an annual basis.

Mr Fox—That is not a phrase that is familiar to us, but perhaps we are talking about something similar with a different title?

CHAIR—Business outcome reports for 457 visas?

Senator GEORGE CAMPBELL—Yes, which identify the top 50 occupations, the industries of the sponsors, the ASCO composition—

Mr Rizvi—You might be mixing that up with the name of the section that produces reports, which is the outcomes reporting section. But you are right; we produce reports such as that.

Senator GEORGE CAMPBELL—Can you provide the committee with the annual reports for the period 1998-99 to 2004-05 inclusive?

Mr Rizvi—I think we took on notice a similar question from Senator Carr when he asked for a whole range of statistics for the last four or five years. If we can put it together with those statistics, we could provide those reports to you. The outcomes reporting section reports have only been produced for the last few years, and so they are only very recent, whereas we were relying on other arrangements prior to that.

Senator GEORGE CAMPBELL—You may have other reporting arrangements covering the same issues going back to 1998-99. Can you provide that data?

Mr Metcalfe—Senator, would you mind repeating precisely what you are after so that we are quite clear?

Senator GEORGE CAMPBELL—It is the material produced by this division, which I understand covers the top 50 occupations, the industries of the sponsors, the two-digit ASCO composition of all 457 visa entrants and a number of other bits of data.

Mr Metcalfe—We will have a look at the reports that are produced and, if they come looking like something like that, then we will give you what is produced. If we need to create a document from some material, we can pick up the indicators you have mentioned—top 50 et cetera—but we might need to come back to the committee if there are other bits of data that you are looking for. As Mr Rizvi said, we may only have them in that format for the last few years and we may need to re-create or otherwise prepare some of that material, so we will take that on notice. If we need to come back to the committee secretary to clarify any points, we will do that.

Senator GEORGE CAMPBELL—The only point I was making to Mr Rizvi was whether it is possible to put the data in a form that is consistent with the reports that were produced recently so that it is easier to understand.

Mr Metcalfe—We will do our best.

Senator GEORGE CAMPBELL—Mr Rizvi, what contact and consultation does your department have with particularly Job Network and Workplace Services before granting guest labour visas?

Mr Rizvi—There are a couple of things there. I will go to the guest worker-guest labourer issue. We do not accept that 457s are guest workers.

Senator GEORGE CAMPBELL—I am talking about 456s and 457s.

Mr Rizvi—In respect of 456s, we would not contact the department of employment or the Office of Workplace Relations. 456s are essentially business visitors, and most of those people are coming here to undertake business negotiations, contract negotiations—those sorts of things. Over 90 per cent of people who come in on a 456 are in Australia for 20 days or less, so they are not really doing work as we would normally think of it. They may have been confused in this debate a bit with 457s. In respect of 457s, our contact—

Senator GEORGE CAMPBELL—But I think there have been examples where they have been used.

Mr Rizvi—There have been one or two examples—

Senator GEORGE CAMPBELL—The fertiliser plant engineers in Western Australia was a classic.

Senator WEBBER—Yes, they are very famous.

Senator GEORGE CAMPBELL—Did they come in on 456s or 457s?

Mr Rizvi—I am not sure about the fertiliser plant, but certainly in respect of—

Senator GEORGE CAMPBELL—They were steel erectors, by the way—

Senator WEBBER—They were not particularly skilled.

Senator GEORGE CAMPBELL—but they came in as fertiliser plant construction engineers.

Mr Rizvi—The percentage of people who come in and do that sort of emergency work on a 456 would be very small. Out of the 400,000, it would be no more than a few hundred who would be doing that sort of emergency work, so the vast bulk of these workers would be coming in on 457s. Our contact with the department of employment in respect of 457s is almost daily.

Senator GEORGE CAMPBELL—And you do it through the department of employment, not through the Job Network?

Mr Rizvi—We would deal with the Job Network through the Department of Employment and Workplace Relations.

Senator GEORGE CAMPBELL—If a company wants to sponsor employees into this country, what steps do they have to follow to demonstrate that the required labour is not available in this country?

Mr Rizvi—I think that question is probably best considered at both a macro level and a micro level. At a macro level, I think it is important to note that the unemployment rate for skilled Australians is currently less than two per cent, compared to around eight per cent for unskilled Australians. At less than two per cent, that is more than full employment, given the level of churn that would naturally take place in the labour market. The research has

consistently found that skilled migrants create as many jobs as they take. That has been the research results for the last 15 to 20 years.

Employer sponsored visas such as 457s have been found in the research to be the most economically beneficial skilled migration visas. That is because they target specific employer needs and there is no gap between arrival and employment. If the hypothesis is that 457s are denying Australians jobs, then all skilled migration must have this impact. But the research shows that is not true. Professor Ross Garnaut, in some work that he has done for us, has found that skilled migrants create job opportunities for unskilled Australians. So, at the micro level, bringing skilled people into Australia does not deny Australians jobs; it indeed creates job opportunities for unskilled Australians. That has been the clear finding of the research for over 20 years now.

At the micro level, we note that bringing skilled workers to Australia from overseas involves very significant costs for employers, including location and recruitment costs, skills assessment costs, travel and settling-in costs and private health insurance. Employers are unlikely to incur these costs if they can find the skills locally. Research done for us by a team led by Professor Peter McDonald found:

The reasons for recruiting skilled foreign labour suggest an increasing demand for people with specialised skills and knowledge that are often not available in a relatively small population such as Australia's.

It is against that background that the 457 visa has been designed. The government has decided, against that background, to abolish what we know as traditional forms of labour market testing. The traditional forms of labour market testing, we found, were creating very significant costs and delays for employers but not adding any value to the decision making. Labour market testing required employers to demonstrate to DIMA that they had advertised the position in the right places, the right number of times and in the right way and that any applicants from within Australia who had applied were not suitable. Those are judgments that can only be made by an employer. Public servants cannot be involved in second-guessing those sorts of judgments.

Given the low rate of unemployment amongst skilled Australians, DIMA requiring employers to demonstrate skills shortages in that traditional labour market testing way was essentially unnecessary red tape, because we could never sustain a refusal decision based on our judgment that an employer had not tested the job market properly.

Senator GEORGE CAMPBELL—So in essence what you are saying is that there are no basic procedures that you have laid out for an employer to demonstrate to you that in fact they have tested the market and that there is not the labour available to perform the work they require. I understand what you are saying with the macro argument. In general terms you may well be right—I did a report myself a couple of years ago which did not necessarily disagree with that—but this is a hell of a big country and there are a lot of geographical humps and bumps in our economy in general terms. You may well find pockets where there is high unemployment of skilled labour. In fact there are some around the country in different places. But that does not mean to say that, when you aggregate it, you do not get the result that Garnaut got or previous researchers may have got. I understand from what you said and the

way you said it—although you did not say it directly—that in fact there are no procedures that you require employers who want to be sponsors to carry out to test the market.

Mr Rizvi—In respect of 457s where the regional concessions are not being used, we focus essentially on making sure that the individual is skilled and that they will be paid above the minimum salary level. We believe that, looking at the macro situation, that is the most cost-effective way to manage this particular issue.

Senator GEORGE CAMPBELL—But most of the stories that I have picked up in newspapers or that have made the newspapers—and I do not believe everything that I read, and I certainly do not believe the half that I read most of time—have been disputes where Australian labour has been displaced or is claiming not to have been given the opportunity for employment or where foreign labour has been imported or sponsored in direct competition to local labour.

Mr Rizvi—Certainly the research that Professor McDonald has done for us does not support that.

Senator GEORGE CAMPBELL—Why do you believe Professor McDonald's evidence and the newspaper stories are in such conflict?

Mr Rizvi—I cannot vouch for the newspaper stories. I can vouch for the thoroughness of the research that Professor McDonald has done at the ANU, along with a number of other very eminent researchers, who, I believe, have probably looked at this issue in more depth than most newspapers would.

Senator GEORGE CAMPBELL—Have you asked Professor McDonald to look at some of these newspaper stories to see why they contradict his research findings?

Mr Rizvi—We have not asked him to specifically look at the newspapers, no.

Mr Fox—I had a conversation with him where he said to me, 'Don't believe everything you read in the newspapers.'

CHAIR—It seems to be a popular refrain today.

Senator GEORGE CAMPBELL—Maybe we should not believe everything we read in research papers either! We have been known to get some research papers through this government that have been dubious, to say the least.

Mr Rizvi—I might just emphasise again in respect of 457s that the biggest users of 457s are—

Senator Vanstone—Governments.

Mr Rizvi—state governments. They use them extensively. The other thing I would say is, in respect of regional Australia, where the regional concessions are being used, we will only allow the regional concessions to be used where the relevant regional certifying body, which is usually a body of a state government or appointed after consultation with a state government, has affirmed that an employer could not find that skill in the region in which the employer is seeking to recruit.

Mr Metcalfe—In other words, the state governments are either the employer, in the vast majority of cases, or the certifying body indicating that there is a skills shortage in this area.

Senator GEORGE CAMPBELL—But wouldn't it be a relatively simple exercise to contact the local job agencies or Job Network providers?

Mr Metcalfe—We used to do this. In fact, one of my first jobs in the department many years ago was to process applications in Queensland for employers seeking to bring out skilled workers. I think it was form M60, from memory. There was a process of checking that the employer had placed advertisements in newspapers on a number of occasions. They had to advise whether they had responses or how they dealt with them. The Department of Employment and Industrial Relations, as I think it was then called, in the eighties, was involved in verifying that as well. For the reasons that Mr Rizvi explained earlier—we are talking about skilled workers and not unskilled workers; an effective full employment rate; the fact that the most significant employers under 457s are state government instrumentalities, the New South Wales health department being the largest; and the concessional arrangements that are designed to assist employers in regional Australia requiring positive support from regional certifying bodies—those old arrangements were essentially seen as non-responsive red tape just creating jobs for the public servants to do needless checking. For all of those reasons, those arrangements were done away with. It is fair to say—and there has been the discussion of a small number of cases here today—that clearly, in respect of some individuals, there has been some unsatisfactory behaviour. Senator Lundy has been involved with publicising some matters here in Canberra which had been proceeding to the courts.

Because there have been a small number of examples of poor performance does not mean that the system is broke as a whole. It does mean that there need to be measures in place to ensure that poor performance or exploitation are identified and dealt with. Certainly, if there is any information available about those issues, they will be followed up thoroughly by ourselves and the relevant authorities relating to workplace standards.

Senator GEORGE CAMPBELL—As I understand your answer and that of Mr Rizvi, you are saying that the market is such, and the demand for skilled labour is such, that if an employer comes along and says, 'I've got a shortage; I require to import labour to cover that shortage,' that is acceptable to you—prima facie, that there is no labour available in this country.

Mr Metcalfe—If the New South Wales Department of Health says they need nurses, we believe them.

Senator GEORGE CAMPBELL—You are not just importing nurses, Mr Metcalfe.

Mr Metcalfe—No, but that is an example.

Senator Vanstone—That is an example of the biggest user.

Senator GEORGE CAMPBELL—They may well have clearly demonstrated to you that there is a substantial shortage of nurses, and I do not think anyone would argue with you that there is not in this country at the moment. That does not mean to say that there is a shortage, for example, in some areas of boilermakers or welders. I know a number of them who cannot get employment—maybe because they are too old or happen to be over 40, but that is another issue in the labour market.

Senator Vanstone—Another example came to my attention on a recent visit to Ballarat. There is a chain of pharmacies—I think it is a not-for-profit pharmacy chain—called UFS. They say you are battling to get a pharmacist into western Victoria, and it is just about impossible if you go past Ballarat. So they used this 457 visa to bring in trained pharmacists from the UK, and one from Fiji who trained in New Zealand but who finished in Melbourne, who are happy to work in regional Australia as pharmacists—in fact, they are delighted. But they meet other requirements in terms of assisting young Australians by taking students who are in their placement year—like the year of articles for lawyers or residency for doctors. Again, they offer that placement year out in the regions because they cannot get the fully trained pharmacist who is free to practise without supervision to go out to the regional areas. We would have the prospect of saying to them, ‘You can’t have another 457—

Senator GEORGE CAMPBELL—Maybe we need to look at the way that industry is regulated, Minister.

Senator Vanstone—unless you advertise,’ when everybody knows that they would rather take local people if they could get local people to do the job. In my view, this is true of a large proportion of employers. There is no gain for them. It is an effort to take people from overseas. The answers that Mr Rizvi has given you are a proper indication of what is happening. There is a skills shortage. If you can’t get people locally, you need to get them, because if you can’t get them, as you know, you lose a contract or maybe can’t keep going, and then your Australian workers lose their jobs.

Senator GEORGE CAMPBELL—What departments does Immigration inform when 457 and 456 visas are issued?

Mr Rizvi—In respect of 456s, that happens so quickly, and the person enters and leaves Australia so quickly, that we would only talk to other agencies about that in a very macro way. In respect of 457s, we would deal and work with, as I said, DEWR. Almost on a daily basis, we would be in contact with the Department of Employment and Workplace Relations, both at the central office level and very regularly at the state office level as well.

Senator GEORGE CAMPBELL—What about state governments?

Mr Rizvi—We would become involved with state governments on 457s in a number of other areas. Firstly, where the regional concessions are to be used, we would of course contact the relevant regional certifying body, and in most states that happens to be a state government instrumentality or someone funded by the state government. We will also be in touch with the relevant state workplace relations body if there is a concern about breach of awards. At a more general level, we meet every two years with every state government in respect of all skilled migration visas, including 457s.

Senator GEORGE CAMPBELL—Are all these applications done by mail, email, fax et cetera? Do you visit the applicants to assess the facility and to see whether or not they can accommodate them?

Mr Rizvi—Around 60 to 65 per cent of the applications are received over the internet for subclass 457s but, in the process of assessing the applications, we may well both look at or visit the individual employer if there is a need to do so—for example, if the New South Wales state government lodges an application we are not going to go and visit St Vincent’s Hospital

or somewhere like that. That would be pretty pointless but, where there is a need to do so, we will look at that. We will refer the cases to our overseas posts where it is appropriate to undertake what we call integrity checks.

Senator GEORGE CAMPBELL—What percentage of applicants would you visit before issuing the visas?

Mr Rizvi—The applicant themselves?

Senator GEORGE CAMPBELL—No, sorry, the sponsor.

Mr Rizvi—That would be a relatively small percentage because we tend to do it after the visa has been issued. The primary objective is to process this as quickly as possible because an employer needs the skilled worker to keep their business going. We do not want to stand in the way of that. It is better to allow the vast majority of reputable employers who use this visa to get the visa operating quickly and to follow up any bad employers afterwards.

Senator GEORGE CAMPBELL—Could you take on notice the number of sponsors whom you have visited before issuing visas over the past five years?

Mr Rizvi—We will see what we can locate on that. It is not something we would systematically record, so we will need to survey our state offices. It would be a small number.

Senator GEORGE CAMPBELL—I think you said this morning in response to a question from Senator Carr that you issue a letter to applicants setting out the terms and conditions under which the visa is granted. What material do you provide them with when they apply for a visa?

Mr Rizvi—At the point of application, they have available to them the range of material we provide in our application and information forms. For example, Mr Waters has a copy of a document that we make available to both employers and employees in respect of this particular visa.

Senator GEORGE CAMPBELL—So, if I go along to our embassy in Beijing and apply for a 457 visa, that is the document I will get.

Mr Rizvi—The applications for 457 visas are lodged generally by the employer on behalf of the applicant. Those documents are available in hard copy, if you wish to purchase one, or you can get an electronic copy over the net.

Senator GEORGE CAMPBELL—You can get an electronic copy over the internet.

Mr Rizvi—Yes.

Senator GEORGE CAMPBELL—How do we know—this goes to the question again—that the applicant, if they are Chinese speaking or what have you, actually understand the application that they are making or that is being made on their behalf? I presume they have to sign it, do they?

Mr Rizvi—They have to sign the application form.

Senator GEORGE CAMPBELL—How do you satisfy yourself that they understand what it is they have signed up to?

Mr Rizvi—When they collect their visa, they must come into the office in our overseas post and that is the point at which we will verify that the individual is the person who has the visa. That is the point—

Senator GEORGE CAMPBELL—They do not do a quiz or a test on their level of understanding of the application form, do they?

Mr Rizvi—No, they do not, and that has been an issue. Recently, the minister announced an intention to consult with industry on introducing an English language requirement into this particular visa because of concerns predominantly about occupational health and safety. Something we are looking at is whether some form of English language requirement should be introduced into this particular visa.

Senator GEORGE CAMPBELL—The reason I raise it is because this issue arose in another area. It arose in respect of AWAs with a company who were employing Vietnamese workers who had all signed up to AWAs but not one of them spoke English. When we asked the Office of the Employment Advocate who wrote the letter which was sent to them explaining the AWA we found out it was a person with a university degree in English. I do not know who writes your letter in English explaining to them what the 457 visa means, but there may well be a huge gap between that level of English and the possibility of understanding it by the applicant.

Mr Rizvi—That remains a challenge in many circumstances. Many people will not understand the complexities of immigration laws and those sorts of issues remain an outstanding challenge. That is one of the reasons the minister has announced an intention to look at introducing an English language requirement into this particular visa. On the other hand, we cannot chop off the opportunity for Australian employers to get the skilled workers they need simply because they lack English, so we need to find a balance in that area in how we progress that.

Senator GEORGE CAMPBELL—I understand that. The issue I am raising is that there ought to be a mechanism of ensuring that they actually understand—whether it is in English or some other language—what it is they have signed up to. One final question—I had a phone call on Friday in my office from a woman who asked questions about the new IR laws and their impact on her son who had been taken advantage of. Basically, the claim is that an international student walked in off the street, offered himself for a free trial and offered to work below award wages, and as a consequence her son's shifts were reduced and this individual was employed.

I do not know the details—she would not give the names and addresses so I am not prosecuting that part of the argument. What she did raise with me, however, which is of concern is that she said she rang the immigration department to establish what would happen to the student if she reported it. She said the immigration department refused to tell her what would happen to the student or what the process for investigation would be, and as a consequence she did not lodge a complaint because presumably she did not want to see this person totally disadvantaged, or I think there was some concern about him being sent back home if that was the case. Why, in those circumstances, would the department refuse to tell

her what the process is and what was likely to happen to the student? Why would that be an issue?

Mr Rizvi—I cannot comment on the specific instance as I am not across it and I am not across precisely what conversation took place between your constituent and the individual officer in the department of immigration. What I can say is where an individual, an overseas student, has been employed at below award wages that is clearly a breach of industrial relations laws. What we should do is take down the details of the individual allegation and the details of the employer involved and refer that matter to the relevant workplace relations agency to investigate and check whether the person is being paid below award wages.

Senator GEORGE CAMPBELL—Is there any reason why that information could not be conveyed to the person who rang up, just as you have told me?

Mr Rizvi—I see no reason why that could not be conveyed to your constituent.

Senator GEORGE CAMPBELL—So you have nothing in the department which would say to your employees that you cannot tell people what the department is likely to do and how it is likely to do it?

Mr Metcalfe—No. It sounds like—just from how you have characterised it, Senator—that it may have been a hypothetical discussion or whatever. We receive tens of thousands of phone calls every week. We operate contact centres and we have large numbers of staff whose job it is to answer all sorts of inquiries, so this would have been one of thousands that day. We will check to see whether there is a particular script or piece of information available to our contact staff on this issue to make sure that if this type of call occurs it is dealt with appropriately: that we would explain, in general terms—which is probably I think what your constituent was asking for—the sorts of issues that would be pertinent and, indeed, if the person wanted to provide specific information—and we do get lots of specific information from the public—as to how it would be followed through. I will arrange for a check to be made and if there is an inadequate or non-existent piece of advice for our contact centre operators we will make sure that that is in place.

Senator GEORGE CAMPBELL—I think that would be useful. This individual wanted to put the complaint in but did not really want to get the student into any serious trouble. That is fair enough.

Mr Metcalfe—If we can be of some assistance to your constituent, then please let us know and we will do what we can.

Senator LUNDY—I would like to ask questions about the situation facing Canberra restaurants. I note the minister is not in the room. I have some questions for her shortly. First of all, I just want to clarify the situation with the Canberra restaurants. Whilst complaints were made to the department, those complaints would not have been made to the department had those workers not approached their union in the very first instance. It was only through the advice of the union that they were able to pursue their complaints. Therefore, I think it is misleading for the minister to claim that DIMA's inspection system is working given that those complaints came about through the contact with the union. On making that point, could the department update the committee on the current status of the various investigations by DIMA into the six Canberra restaurants referenced. I note the table provided by the

department in answer to questions on notice from the last estimates. Could we get an update from that point on?

Mr Fox—Do you want me to go through those one by one?

Senator LUNDY—Yes.

Mr Fox—In the answers to questions on notice, we did not identify individual restaurants.

Senator LUNDY—Before you start, perhaps we should deal with that issue. Given that four of the six are already in the public domain, why didn't the department identify the names of the two not currently in the public domain?

Mr Rizvi—You are correct: some of the restaurants are in public domain; some of them are not. Some of the individuals involved have their names in the public domain; some of them do not. Canberra is a very small community. Once we start identifying within that table those who are in the public domain, it actually becomes quite possible to then identify those who are not already in the public domain. We felt that it was inappropriate, particularly in respect of some of the other restaurants who may or may not be guilty of any wrongdoing and some of the other individuals who may not wish to be identified, to put forward anything that might lead to them being identified. We have tried to answer the question as best we can without divulging the possibility that these people get identified.

Senator LUNDY—For clarity's sake, the four that are in the public domain are Milk and Honey, Zeffirelli, Pangaea and the Holy Grail. Has either of the two restaurants not named, in the eyes of DIMA at least, had a sanction applied to them because of their conduct?

Mr Rizvi—Not at this stage.

Senator LUNDY—I am sorry that the minister is not here in respect of my next question. I certainly raised the issue in parliament of those restaurants whose names are in the public domain, and one was specifically raised by the department and put into the public domain—that is, Pangaea. Where is the equity in not naming the other two restaurants?

Mr Fox—I will check the record, but I think that the public naming of Pangaea was actually not by the department of immigration but by the Office of Workplace Services.

Senator LUNDY—Yes, you may be correct. My recollection is that that was a joint press release. I might be wrong and it could have been Workplace Services.

Mr Fox—In terms of the prosecution, it was Workplace Services. I will check as well. With the two restaurants that have not been named, we have found no substance to the allegations. There has been no wrongdoing found against them.

Senator LUNDY—Is that under the terms of the Migration Act as opposed to the Workplace Relations Act?

Mr Fox—That is right. I think that the Workplace Services investigation is ongoing with those two, but certainly from the Migration Act perspective we have found that they have not done anything wrong. With the other four: we are aware from the public record that the Pangaea case is before the courts at the moment. I do not think I need to add anything to that.

Senator LUNDY—Can you confirm that the date for that hearing is 20 June?

Mr Fox—My advice is that it is the 19th, but I do not know that for sure. As far as any sanctions under the Migration Act are concerned, we will wait and see what happens with them, but we have also issued a notice of intention to consider action against them.

Senator LUNDY—Why do you deem it necessary to wait until that litigation proceeds before determining whether or not to apply a sanction, given the Office of Workplace Services has found there to be a breach and is seeking a court action to recover moneys owing? It is a very important question because I need to know what is a determinant of your considering what constitutes a breach for a sanction under the Migration Act—whether you require a successful prosecution or whether you just need to determine there is a breach.

Mr Fox—I was perhaps a little loose in my language there. The action with respect to them, from the Workplace Services point of view, is awaiting the outcome of the litigation. We have issued a notice of intention to take action against Pangaea to them and we are awaiting a response from them. They have indicated they will not respond until after the prosecution takes place.

Senator LUNDY—So the outcome of the litigation is not the determinant of whether or not you impose a sanction?

Mr Fox—Correct. With the other ones: we have taken sanctions against the Milk and Honey restaurant. They have had a bar imposed on them against further sponsorships. With the Holy Grail we are considering sanctions and there are still ongoing investigations on those. And Zeffirellis is in the same situation. Our investigation continues on those.

Senator LUNDY—You have had these complaints before you, and obviously the ongoing Office of Workplace Services investigations have been able to demonstrate that a breach has occurred in, I believe, all of those circumstances; why is it taking DIMA so long to determine whether or not a sanction should apply? It has been many months, certainly in a couple of those cases, since Workplace Services determined that in fact there was a breach of the Workplace Services Act. I am trying not to trawl back over all the issues we have been through all day to make the very specific point that you have got to come a long way before the sanctions are even considered. They have come a long way and still the department procrastinates in the application of those sanctions. Why?

Mr Fox—Certainly I accept that we have taken too long to impose those. The question that we are asking ourselves is how severe the sanctions we apply should be, as opposed to whether or not we should apply them. Mr Rizvi took us through a little while ago—I am not sure if you were in the room—the range of sanctions that we can apply and the degrees to which they can apply. Those depend on the severity of the breach. So we are looking at those issues in determining what sanctions to actually impose in the matter. We have also been making sure that we are able to deal with those employees who either want to stay with that employer or want to change employers. So we have been working with the employees to make sure that they are not sent back to their home country if they do not want to be, for example.

Mr Rizvi—I might add to what Mr Fox just said. In respect of those employers for whom we are currently considering sanctions, during this period, if they were to lodge an application to bring in a further worker under subclass 457, of course the fact that they are under

consideration for sanctions would be taken into consideration and it would be unlikely that they would be able to bring in anyone whilst we are going through that consideration process. So, in effect, a bar is already in operation.

Senator LUNDY—Just following on from that: I understand that Milk and Honey still do have someone on staff who was part of the scheme organised by Harrington.

Mr Rizvi—That is right.

Senator LUNDY—What is the status of that skilled migrant worker's future with that ban now imposed on Milk and Honey?

Mr Rizvi—The ban would be in respect of any further employees who are brought in. In respect of that particular worker, Milk and Honey clearly has an obligation to do the right thing by that employee and, whilst that employee wishes to remain with Milk and Honey and Milk and Honey continues to abide by its obligations, we will allow that situation to continue, as it is beneficial to both employer and employee.

Senator LUNDY—Going to the issue of the Pangaea restaurant: you said you were awaiting a response from them in relation to your view that there ought to be a sanction applied. What scope does a restaurant have to choose not to respond or to determine that they should wait until after the litigation to respond to your approach to discuss a ban?

Mr Fox—As a matter of course, we will issue a notice of intention to take action and a sponsor, whether it is a restaurant or any other sponsor, is entitled to reply to that. If they choose not to, then we will make a decision based on our assessment of the facts.

Senator LUNDY—Do you think their response to you that they will await litigation before they respond to you is reasonable? If so, why?

Mr Fox—It is reasonable to the extent that, should the litigation find that they have committed no breach, we may then take that into account in determining the severity of the sanctions, as we said earlier. We think that there is *prima facie* evidence that they have breached their undertakings as an employer under our legislation. The degree to which that is found to be the case will depend on the court outcome. We certainly think we will take some action. The extent of that action will depend on the outcome of the litigation.

Senator LUNDY—What relationship does your act and the application of sanctions have with case law in that regard? It is quite possible that, if they are found not guilty as a result of the action by the Office of Workplace Services, they could in fact still be in breach of the Migration Act, so why don't you act now?

Mr Fox—That is what I was indicating. We consider that there will *prima facie* be a case against them under the Migration Act and we would consider the sanctions that we would apply on that basis.

Senator LUNDY—I just do not understand why you are waiting for the litigation, given that you have said on the public record that there is *prima facie* evidence there. The litigation is not in relation to the Migration Act; it is a different act altogether.

Mr Metcalfe—There is a technical point. The sanctions that we would apply are not under the Migration Act *per se*. They are under the broad coverage of action that occurs in relation

to visas under the Migration Act, but the breach has been in relation to promises and undertakings that have been provided to us in relation to a visa application. So it is not a breach of the act; it is a failure to abide by an understanding or promises that have been made in relation to a visa matter.

To summarise what Mr Fox has said: we have provided an indication to the employer that we believe that they have been in breach. They have said that they wish to respond to us after a certain event occurs following a decision by a court, a magistrate or whatever. Ultimately, I would not see that as constraining us from reaching a decision. It is not up to them to dictate to us when they are going to respond. Ultimately, it is up to us as to when we wish to make a decision, having given them sufficient time to mount an argument or prepare a response.

The effective point, though, is what Mr Rizvi said earlier—that is, in simple terms, that their ability to sponsor is under suspension at the moment. So, pending a permanent decision as to what the sanction should be, there is a suspension in place and we would not be going ahead and allowing them to sponsor in the meantime, and that is the sanction that is available to us in that sense.

Senator LUNDY—Thank you for that explanation. Where does the Migration Act evoke the payment of the award as being a condition of the 457 visa being granted? The way I am interpreting what you are telling me is that the mention of the award in the Migration Act is not in itself a law under the Migration Act, that the award be paid.

Mr Metcalfe—There is a technical point. It is not a provision of the act itself; it is a provision in the relevant migration regulation that establishes that class of visa. I am told it is regulation 120. Ultimately it flows through to the act, but it is contained in the visa class established in the regulation. But the sanction available to us is not a breach of the act, per se; rather a breach of an undertaking, and the sanction is an administrative one: we will not let you make any more applications.

Senator LUNDY—Going now to the status of the Holy Grail, again you said that the sanction is pending. You are considering applying a sanction.

Mr Fox—Yes. We had issued a notice of intention to take action to the Holy Grail. We found that we had incorrectly addressed that, and we have now redressed that and issued it to the correct arm of the Holy Grail. We are awaiting their response to that at the moment.

Senator LUNDY—When was that issued—that is, the correct one?

Mr Fox—It was on 15 May.

Senator LUNDY—And Zeffirelli's?

Mr Fox—On 22 March we sent them a notice.

Senator LUNDY—And, just for the record, when did you send a notice to Pangaea and Milk and Honey?

Mr Fox—That was also 22 March.

Senator LUNDY—For both of those?

Mr Fox—Yes.

Senator LUNDY—I am presuming you sent the original notice, which was incorrect, to the Holy Grail on 22 March as well?

Mr Fox—In fact, I think it was 19 February.

Senator LUNDY—Even earlier. Again it highlights the point that has been stressed throughout the day about the lack of voracity of the sanctions available to the department to get employers to do the right thing with respect to their obligations under a 457 visa. February and March were some months ago. Do you think that is a reasonable amount of time to ponder the issue of sanctions? Will you admit that it is too long and tell the committee what you are doing to try to rectify this slowness?

Mr Rizvi—It is certainly true that we would like to move more quickly but—

Senator LUNDY—What is stopping you?

Mr Rizvi—I think what we want to do is to make sure that the processes that we go through are defensible. In the migration area, we are very used to litigation action being taken against us for very minor slips in these sorts of processes. What we want to do is make sure that the sanction action that we do take is defensible and will be sustained against an appeal. As Mr Metcalfe has pointed out, these restaurants are already effectively under a sanction in that we would not allow them to bring in any further workers while this consideration is going on. Effectively the sanction is in place. The next step is to make sure that that sanction, when it is fully applied in its totality—if it is applied—is indeed sustainable through any appeal action that the restaurants might take.

Senator LUNDY—So this is the ultimate sanction available to the department for employers who do not do the right thing. We have prima facie cases of breaches of awards. Two restaurants have already settled the outstanding claims. Two are still contesting. One is going to court. I have certainly heard, in relation to Zeffirelli's, no announcement from the Office of Workplace Services about any intention to prosecute. I do not know if you can help the committee out there. It certainly will not help confidence in the system that the department has the robust tools you require to deal with recalcitrant employers who exploit workers. Do you think that is a fair comment?

Mr Metcalfe—I think the question is: what is it appropriate for us to do? The service we provide in this area is authorising the grant of visas for foreign workers. Therefore a sanction of removing that is a very significant sanction as far as we are concerned. If indeed there is proven to be exploitation or inappropriate employment practices then those are properly the subject of activity through the Department of Employment and Workplace Relations and its authorities, including state and territory authorities.

There is clearly a set of laws to be obeyed in relation to whether you treat your workers properly and in accordance with requirements. That is clearly an issue on which we work closely with those authorities, but that is their sanction to pursue, including through legal action. What we can do under our current arrangements is to permit or withdraw an ability to bring further people to the country, and that is an issue that we obviously take seriously.

Senator LUNDY—Again, I am sorry that the minister has not deigned to return, because I wanted to ask the minister a policy question. Here she is. Good timing, Minister! I have a

question for you. I notice that you have made several public statements about how concerned you are to come down on employers who are doing the wrong thing and how disturbed you are that they might be bringing the system undone, or words to that effect. Yet, in the case of the Canberra restaurants, the department has issued notices now for some months with action having been taken in only one, implying that there is a weak sanctioning regime in place. How does that stack up with the words you have expressed and what are you going to do with respect to strengthening the act to ensure that recalcitrant employers who exploit migrant workers are pulled into line sharply and swiftly, and all moneys owing paid straightaway?

Senator Vanstone—Moneys owing paid, as you probably know, given your interest in the matter, to Australian workers as well. With respect to some industries—and restaurant, catering and hospitality, sadly, is one of them—anecdotally, people will tell you that young people especially are misused, if that is the right word; I am a little bit cautious about using the word ‘abused’.

Senator LUNDY—‘Ripped off’ is probably adequate.

Senator Vanstone—Fair enough; that is a very good and precise expression. Many people will have heard of circumstances where young people want a job and they are told, ‘Come and work on a weekend; we’ll give you a look and see if there’s a space.’ Then—surprise, surprise—having done the weekend work, there is not a space. You would have heard variations on that theme, and I understand it well. The last time I got advice, there were some Australian workers still short of money. I just want to make that point: in this particular case it may not be something that is targeting specifically skilled workers from overseas but just generally trying to get away with what you can.

The speed of investigations is an issue. Investigations are, in part, done by another department over which we have no control. I have had some discussions with colleagues and I hope—it is nothing more than that at this point—that we can move to something like a mobile strike team. There is, for example, the Cash Economy Task Force, with which I have some familiarity in the welfare portfolio. If there were people working in the cash economy, it was obviously of interest to the welfare people, it was of interest to Immigration, it was of interest to the tax office and frequently it was of interest to local police as well. They worked cooperatively together regarding where they would focus their work, when they would strike, if you like, and where. I would like to see a more cooperative arrangement between the range of agencies that are involved here. In some cases state authorities have something to say about pay and conditions. We are not the employment department. Immigration has not been with Employment since probably Gough Whitlam’s days.

Mr Metcalfe—Clyde Cameron was the last minister.

Senator Vanstone—Was that under Gough Whitlam?

Mr Metcalfe—Yes.

Senator Vanstone—In one sense, when you are discussing issues like this, you can see why some people have thought that immigration should be with the employment department, but given the enormous range of Immigration’s work, that goes to spouse visas, tourism, education visas, that is no longer the case, and it is a department that stands on its own. So it has to work in cooperation with other agencies at a federal level and also at a state level.

I am pleased with the level of cooperation that this department has built up with state agencies. Up until last year I do not think that, in the 21 years I have been in parliament, I would have expected a state Premier to praise a federal minister in the state *Hansard*, crossing both levels of government and political persuasions. We work very well with the state and territory governments. I pick out my own state in particular, but Victoria is another example. It is to a slightly lesser extent, but Victoria is still working very closely with Western Australia. Those governments have an interest through their agencies in seeing that the visas they want to use and that they want to encourage us to use are not misused. We are working on looking at what we can do to have something akin to a mobile strike team which would move more quickly than in the past and be more transparent to each of the other agencies involved. As far as I am concerned, our interests are the same as DEWR's, which are the same as the state agencies' interests. We do not want these visas misused; we want people to pay the appropriate money and comply with all the rules. We are looking at that. That may not require any changes to the act at all. Frequently, improvements should not necessarily be equated with extra money. When you need new IT, sure, it costs the same as an aircraft carrier, just about. Perhaps not: Defence are very good at spending. Perhaps it costs the same as the rudder of an aircraft carrier. You know what I mean. IT is a big expense, and you expect to have to pay more money. Often, what is required is a change in the way people work. We are seeing that in Immigration. We have had to get in new IT and make some new arrangements in relation to health, but also a large amount of what we are trying to do is change the way people work. That is what I am looking at here: to try to change the way a variety of people, who are all charged with this responsibility in different ways, can better work together.

Senator LUNDY—With regard to some of the concerns my colleagues have brought up today about the general motivation for this, we know that the shortage of Canberra chefs is real and that these people are required.

Senator Vanstone—Not just Canberra, Senator.

Senator LUNDY—I know, but I am just keeping focused on the issue here.

Senator Vanstone—You are bit like Keating in Sydney: after he leaves Sydney, Australia does not exist and, after you leave Canberra, Australia does not exist. I understand that.

Senator LUNDY—That is not true at all, but I think you will agree with me—

Senator Vanstone—I am being light hearted. I was being friendly.

Senator LUNDY—Excellent. That is good to see. Perhaps while you are in such a friendly mood, you could tell us what you are going to do about making sure that the money is recovered for the outstanding workers who were ripped off as a result of the exploitation by their employers. Some of them are still waiting for their money.

Senator Vanstone—It is not something personally in my control, as you know. The relevant agencies are charged with pursuing that matter. You can certainly be sure that Immigration will be looking very carefully at future applications of people associated with any past applications where the obligations were not lived up to and workers were not paid their entitlements.

Senator LUNDY—Do you feel that the department appropriately has an obligation to these workers who are working under these visas who now find themselves out of pocket?

Senator Vanstone—I think the employer has an obligation to the workers.

Senator LUNDY—Perhaps you can tell me why the workers have heard nothing from DIMA in relation to their complaints. I know they have not been advised of the sanctions being sought or applied in the various cases. That does not invoke a great deal of confidence in them that DIMA is acting on their complaints.

Senator Vanstone—They are. You were not here at the time, although you came not long after, when I mentioned that some of the people involved had made their complaints in October some months in advance of when you raised it. I mention that by way of indicating that it is simply not true that someone who comes from overseas must be half-witted and could not possibly make a complaint on their behalf. I am not saying you have made this allegation, but some have sought to put that view, which is simply not true. People from other ethnic backgrounds have the same intelligence level as everybody else and can make appropriate complaints. In this case, they did. I am not familiar with the degree to which those people have been informed of the progress of investigations, although what they want in the end, of course, is the proper outcome as opposed to just knowledge of the process as it goes along.

Senator LUNDY—The general problem with the Canberra restaurants really goes to the heart of confidence in the system. I think that is a fair reflection. So, if the original complainants are not kept apprised of the developments within the department, do you acknowledge that is a problem?

Senator Vanstone—I am just saying to you that I think what the complainants want is to have their complaints dealt with. Dealing with it may not mean on a day-by-day basis letting people know what either—

Senator LUNDY—Once in five months would have been good.

Senator Vanstone—we or other agencies are doing. Then I said to you that one of the officers might have something to add with respect to this.

Mr Fox—I certainly take the point that not all of the employees have been contacted on a daily basis, but there has been quite regular contact with them, particularly with those who have sought to change to alternative sponsors. A number of them have left Australia already and we certainly have not had any further contact with those. As recently as 9 May, we met with one of the employees and, indeed, that is the one who has I think stayed with the employer against whom we have imposed sanctions. To say that we have not contacted them in five months is perhaps not quite right.

Senator LUNDY—I am thinking more about the workers who have made complaints and moved on to new employment. They have not heard any follow-up from the department about what sanctions you were taking based on their original complaints. I put it to you that it is a reasonable idea that the department have that communication.

Mr Fox—We can look at that and do that in a more systematic way. Quite a number of them have been involved in, indeed, providing evidence that may or may not be used in courts, for example.

Senator LUNDY—Can you tell me whether Harrington Corporation has applied for or has had any further visas approved since the granting of the 17 visas in October 2005?

Mr Fox—Not that I see on the documents before me. I can take that on notice.

Senator LUNDY—Given the status of the notice of intention to apply sanctions, what would be the scenario if, in fact, they had either a) applied or b) been successful in bringing in more 457 visa migrant workers since that date?

Mr Fox—I think that Mr Rizvi explained that they are under an, I guess, effective sanction. All employers with whom we have concern are identified and, if any application comes up from them for subsequent sponsorship or visas, we are able to identify that and we would be unlikely—I will not say that it could not happen—to issue them with further sponsorship approval or visas.

Senator LUNDY—Given the nature of Harrington Corporation's involvement in the recruiting and the operation of this scheme for those 17 workers to go into six Canberra restaurants, can you tell me whether or not Harrington Corporation would have been required to have a migration agent's licence to do that and whether or not they in fact did have a migration agent's licence?

Mr Rizvi—My understanding is that the employers involved in this area did use a migration agent who was providing them with advice and that they were reliant on that agent in meeting the requirements of the act—that is, that migration advice not be provided by anyone other than someone who is a registered migration agent.

Senator LUNDY—In terms of your consideration of any sanction, is that migration agent liable or challenged for their role in this particular scheme?

Mr Rizvi—We have referred the matter of the role of the migration agent in this particular case to the Migration Agents Registration Authority and they will need to consider whether sanctions should be applied against the migration agent.

Senator LUNDY—Going back to the points you made earlier—I think senators Carr and George Campbell asked about the integrity checks for business sponsors—I note, again from questions on notice, that the department was investigating further restaurants. I am sorry, I might be confused about that. The Office of Workplace Services has written to many hundreds of restaurants and is investigating a further 40 restaurants. Could you tell me what processes you have now put in place to test the integrity of business sponsors, particularly in this sector in light of the problems that have been unearthed?

Mr Rizvi—There are perhaps three things that government overall is doing in this area. The first is what you have just referred to, which is what the Office of Workplace Services is doing. Secondly, we have identified restaurants and similar organisations in our system, so where such restaurants lodge a sponsorship application, those applications are immediately alerted to the decision maker as being 'in a higher risk category' and therefore requiring

additional scrutiny over and above that which would normally apply. That would similarly be the case in respect of the applicants involved.

The third thing is we have met in a number of instances with the Australian Restaurant and Catering Association, who are concerned that their members may not fully understand their obligations when they bring in overseas workers. We will be working with that association to run joint seminars for restaurant owners so that they fully understand their obligations in utilising this particular visa.

Senator LUNDY—Have you found any evidence of organisations or individuals bringing in skilled migrant workers in this sector but advising employers in restaurants specifically and incorrectly about their obligations under the award?

Mr Rizvi—This is agents doing that?

Senator LUNDY—Agents—for example, like Harrington Corporation. It is not an agent but it is obviously involved in organising the scheme—

Mr Rizvi—We are only at this stage aware of—

Senator LUNDY—that is, misleading business sponsoring restaurants.

Mr Rizvi—I acknowledge that that could happen as appears to have been the case in this particular instance. That still has to be, of course, tested by MARA but it is an issue we will be raising when we do this series of seminars. We have some 57 information seminars with the restaurant industry scheduled at which we will explain the obligations and undertakings that the employers have to enter into. It would be in that context that we would be able to disabuse them of any misconceptions that agents may be pushing.

Senator LUNDY—You did not answer my question.

Mr Rizvi—I am just coming to that.

Senator LUNDY—Thank you.

Mr Rizvi—It would be in that context also that we would ask if they are aware of agents who have been providing misleading advice in that regard to pass those concerns onto us so that we may refer those to MARA to consider.

Senator LUNDY—You mentioned that the percentage of integrity checks on business sponsors that you achieve is quite small, in answer to a question earlier.

Mr Rizvi—That referred to checks of the physical premises of the sponsors prior to visa grant. We site visit some 25 per cent of sponsors within 12 to 18 months after visa grant.

Senator LUNDY—You also mentioned in answer to a question earlier that you had 33 separate complaints with respect to, I think, employers specifically.

Mr Rizvi—There are 33 different sets of allegations that we are currently investigating.

Senator LUNDY—How many of those relate to the restaurant and catering sector?

Mr Fox—I do not think we have that breakdown with us; we can provide that on notice.

Senator LUNDY—Can you take that on notice for all sectors—break down the 33 complaints?

Mr Fox—I think we have taken that on notice already from Senator Carr. I think his question will take yours into account, but if it does not we will provide that separately.

Senator LUNDY—Thank you. What is the nature of the interaction between DIMA in resolving these complaints and the Office of Workplace Services given that, as you have pointed out and we all know, they are the ones that determine whether or not a technical breach of the award has occurred?

Mr Fox—As Mr Rizvi said earlier, we work very closely with the Office of Workplace Services and the Department of Employment and Workplace Relations generally. My understanding is that there are some legislative restrictions that prevent the Office of Workplace Services and its predecessors, I guess, from giving some information to us. The benefit of the joint operations that the minister mentioned earlier is that that should help us to work much more effectively together to move things much more quickly. But we do work very closely already. We provide information to each other subject to the restrictions that we have within our own legislative frameworks. We certainly make sure that we do communicate with each other as much as we can.

Senator Vanstone—I agree with everything Mr Fox said. It could have equally been said that the Federal Police and Customs shared information with each other—and they did. But there is nothing like being actually committed together—you are all there and this is your task—instead of, ‘I will tell them’ or something happens like your kid rings up or whatever and it does not get done immediately. When you are actually there together as a team, I think that has an effect of upgrading the cooperation.

Senator LUNDY—In this spirit of upgraded cooperation, how many of the 40 restaurants that the Office of Workplace Services are currently investigating also host migrant workers under a 457 visa?

Mr Rizvi—We would have to take that on notice. We would have to do a check and compare our database with theirs.

Senator LUNDY—You are not already in possession of that information?

Mr Fox—We may be back in our office, but we do not have it here.

Senator LUNDY—I am trying to gauge how close that cooperation is. We know they are investigating 40 restaurants. I am interested to know how many more may involve workers under a 457 visa.

Mr Fox—Certainly my understanding is that their primary target is all employees and it may be coincidental that there are some 457 workers as well. We will confirm that for you.

Senator LUNDY—In your efforts to resolve this, what is the nature of the relationship between the department and employer representative groups? You mentioned the restaurant and caterers, but I know the Chamber of Commerce has also claimed to represent at least one, and perhaps two, of the four restaurants already in the public domain. What is the nature of that interaction?

Mr Rizvi—In this particular area, we seek to interact very closely both with the industry bodies and with the unions. Only the week before last, Mr Metcalfe had me go up to

Queensland to talk to the conference of the Australian Manufacturing Workers Union to discuss 457 visas. We had a very robust discussion about 457s.

Senator LUNDY—I can imagine.

Mr Metcalfe—I think they were a little surprised that I asked Mr Rizvi to go.

Senator WEBBER—Congratulations. A good initiative.

Mr Metcalfe—We are serious about talking about these issues.

Senator Vanstone—I indicated in an answer before—and Senator Lundy might not have been here for it—that the department has contacted a range of unions and said, ‘If you’ve got information, don’t sit on it. Give it to us and we’ll work with you on it.’

Senator LUNDY—My question actually relates to employer organisations such as the Chamber of Commerce.

Senator Vanstone—Sure.

Mr Rizvi—Similarly, we seek to work closely with the chambers of commerce and other industry bodies. We have industry outreach officers who work closely with the industry bodies as well. As a result, we are able to communicate to the industry bodies as well as to the unions our concerns in this area and to work in partnership with them to progress approaches to addressing these problems.

Senator LUNDY—What sanction do you have for industry employer organisations that provide misleading advice in relation to 457 visa schemes?

Mr Rizvi—If they are in the business of providing migration advice, they must be registered. There are sanctions available if they were providing migration advice. If it is more general advice in relation to other matters, then we have no basis for sanctioning them.

CHAIR—Senator Lundy, we are keen to move beyond outcome 1, output 1.1. I know that is ambitious of me. What is your time frame?

Senator LUNDY—I know other senators have actually covered a lot of the ground with respect to the sanctions proposal, so I am not intending to go through that.

CHAIR—That had crossed my mind.

Senator LUNDY—Perhaps I could just wrap up with a question that relates to the way in which the Migration Act regulations currently evoke the award and the longer term impact of the Workchoices legislation changes and the potential demise of the awards under the system.

Can you describe the longer term impact of those changes and what protection migrant workers will have with respect to a minimum wage, and especially the payment of things like penalty rates? So the issue of just setting a minimum salary is not good enough in providing assurances that these workers will not be paid less than Australian workers.

Mr Rizvi—In terms of the details of the interaction between the Migration Act and the new Work Choices legislation, that is something on which we will need to continue to seek advice from the Office of Workplace Services. I can make some general comments, though, in respect of these matters.

The individual workers concerned will have whatever protections are provided within domestic law at a minimum. They will have, in addition to that, whatever protections are provided in the Migration Act. Two of the key protections in the Migration Act are the obligations and undertakings that the employers make to the individuals concerned, and we are looking very closely at those obligations and undertakings. As the minister announced, we are looking at how we might strengthen those. So that will help us. The minister has also indicated the objective of looking at mobile strike teams to improve our capacities in this area.

In respect of the minimum salary level, I think it is important to note that the minimum salary level relates to a standard working week. My understanding is that that is defined in workplace relations legislation as 38 hours. So where an individual works for more than 38 hours in a week, they would be eligible for payment at least at that minimum rate for every additional hour over 38 hours. Where the award system provides for penalties, overtime et cetera which are over and above that rate, they would of course have to be paid at whatever that higher rate is. So it is either the minimum salary level or the award, whichever is the higher.

Senator LUNDY—If the minimum wage set by the so-called Fair Pay Commission is lower than, or indeed the same as, the minimum salary as identified under the Migration Act, which will prevail as far as the penalty hourly rate is applied?

Mr Rizvi—It would be whichever is the higher.

Senator LUNDY—I will place some further questions on notice in relation to that and leave you with a final question on notice—that is, to ask you to place the names of the other two restaurants you are investigating in the public domain. I note that you have already said that you do not think that is right; I certainly think it is in the public interest given that they have been investigated and you are considering sanctions.

Mr Rizvi—If the allegations against them are proved, I accept what you are saying. But if the allegations are not proved, I am not sure that it would be fair to them to publicise their name if the allegation was unproven.

Senator LUNDY—You know as well as I do that, with respect to some of the other restaurants involved, it was difficult to prove or disprove the allegation in the first instance because of the state of the books. So there is a public interest test that goes beyond the technicalities in these cases, and I ask you to consider that in responding.

Mr Metcalfe—We would consider that in connection with any obligations we have under the Privacy Act, Senator.

Senator LUNDY—Certainly.

CHAIR—Senator Webber has indicated that she will place her questions in this area on notice, for which the committee is grateful; thank you very much. Senator Scullion has indicated that he has one question on this matter, and then we will return to general questions in the area of outcome 1, commencing with Senator Bartlett.

Senator SCULLION—You answered a whole range of questions in regard to a plethora of research that you had obviously conducted. Did any of the research cover behaviour in the exercise of expenses and undertakings by businesses that are interested in having people come

over on a 457 visa? I refer in particular to the area of expenses. Have you done any research like that?

Mr Rizvi—Certainly some work has been done in this area by Professor Peter McDonald, who I mentioned earlier. He surveyed a significant number of 457 employers, who highlighted to Professor McDonald the very extensive costs that they incur whenever they bring an overseas worker to Australia. The costs of recruiting overseas can be very substantial. Then the costs of bringing that individual to Australia are also very substantial, such that Professor McDonald found that it is highly unlikely that an employer in Australia would turn to the overseas option unless they had no choice.

Senator SCULLION—So you are saying it is another way of validating that, even in a business sense, they are only going to go out and seek someone if there is absolutely nobody available in Australia to seek the position.

Mr Rizvi—I think that was certainly what Professor McDonald was saying. I have a quote from his research, which we can provide to the committee if you wish. I will give you some quotes that he provided in his paper. He said:

The reason given most often by employers for sponsoring a worker from overseas was that the required skill was not available or difficult to obtain in Australia. Knowledge of a company's system, product or culture is a specialised skill, and many employers mentioned it as an important reason for bringing in people on 457s. Often these employers also needed people at very short notice.

Here are some other relevant quotes from Professor McDonald:

The need for people to train other employees was mentioned by more than half the employers in the survey as an important reason for sponsoring employees from overseas ...

That is, they bring in the already trained person from overseas to help them train other Australian employees in the business. He also found that a large majority of employers indicated that 457 visa holders were employed to fill new positions, suggesting that Australia's labour demands for skilled workers were expanding. I think the research that Professor McDonald has done is quite valuable in this area and would be quite informative. As I said, I think it is probably more considered than some of the statements being made in the media.

Senator SCULLION—Would you be in a position to table that document?

Mr Rizvi—We can do that.

[4.42 pm]

CHAIR—Thank you very much, Mr Rizvi. We will move on to general questions in the area of outcome 1. Senator Bartlett.

Senator BARTLETT—I wanted to ask firstly about some suggestions that were detailed in a newspaper article on 30 March this year in the *Australian*. It quoted some minutes from the Muslim advisory group set up by the federal government, which talked about plans to put stricter conditions on people entering the country on religious worker visas. It actually quotes you, Mr Rizvi, from the minutes in the paper, saying that there is no condition on either of the visas—these are religious visas, I presume—that require an applicant not to incite discord. The suggestion in the article is that there will be some sort of new condition put in place to

require people to say they will not incite discord, and they will be able to be removed if they do. Could you give any comment about the accuracy of what has been stated there and also what is actually happening in that regard? I would have thought that all people on any sort of visa, even the most benign tourist visa, would have been required not to incite discord.

Mr Rizvi—You are correct, Senator. There were two issues in respect of religious worker visas that were being discussed. The first was the inciting discord issue and the second was the extent to which religious workers should have some basic knowledge of English prior to entry into Australia so that they may be able to communicate more effectively with Australians. In respect of the first matter, you are right: at a general level there is that requirement regarding discord. However, it is not explicit in terms of the way the religious worker visa is prepared. What we wanted to do was to actually include a very explicit provision which communicated very clearly the expectation of the Australian community regarding the incitement of discord. The objective was to introduce a condition that made that matter more explicit rather than it not being there already. The second issue which was discussed by the reference group was the matter of English and how that might be dealt with. Both of those matters are still as yet unresolved, essentially because we, as well as the reference group, have not yet reached a point of consensus on how those two matters should be addressed. Whilst there is agreement that they are two important issues, there is still not consensus in the working group as to what advice should then be put forward to the minister.

Senator BARTLETT—Why would you need to make any regulatory change if it is a standard condition anyway that anyone coming here cannot incite discord? Can't you just add a line on the form or something?

Mr Rizvi—It is buried under the character test, which covers so much that it is not explicit enough, particularly in respect of a group where there is potentially some concern.

Senator BARTLETT—Is it not made explicit for tourists, visitors, businesspeople, students or whatever that they are not supposed to incite discord either?

Mr Rizvi—We only go through a process of making it explicit in specific cases where the controversial visitor process is engaged. For the vast majority of tourists that come to Australia, for example, they go through a very, very light touch visa process and they are not across all the details of the conditions that might apply. The vast majority of them come on an electronic travel authority where these things are just not laid out in any detail.

Senator BARTLETT—With the religious worker visas—which I have to confess I am not hugely familiar with—according to this there were about 1,550 issued in the last financial year and a third of them came from the United States. How do they work?

Mr Rizvi—The religious worker visas work on the basis of a religious organisation in Australia seeking to bring a religious worker to Australia who is going to minister to the local community. I am also not across the details of the visa.

Senator BARTLETT—Do you have to meet award rates? I can feel myself going back to the earlier—

Mr Waters—There is a sponsorship requirement for the entry of religious workers. We need to be satisfied that the organisation is a bona fide one and that sufficient provision is

made for that person to be able to live in Australia. They are not subject to a minimum salary level or the like, but there are sponsorship undertakings in regard to providing for the individuals living in Australia.

Senator BARTLETT—Do they have a time frame? Are they temporary or two year visas?

Mr Waters—These visas are generally of two years duration but a new visa can be issued after that period; so, in effect, they can roll on—a ‘two years on two years’ sort of thing.

Senator BARTLETT—Do they have work rights and that sort of thing?

Mr Waters—They have the ability to be able to work for the sponsoring organisation in a ministering of religion type capacity—that is, as a religious worker. They cannot leave their employer and go and work in a restaurant, for example.

Senator BARTLETT—Or do extra taxi driving on the side or whatever.

Mr Waters—That is not permitted.

Senator BARTLETT—Even if they wore their collar while they were driving and said they were ministering religion. It is a way of spreading the Word. So there is not actually going to be a tougher test to get in proposed, it is proposed to more clearly outline the obligations on people who would be coming in. Would it be applied to all religions? I presume, at a guess, the majority that come in on religious worker visas are Christian.

Mr Rizvi—That is correct, and it would apply irrespective of religion.

Senator BARTLETT—The other aspect that was in that article, which was in addition to what you have mentioned, was a suggestion that religious umbrella organisations would be given the power to clear or knock back such a visa. I presume if a priest was going to come out that the diocese or something could knock it back, or some peak Muslim body—assuming there is one, which is always debatable—is given some role like that. Is that a proposal under consideration as well?

Mr Rizvi—There were a range of options that were floated in the discussions with the Muslim Reference Group. We already consult with a number of umbrella type organisations before we issue religious worker visas. The question was whether we should make that more formal and that was the issue being discussed. There were a number of supporters of that proposal but there were also a number of people who were concerned about the exact point you make: who is the umbrella organisation for the Muslim religion? There is no single, clearly identifiable body and hence that makes the operation of such a provision very difficult.

Senator BARTLETT—I want to ask about working holiday visas. Changes to those visas were announced before the budget: they have been changed to two-year or they are able to be extended from one to two years once you are already here. Could you quickly zip through what the changes are?

Mr Rizvi—The minister announced them and the regulations were changed from 1 November, which allowed working holiday makers who worked for three months with an employer in regional Australia doing seasonal harvest related work to seek and obtain a further working holiday maker visa. It was quite successful. We had quite a rush of people applying immediately after 1 November seeking a second working holiday maker visa on the

basis that they had been working for at least three months doing seasonal harvest work. The minister announced recently that that provision would be expanded to cover a wider range of primary industries such as shearing, forestry and that sort of work to enable working holiday makers to obtain a second visa.

Other changes the minister announced were that a working holiday maker visa holder would be able to work for a maximum of six months with one employer. Previously, the law permitted only three months with any single employer. The arguments that were put to us were that many employers had only just trained up the working holiday maker in the kind of business that they were running and that, by the time they had trained them up, the three months were up and they had to let them go again. It was quite wasteful. They said that if the person could stay for a longer period it would be more beneficial to both, so the government announced that that would be changed.

The government also announced that the minimum study allowed under a working holiday maker visa would be increased from three months to four months. The main purpose of that is because a substantial number of working holiday maker visa holders have nursing qualifications. However, for someone with nursing qualifications to work in Australia they often need to undertake a bridging course. Apparently, a significant number of those bridging courses are just more than three months but less than four months, hence the difficulty and hence the change.

Senator BARTLETT—If somebody did six months with one employer, whatever employer—I think forestry was one you mentioned—could they then cease to do that and do another six months in the second year if they got an extension to their visa or would it be six months?

Mr Rizvi—That is correct. In the second year they would be free to work in whatever industry they wished, including a primary industry if that is what they wished.

Senator BARNETT—The same again. What are we up to: 104,000 coming on this visa.

Mr Rizvi—There were 104,000 visas in 2004-05. We would expect more than 110,000 this year.

Senator BARTLETT—Most of these are reciprocal, aren't they? Australians can do something similar.

Mr Rizvi—All working holiday maker visa agreements are reciprocal.

Senator BARTLETT—Do you know what the numbers of Australians taking them up are?

Mr Rizvi—Generally, the number of Australians taking up these visas is significantly less than the number of overseas people coming to Australia. It is about one in three.

Senator BARTLETT—We briefly touched on this earlier with the extended questioning regarding the 457 visas. Somewhere the department made a comment about how we do not have guest worker visas—and I saw some of the statements being made about these changes to the working holiday visa which said that this was really helpful for seasonal industries, agriculture and the sort of work you have just mentioned. This visa was being clearly portrayed as a labour market program, which people then have to go home at the end of and, I

presume, mostly do or apply for other visas. How does that differ? The label ‘guest worker’ seems to immediately bring out brick walls and hives in everybody anytime anybody mentions it, but I sometimes find it hard to see how massively different it is.

Mr Rizvi—Firstly, I might compare 457s to guest workers and then I will compare working holiday makers to guest workers to try to make the distinctions clearer. The traditional guest worker schemes—those run in Europe and North America—have a number of features which make them quite different to 457s. Firstly, the skill levels of the workers involved in the guest worker schemes are very low, whereas in the 457 visa over 70 per cent of workers are managers or professionals and over 95 per cent are in the top four ASCO major groupings, so there is clearly quite a difference in skill levels.

Secondly, the 457 visa is predominantly in sectors such as health, community services et cetera. It is generally high-skilled work that the individuals are doing, whereas guest worker visas are generally for people doing what are known as the three-D jobs—dirty, difficult and dangerous; the jobs that the locals will not do.

Thirdly, 457 visa holders have significantly higher salary levels. The average salary level of a 457 visa holder is \$65,000—well above the average salary level of an Australian—whereas a guest worker in the United States or Europe would be earning a salary well below the average salary levels in those countries.

The fourth main difference is the open pathways to permanent residence that 457s have. For example, guest workers in Germany do not have any pathway to permanent residence, yet they have de facto permanent residence because they have been there for so long. Indeed, there are some guest workers in Germany who are third generation guest workers.

The fifth key difference is that they are not tied to a single employer. All guest worker schemes are tied to a specific employer and the capacity to move from one employer to another is not open. They are probably the five major differences between the traditional guest worker schemes and a 457 visa. A 457 is much more like what is known in America as an H1B, which is quite a different kettle of fish to their guest worker visas.

The first difference to working holiday makers is that the individuals are visaed not on the basis of an expectation that they will work with anybody. There is no link to an employer. They are effectively coming for a holiday and work is something that is incidental to the holiday. Secondly, in Australia, the working holiday maker has many pathways open to them for both temporary residence visas as well as permanent residence visas. A guest worker in Germany or in the United States has no such open pathways available. Indeed, the government has recently expanded the range of pathways to permanent residence available to working holiday makers. Thirdly, as you have mentioned, they are reciprocal—that is, young Aussies have the same opportunities to work in the agreement countries as young people from those agreement countries have to come to Australia. They are three key differences between a guest worker scheme and a working holiday maker.

Senator BARTLETT—I do not want to get too hung up on the guest worker visa per se and the way it has been to date—you can call anything anything and put in it whatever you like, I suppose—but thank you for that; that was a useful outline. I appreciate that working

holiday makers do not have to have any work; they can just have a full-blown holiday for 12 months. Do you have any statistics on how many do that?

Mr Rizvi—There has been some research done for us by Melbourne University. It was done in early 2001, I think, and we could dig out some statistics from that on that particular issue.

Senator BARTLETT—Thank you. Going back to the point I mentioned before that it is clearly being promoted and sold as part of meeting the gap in the unskilled labour section of the market—

Mr Rizvi—It is part of the holiday experience.

Senator BARTLETT—Yes, but it was being sold to Australian employers to help with some of those jobs that the locals will not do, as you call them. I hope none of them are dangerous, but I am sure that some of them are difficult and dirty—fruit picking and the like certainly can be that. I would hope we do not have any dangerous jobs here, particularly for people in that circumstance. My understanding is—and I know we have a separate Senate committee reference looking at this at the moment, so I do not want to traverse all over that ground—that in the lead-up to the budget measures we have expanded this program further and we are actively selling it as a labour market measure, in effect—not solely that but that is a key part if it.

Why are we still so utterly opposed to any idea of having seasonal workers coming in from the Pacific islands? I read some comments made by, I think, the Prime Minister of PNG the other day, who is still quite annoyed at this, and at the fact that we are expanding these types of visas to people from western Europe and North America, plus a few South-East Asian countries, while Pacific islanders are all being told, ‘You can’t come in to do this sort of seasonal work,’ even though that is how we are promoting it to others. I know it is a government policy decision at the end of the day, but why is there such a strong insistence on continuing to refuse to allow this aspect of the labour market, the jobs that others won’t do, to be filled with a visa that is clearly focused on work, rather than one that is a holiday experience—you come here, and maybe you work; maybe you won’t—and let that much fuzzier visa fill that gap?

Mr Rizvi—There are perhaps three key issues here, Senator. The first is that the working holiday makers who are coming to Australia are generally from developed countries or, where they are from lesser developed countries, we have additional tests to ensure that the individuals have the capacity to defend themselves if they are subject to exploitation—that is, they understand enough about the labour market and how it operates in a place like Australia; they have enough resources and wherewithal to be able to protect themselves against exploitation. Where a person is brought from a lesser developed country and perhaps has had minimal education and has very little English, their capacity to defend themselves is significantly reduced; hence the concerns about exploitation, or risks of exploitation, are much greater.

The second concern is the issue of overstay. The overstay rate in the working holiday maker program is very, very low, and it has remained very low essentially because the incentives to overstay are not very strong. If you target a lesser developed nation and workers

from that lesser developed nation who do not have much in the way of education or English, the incentives for overstay become much greater and the management of the overstay issue becomes a lot more difficult. It becomes like the experience of North America and Europe.

The third issue is that, if you are going to run an arrangement for lower skilled workers from less developed countries, you are going to have to find ways of those people being able to fund themselves to come to Australia and earn enough money to go back with enough money to make the venture worth while from their perspective. We have done some of the sums on this, and unless a person is going to become indebted to a very significant degree, the economics of this actually do not work. If the person is going to be paid at a proper wage rate, is going to be taxed and is going to pay for the cost of coming to Australia and then returning, the economics of it actually do not work. So something has to give for the economics of it to work.

Senator BARTLETT—I will leave that issue there; I will continue to pursue it over time. The issue of aged parent visas: I know there was a small expansion in the family component announced in the lead-up to or as part of the budget. As I read it—I want to get it confirmed—that was in the spouse arena, wasn't it? It does not count parent—

Mr Rizvi—That is correct.

Senator BARTLETT—Can you remind me what the total increase in the spouse category is?

Mr Rizvi—The increase in 2005-06 is an extra 3,000 places, and the increase in 2006-07 is an extra 4,000 places.

Mr Fox—It is 1,000 extra on the net 2005-06 program.

Senator BARTLETT—At this stage it is intended that it will stay at that level from then on, subject to further announcements?

Mr Rizvi—The government looks at the migration program annually. Of course, it will relook at that situation at that time.

Senator BARTLETT—There was also an announcement a little while ago—and I did put out a press release congratulating the minister, but amazingly enough the media did not think that was newsworthy; I did not get any coverage of it.

Senator Vanstone—Gee, you should have faxed one to my office!

Senator BARTLETT—I shall endeavour to do that.

Senator Vanstone—I could have taken some small, private pleasure in it.

CHAIR—I am sure it will be on the Democrats website.

Senator BARTLETT—Yes, it is.

Senator Vanstone—Okay, I will look there.

Senator BARTLETT—I am sure you read my website regularly, Minister. If you don't, I can send you the link. There was an announcement a little while ago that same-sex relationships would be counted as partners for some visas. Can you clarify for me which visas are involved? Is that for spouse visas or others?

Mr Rizvi—For spouse visas we already have a separate, interdependent visa category. So, if an Australian forms a relationship with a same-sex partner from overseas, at the moment they apply to enter through what is known as the interdependent visa category. The change in respect of same-sex relationships will start from 1 July with the subclass 457 visa and then will be expanded progressively to a range of other skilled migration visas. It has been decided to extend it to other visas as well. The restriction is related to how fast we can get our systems changed to accommodate that.

Senator Vanstone—I am happy to go back to 457 visas if you want to, Senator, but we have covered them. Just as a matter of interest, one of the issues that has been consistently raised with me—and was in fact raised by a former Australian Democrats senator, Brian Greig—was medicos and other health workers who were reluctant to accept either coming here on a 457 visa or coming here and transferring into permanent migration if their partner was not recognised as a partner. I kept telling him to watch this space, but he left before that could happen.

Senator BARTLETT—I can assure you he is still watching from afar! So at this stage it applies solely to partners of primary applicants for 457 visas?

Mr Rizvi—It already applies to interdependent partners and, from 1 July, it will apply to partners of 457 visa holders, and then we will progressively expand it to other skilled migration visas and student visas.

Senator Vanstone—The decision covers temporary skilled migrants, permanent skilled migrants and students.

Senator BARTLETT—So it is not just 457 visas?

Senator Vanstone—No. But the application of the decision goes with 457 visas first. That is the July date that Mr Rizvi is talking about.

Senator BARTLETT—Thank you. So the interdependency category under the family stream will stay separate for the time being and the other spouse numbers will stay the same?

Mr Rizvi—They are both managed on a demand driven basis. There is no cap on either of them. It is just a name.

Senator BARTLETT—What can be in a name sometimes! But these extra numbers you put into the family spouse stream program—that is a cap in effect, isn't it?

Mr Rizvi—No, we have no cap on partner visas—that is, spouses and dependants.

Senator BARTLETT—So it is more of a prediction?

Mr Rizvi—Yes.

Senator Vanstone—Obviously, there is a cap on humanitarian and refugee entrants, but we set the program with an overall cap, and cabinet charges the department with the responsibility of managing the program within that cap. If we have a build-up of spouse applications, which are not capped, the only place we can get them from is skilled migration. While we have a skills shortage, that is not ideal. So we got permission to get some extra places that are specifically being allocated towards the spouse category, which is uncapped, to fill that need, so that we do not have to draw on the skilled migrant category.

Senator BARTLETT—Is there any specific work done at that early stage to identify the potential skills of spouses?

Mr Rizvi—We do not look at the skill levels of spouses per se because that is not relevant to the decision making. But, certainly, if you look at the Longitudinal Survey of Immigrants to Australia, it highlights the fact that the spouses actually have quite substantial skills; indeed, within six months of arrival spouses are getting jobs at a historically high rate.

Senator BARTLETT—They might be doing better than the original applicant in some cases. Thank you for that. The other area I wanted to ask about is the aged parent category, which I am certain is capped. Could I get the latest figures on the pipelines and queues for that?

Mr Fox—Currently we have 20,800 people waiting for a decision on an offshore parent or onshore aged parent visa application. Of those, 17,200 have been queued and there are about 4,460 people in the contributory parent pipeline.

Senator BARTLETT—Is there any impact of that? The non-contributory one still seems fairly long; the other one, if I am getting it right, seems to be ample.

Mr Fox—Yes, it is not as long as the other one.

Senator BARTLETT—Does the contributory one need to be as big as it is? It seems that load is able to be managed pretty well already.

Mr Fox—We are managing that one at the moment.

Senator BARTLETT—In case you have not thought of it, you might want to drop a bit out of that one and toss a few over to the other one.

CHAIR—That is a very constructive suggestion, Senator Bartlett.

Senator BARTLETT—I realise that is a government decision but just in case you have not thought of it—

Mr Fox—Thank you for that suggestion, Senator.

Senator BARTLETT—Can I check what the actual charge is now. I presume it goes up in a CPI sort of way?

Mr Rizvi—Yes, it will again be indexed on 1 July. It might be best if we take that question on notice so that we can give you the current charge as well as the post-indexation charge.

Senator KIRK—I have some questions in relation to the trade skills training visas. I am interested in how that category of visa was developed.

Mr Rizvi—It had perhaps two sources as its genesis. The first was representations from industry about the difficulties, particularly in Queensland and regional Queensland, of their not being able to fill enough apprenticeship places. We had received representations to that effect. Secondly, we received representations from the education industry, particularly the VET sector, about how they could expand their segment of the market. In recent years—over the last five or six years, prior to the visa being established—there had been strong growth in the higher education sector in respect of overseas students, but the VET sector had not grown nearly as quickly. In particular, TAFEs were interested in growing it.

It was against that background that the minister asked us to undertake consultations with industry, with state and territory governments and with employer bodies about how we could cater for those issues. From those consultations we found that the current visa structure did not adequately cater for the situation of someone from overseas coming to do an apprenticeship. We went through a lengthy period of consultations with the VET agencies in state and territory governments, with industry and with others, and progressively developed the design of the visa through that process until it eventually came into being through the regulations that were changed a little earlier.

Senator KIRK—Over what period of time did the consultation process occur?

Mr Rizvi—It would probably have taken in the order of 18 months.

Senator KIRK—I understand that the minister stated at one stage that the visa came about as a consequence of a request from one business—is that correct?

Senator Vanstone—There were a number of approaches but I have used one example—Golden West. They are a training company operating in Queensland, I think. They wanted more apprentices so that they would be more viable, which would allow them to keep operating and offering the training courses they were already offering to Australians.

The other example I have used is one of the big supermarkets—I cannot remember which one it is—that operates in Mount Isa complaining that they had tried and tried and could not get an apprentice baker to go there. The regions want people. They need pharmacists. They need bakers. They need everything that everyone else needs.

Senator KIRK—I am trying to get the time line. Was this request made to you, Minister, and then was this process of consultation initiated?

Senator Vanstone—No, we have consultations every year in any event.

Senator KIRK—What about in relation to this visa?

Senator Vanstone—We described it as being on the migration program for the purpose of trying to set the limit of the skilled migration for that year. However, obviously during that time, both in the capital cities and in the regions, local government people come along, businesspeople come along and everybody comes along and puts their views not so much about the level of migration at a national level, because they are not in a position to be across that, but about the issues and problems that they have got. Can they still get enough people? Where are there shortages? Are there things not on the modal list that should be? Are there delays in certain visa applications? In the context of that, this came up two consultations ago, that I know of. If I had to guess, I would say that Golden West came after that, but I do not know.

Senator KIRK—As I understood it, the consultations that Mr Rizvi was talking about were post this idea being conceived about the training visas. Is that understanding correct?

Senator Vanstone—It could be.

Mr Rizvi—There were two phases. Obviously, there are the annual consultations that the minister undertakes and then there are separate ongoing consultations we take with industry and with state and territory governments, in essence to follow up the issues raised in the

minister's consultations so that we can test those out in more detail. There was very specific consultation on this alone.

Senator Vanstone—We did consult with the states on this issue.

Mr Rizvi—Yes. The visa could not go forward without it incorporating the apprenticeship system, which is essentially governed by the states.

Senator Vanstone—I feel strongly about this issue quite apart from the fact that the regions need to be able to develop and attract people. If it is good enough for us to have an export industry of higher education and if it is good enough for kids who are bright enough to do a university degree to be able to come into Australia and pay to get a qualification that will assist them to have a career, why is it not good enough for a kid who may or may not have academic skills and does not choose that career path but chooses a trade path? What is the matter with a trade path? Why shouldn't someone be able to pay to acquire those skills in Australia in the same way that their family can pay for them to acquire a bachelor of arts, law, medicine or whatever?

Senator KIRK—I am just trying to understand the process at this stage and how it came about.

Senator Vanstone—I understand. I am just putting a proposition to you that I see the need to acquire a pathway for your career and life as important, irrespective of your pathway and career, and I do not see a more important, reserved and special place for those who happen to be lucky enough to have the academic skills.

Senator KIRK—Thank you for that. In relation to the consultations, was a written review or any documentation produced setting out the views of industry and the states in relation to this proposed visa?

Mr Rizvi—The consultations took the form of a series of meetings right across the country. What we really have are the outcomes of those meetings.

Senator KIRK—Are the outcomes public or were these internal documents that were generated?

Mr Rizvi—There are minutes of the consultations that took place and then they were drawn together into a submission to the minister which eventually went to the government for consideration.

Senator KIRK—Which was the first business accredited to employ apprentices under the visa?

Mr Farrell—The first sponsorship application was Golden West and that was approved on 21 December 2005.

Senator KIRK—Was it just coincidental that that was the body that approached the minister in the first instance?

Mr Farrell—That was the order in which they were processed.

Senator KIRK—Was it the first one to make an application?

Mr Farrell—Yes, it was.

Senator KIRK—How many apprenticeships did that relate to?

Mr Farrell—Up to 50.

Senator KIRK—What is the nature of the apprenticeship scheme that they put in place for these 50 people?

Mr Fox—There have not been any visas issued against that. They have been approved to bring apprentices in but there have not actually been any people arrive to date.

Senator LUDWIG—Is Golden West a group training employer?

Mr Fox—It is a group training organisation.

Senator LUDWIG—So the way the system will work then is that if they have approval for up to 50 they can then place them through their contacts through industry. Against which trades? Is there a limit to the number of trades or type of trades, or is it any trade?

Mr Fox—They must be trades identified in the migration occupations in demand list, the MODL.

Senator LUDWIG—Is that list available?

Mr Farrell—It is on the DIMA website.

Mr Rizvi—We will provide the committee with a copy.

Senator LUDWIG—What checks are made for when these apprentices are then put out to industry? Do you follow up as to which employer then employs them?

Mr Rizvi—I think there is a step before that that probably needs to be considered. What has happened to date is that the sponsor has applied to be approved as a sponsor.

Senator LUDWIG—For up to 50.

Mr Rizvi—So a number of sponsors have been approved as sponsors who can bring in visa holders under this visa. You then have to have a visa application from an applicant. That has to be linked up to that particular sponsor. That application itself then has to go through a number of checks, including that the apprenticeship that the individual will take up is in a region where the employer is finding it difficult to fill that apprenticeship, as certified by the local regional certifying body. So that process still has to be gone through before Golden West can actually bring in an apprentice.

Senator LUDWIG—I appreciate that. I may have been getting ahead of myself. I will come back to the regional certifying authority shortly. What I wanted to understand was, when Golden West do place them, will it be notified to you through Golden West or through the visa application that they will be going to a particular employer? The way that group apprenticeship schemes work, of course, is that there can be multiple employers during the period of the apprenticeship. At what juncture do you get notified: at transfer or at the initial job or at any subsequent job, or do you only approve the group apprenticeship scheme as the Golden West employer?

Mr Rizvi—We have approved the group apprenticeship scheme. The sponsor is the one who holds the obligations—

Senator LUDWIG—That would be Golden West.

Mr Rizvi—Yes—and it would need to fulfil the obligations. Where they locate the apprentice with a particular employer, it is their responsibility to make sure that the employer meets all the relevant awards and other requirements. But it is the sponsor who we would hold accountable.

Mr Fox—And of course we would be following that up and monitoring their compliance with all those undertakings. We would be asking them to provide us with an apprenticeship outline in that situation, and we would be holding them to account against that plan.

Senator LUDWIG—You said that Golden West is the first. How many others have been approved?

Mr Farrell—Two others have been approved.

Senator LUDWIG—Who are they?

Mr Farrell—They are Marks Capital Pty Ltd, also in Queensland, and the Myriad Group from the Northern Territory.

Senator LUDWIG—And whereabouts are Golden West and Marks located?

Mr Farrell—Golden West is in western Queensland, and I just have ‘Queensland’ listed for Marks Capital Ltd. I would need to follow that up.

Senator LUDWIG—Perhaps you could take that on notice to identify it. When you say Golden West, what do you mean by ‘west’—Rockhampton, Roma? There is a lot of west in Queensland!

Mr Fox—Golden West is based in Roma but I think it operates all around Queensland. Marks Capital is based in Toowoomba. It is a direct employer rather than a group training organisation.

Senator LUDWIG—Has the regional certifying body been set up for those areas?

Mr Farrell—Yes, there are regional certifying bodies in Queensland.

Senator LUDWIG—How many are there?

Mr Fox—I think there is a total of 18 around Queensland.

Senator LUDWIG—Is that listed on your website?

Mr Fox—Yes.

Senator LUDWIG—Do you have the participants on those boards?

Mr Fox—There is the Central Western Queensland Remote Area Planning and Development Board, Commerce Queensland, Mount Isa Chamber of Commerce, Winton Shire Council and I could go on. We can provide that list.

Senator LUDWIG—How do they get approval to be a regional certifying body?

Mr Fox—They are nominated by the state or territory government and gazetted by the minister for immigration.

Senator KIRK—I understand that there have been three sponsors approved. Is that correct?

Mr Fox—That is correct.

Senator KIRK—Yet, to date, there have not been any visa applications made in relation to—

Mr Rizvi—There have been no visas issued; there have been visa applications made.

Senator KIRK—I see. How many visa applications have been made?

Mr Farrell—Eleven.

Senator KIRK—And they relate to which sponsors? How does that break down?

Mr Rizvi—I do not think they relate to any sponsors that have been approved, and hence we are not able to proceed with those visa applications until the sponsors that they are associated with are approved.

Senator KIRK—To get it clear: of the three that have been approved there have been no visa applications, yet there have been visa applications in relation to sponsors that have not been approved.

Mr Rizvi—Correct.

Senator KIRK—How long does it take for a sponsor to be approved? What is the process for doing that?

Mr Fox—There is no time frame, but we go through a process of doing the sorts of checks that Senator Ludwig was just asking about: where they propose placing apprentices; what their training record is; and whether the direct employer, for example, has been able to attract local apprentices. So we go through that process first. The only one I have a particular time frame on here is the Golden West application. It was approved as a sponsor some six weeks after lodging its application.

Senator KIRK—Do the 11 visa applications that have been made relate to just the one possible sponsor or to numerous sponsors?

Mr Fox—Numerous sponsors.

Senator KIRK—How many?

Mr Fox—I can get that number for you; I do not have it to hand. I will have to take it on notice.

Senator LUDWIG—It is not more than 11, though, is it?

Mr Fox—No. It is fewer than 11. I think it is more than one and fewer than 11.

Senator KIRK—In what parts of Australia are those sponsors?

Mr Farrell—There are seven in Queensland, six in Victoria, three in Western Australia, two in New South Wales and one in the Northern Territory.

Mr Fox—That makes 19.

Senator KIRK—I take it that these are all in regional parts of those states?

Mr Farrell—Yes, indeed. They have to be in regional areas.

Senator KIRK—What is the breakdown of the seven in Queensland? Do they vary from western Queensland to North Queensland?

Mr Farrell—I do not have that breakdown. I will need to take that on notice.

Mr Fox—Were you asking us for the visas or the sponsors?

Senator KIRK—I asked about sponsors, but tell me about visas as well. Where have the visa applications been made in relation to?

Senator LUDWIG—The figures you gave added up to more than 11, so I figured it must have been the sponsors you were referring to.

Mr Fox—Yes, that is right. The 19 are sponsors.

Senator LUDWIG—Can we then go to the visa applications. Do they nominate on the application a region where they intend to work, or do they just make an application? There is obviously a mismatch going on at the moment.

Mr Farrell—We do have that breakdown of country and their intended sponsor.

Senator LUDWIG—Perhaps you can provide that on notice.

Mr Fox—We just need to be careful about the privacy implications of each of those.

Senator LUDWIG—That is why I asked you to take it on notice. I did not ask for their names and nor do I want them.

Mr Fox—Thank you.

Senator LUDWIG—What sort of process do you go through to check that the intended employer has not refused apprentices and whether they can actually provide a training plan for the apprentice—any of those sorts of issues?

Mr Fox—That is part of the process of assessment and advice that we get from the regional certifying body.

Senator LUDWIG—Which is one of those 18 bodies you mentioned earlier. But on what basis do they have the right to ask those questions and obtain that information? To find out that information, you would have to talk to the different certifying bodies, for example, in Queensland and New South Wales. They are not the apprenticeship board or whatever name it goes by in the various states, so how do those certifying bodies get access to that type of data? I could imagine that, hypothetically, they would be able to have someone there from the local apprenticeship board, but I do not know. Do you know that?

Mr Fox—I do not know that, but certainly the intention is that the regional certifying body will satisfy itself as to those criteria that we mentioned earlier and will need to make sure that the apprenticeships will comply with the new apprenticeship system. I have to say that I do not know enough detail about that process to provide a detailed answer to you, but we could take that on notice.

Senator LUDWIG—The purpose of this question, of course, is to establish that you know what you are doing when you give these people that authority and that the information they give you is sound and accurate. That is the purpose of the question. If those bodies do not have access to that information, you can see how they might provide an approval that was not

based on sound advice, yet you would accept it as sound advice without asking the \$64 question: do they have access to that information? Perhaps you could follow that up for me.

Mr Rizvi—We will follow that up.

Senator KIRK—I have a question about the process of determining whether or not there are Australian apprentices willing to undertake the proposed position. I understand that some sort of check needs to be done to ensure that there are no Australian individuals available. Can you outline for the committee what takes place and who does that check? Is it the regional authority? Whether or not that is so, what involvement does DIMA have?

Mr Farrell—In considering whether there is a genuine skills shortage in a trade occupation, as some of my colleagues mentioned earlier, there are four criteria they need to address: (1) whether it is on the MODL, the Migration Occupations in Demand List, which is a list of skill shortages; (2) whether it is on the state and territory shortage list that is prepared; (3) whether the vacancy has been on the Australian Job Search website for 28 days; and (4) whether there is a local shortage in a specified region where the apprenticeship may be located.

Senator KIRK—So those four criteria all have to be satisfied? Is that correct?

Mr Farrell—Not all four, but certainly the criteria all need to be considered in determining whether there is a shortage.

Senator KIRK—So, for example, if the position was listed on the MODL, that could be sufficient?

Mr Rizvi—I do not think we would accept that. The regional certifying body would not accept that just because it was on the MODL. I think what they have to do is satisfactorily address, or reasonably satisfactorily address, all four criteria.

Senator KIRK—You said ‘we’ and then you said the ‘regional certifying authority’, or whatever they are called.

Mr Rizvi—The authority would need to be satisfied.

Senator KIRK—Okay. So it is the authority that makes that determination rather than DIMA.

Mr Rizvi—Yes. The regional certifying body makes that determination, essentially because they are in a better position to know what is happening in their particular region than we could possibly be.

Senator KIRK—Are there guidelines for that? What you said is somewhat vague, that they all have to be considered. They are all quite different. Just because something is listed on the MODL does not necessarily mean that there has been a vacancy on the Job Search website that you referred to, for 28 days. Perhaps you could give us further information about that. Are there variations in how the different regional bodies operate?

Mr Rizvi—We could take on notice specifically how those four criteria are addressed. It is certainly true that the regional certifying bodies operate somewhat differently across the country. They are very different organisations. For example, the situation for the body in

Queensland is very different to the situation in South Australia, where it is essentially just the South Australian government and nobody else.

Senator KIRK—Are there standard guidelines issued so that there is some sort of consistency amongst the bodies?

Mr Rizvi—We had a conference of all regional certifying bodies where these matters were discussed and a draft set of guidelines was put in place. We are continuing to refine that.

Senator KIRK—Are those draft guidelines available for the committee to see?

Mr Rizvi—We could table those.

Senator KIRK—That would be good, thank you.

Senator LUDWIG—In terms of total numbers, how many are envisaged? Is there a cap?

Mr Fox—It is not capped but our target is 250 per annum, so we are not talking large numbers of visas.

Senator LUDWIG—I think you talked earlier today about multiple pathways. Are there projections of how many may then apply for subsequent visas?

Mr Rizvi—We would anticipate that all of those who make their way and successfully complete the apprenticeship are likely to apply for regional skilled migration.

Senator LUDWIG—How does that sit with the minister's earlier remarks? The minister indicated that people might want to train in Australia. It is about staying in Australia, isn't it? It is about training and staying, not so much returning and taking the skill set back home.

Mr Rizvi—It is open to the individual, but we imagine that the bulk will seek to apply to migrate. Once they have spent three to four years in Australia, they will have developed very strong ties to the region and the likelihood is that they will probably want to stay.

Senator KIRK—They would not be limited to applying for regional skilled migration, would they?

Mr Rizvi—They are limited to a regional skilled migration visa—that is correct. The idea is that we would like those who are going to stay in Australia to stay in the region in which they got their apprenticeship.

Senator KIRK—So no other category of visa would be open to them—is that what you are saying?

Mr Rizvi—There are other visas, of course. For example, if they married someone from Melbourne, obviously they could move to Melbourne.

Mr Fox—I want to clarify something. When you asked about numbers, I said 250. That was our estimate for the 2005-06 year, when we introduced it in November. Our estimate for subsequent years is 750. Clearly, we are going to be way short of that for the 2005-06 year.

Senator LUDWIG—None have been approved yet.

Mr Rizvi—That is correct.

Senator LUDWIG—That will be 250 short, do you think? Or will you get some in before June 30?

Mr Rizvi—I think the key will be the number that are approved by the regional certifying bodies. It is going to be the key determinant to how many get through.

Senator LUDWIG—Do you track the number of skills shortages and apprentices in regions or do you leave that to the regional certifying body?

Mr Rizvi—The tracking of skills shortages is, firstly, done by the Department of Employment and Workplace Relations, who have various tools to track skills shortages at the national, state and regional levels. They work fairly closely with equivalent state government bodies, and, as well, a number of the regional bodies, who are effectively in many instances an amalgam of local councils, also track what is happening in their local region.

Senator LUDWIG—Once the person achieves the apprenticeship, what support is available to them? Obviously, they are paid an income by the employer. What about the various state government subsidies to the employer—are they all available as far as you are aware?

Mr Rizvi—The Commonwealth government subsidies to the employer are paid. I am not across the situation in respect of state government subsidies.

Senator LUDWIG—In respect of other benefits provided by the Commonwealth which would not be applicable if they got sick, required a doctor or things like that—a health benefits card or Medicare card—what services are available? Are they treated as a permanent resident?

Mr Fox—They are not eligible for Medicare; they would have to take out their own health insurance.

Mr Rizvi—In the same way that overseas students must take out their own health insurance.

Senator LUDWIG—There is no special dispensation?

Mr Rizvi—No.

Senator LUDWIG—This is potentially open to an 18-year-old or a 17-year-old.

Mr Rizvi—They must be over 18, I think, to access this visa.

Senator LUDWIG—So they have to be 18 or 19?

Mr Farrell—It is a visa for 18- to 35-year-olds.

Senator LUDWIG—What would be available to the individuals in terms of Commonwealth support?

Mr Rizvi—They do not have access to any Commonwealth support. They are essentially in the equivalent situation of an overseas student.

Senator LUDWIG—In that sense, if the apprenticeship runs into difficulty, or if it is cancelled, what happens then?

Mr Rizvi—Similar to a 457 visa, we would seek to allow the individual an opportunity to find an alternative apprenticeship. If they were able to do so, we would allow them to transfer to that and to a different sponsor.

Senator LUDWIG—Could I give you some gratuitous advice. When you are dealing with 18-year-olds who may apply for this visa and who may not speak English, could you provide them with a bit more information than is provided with a 457 visa—as I think we discussed earlier.

Mr Rizvi—Thank you for that. A key requirement in respect of this visa is that the individuals must have a minimum level of English.

Senator LUDWIG—I still suggest you provide the information or provide places where they can access it.

Mr Rizvi—Yes.

Senator KIRK—I have some questions in relation to 456 visas. How many of those visas which were issued in the last 12 months have been subsequently renewed, where the individual is working at the same workplace?

Mr Rizvi—A 456 cannot be renewed onshore. A 456 visa holder can apply for a different visa after they arrive. So, for example, a 456 could apply for a 457. A 456 visa is for a period of three months, and the work condition available to a 456 is heavily restricted. They can only work in a very narrow set of circumstances, and I would suggest probably a very small percentage of 456s would do work in the traditional sense in Australia. The vast majority of business visitors to Australia would be here to attend meetings, conferences, contract negotiations—that sort of thing. More than 70 per cent of 456 visa holders spend less than 10 days in Australia. More than 90 per cent spend less than 20 days in Australia. It is not a work visa. It is a contract negotiation, meetings, business people interacting type visa.

Senator KIRK—Is it possible to convert from a 456 to a 457 onshore?

Mr Rizvi—Yes, it is.

Senator KIRK—How often has that occurred in the last 12 months? What sort of numbers are we talking about?

Mr Rizvi—It would be a small percentage of the approximately 400,000 456 visas we will issue this year. We would have to take on notice how many it was.

Senator KIRK—When you say ‘a small percentage’, is it 10 per cent, five per cent?

Mr Rizvi—Less than five per cent.

Senator LUDWIG—In terms of the 456 visas, a problem seems to arise when people apply for a string of them or abuse the process. I suspect you would call it that. There is sometimes media scrutiny where they might apply for a 456 or, because it is limited to three months, they might make multiple applications. So within a 12-month or two-year period there has been more time here than anywhere else, effectively, in a work occupation. Is that investigated by you?

Mr Rizvi—I imagine the kind of situation you are trying to describe is—

Senator LUDWIG—It is hypothetical.

Mr Rizvi—Sure. A person comes here for three months, just before the three months is up they leave, they spend two days in New Zealand and they come back and spend another just

under three months, they leave and go to New Zealand and come back and spend another just under three months. Is that the kind of thing you mean?

Senator LUDWIG—Let's not pick on New Zealand, but something like that. It is a good example.

Mr Rizvi—They go to somewhere convenient from where they can come back quickly.

Senator LUDWIG—Yes.

Mr Rizvi—That is plausible; that is possible. I can remember in my last 10 years in this job or around this area probably a handful of instances where I have become aware that that has occurred. That is, in our terminology, called 'de facto residence'. The individual is effectively abusing the conditions of the visa. It is a business visitor visa, and the intention of it is a genuine visit. When a person is doing that it would be a breach of the visa conditions. If we became aware of it we would seek to act against the breach.

Senator LUDWIG—In the last 12 months, have there been any of those instances or abuses of 456 visas that have come to the attention of the department of immigration?

Mr Rizvi—I will have to take that on notice. I cannot remember one specifically myself.

Senator LUDWIG—If there is, could you give a general outline of what it is and the circumstances, bearing in mind the privacy implications.

Mr Rizvi—Sure.

[5.46 pm]

CHAIR—We have completed outcome 1, output group 1.1. We will now move to output 1.2, Refugee and humanitarian entry and stay.

Senator NETTLE—My questions relate to the new laws. It was indicated that they come under this output. Who will undertake the refugee status determination?

Mr Metcalfe—I take your question to be in respect of the bill that is currently being introduced to the House of Representatives.

Senator NETTLE—Yes.

Mr Metcalfe—And your question is: who would be making the decisions in relation to any applications for refugee status?

Senator NETTLE—That is correct.

Mr Metcalfe—I will get Mr Hughes to respond to that.

Mr Hughes—The proposal at this stage is to use the model that has been used since 2001, which is that departmental officers would make the refugee status determination.

Senator NETTLE—What process would they be following?

Mr Hughes—The process is the one we used for the cases that have been transferred to Nauru since 2001. It was based broadly on the UNHCR processing model and involves an initial refugee status determination by our staff, the staff who normally do the refugee status determinations within Australia. If a person is found to not require protection, they can have that determination reviewed by a different, more senior departmental officer.

Senator NETTLE—I think the phraseology that you have used in the past is ‘closely modelled on the UNHCR process’?

Mr Hughes—That is correct.

Senator NETTLE—Is it possible to get an understanding of how that process, the ‘closely modelled on the UNHCR process’, differs from the process that would be used for an onshore refugee application? I understand that may be a long question to answer and am happy if you need to take it on notice.

Mr Hughes—I will take it on notice, if that helps.

Senator NETTLE—Would private contractors be used in their detention?

Mr Hughes—The people are not in detention. That is a separate question from refugee status determination.

Mr Rizvi—I think that question might come under a different output. I think it might come under output 1.5.

Senator NETTLE—We will do that under output 1.5. How would the transfer to the offshore countries take place? Does that come under output 1.5?

Mr Metcalfe—I think the logistical considerations about offshore centres come under output 1.5, but issues that go to refugee law or policy are appropriate under output 1.2.

Senator NETTLE—Perhaps I can ask about the migration zone. Where would the migration zone be?

Mr Metcalfe—Our chief lawyer will correct me if I am wrong. Your question is a good opportunity to explain one of the myths that has arisen in relation to this issue. The legislation that was enacted in 2001 in relation to certain offshore islands—originally Cocos (Keeling), Ashmore and Christmas islands—and subsequently extended a year or so ago to a much larger number of offshore islands, has been referred to in common parlance as ‘excising from the migration zone’. That is in fact not legally correct. The migration zone essentially extends to Australia and its territories other than Norfolk Island. It extends to, essentially, areas enclosed by proclaimed ports, such as the Port of Brisbane or the Port of Port Hedland. Otherwise, it essentially is the low-water mark on the land. The migration zone is an important concept because of rights and powers and responsibilities that accrue.

The 2001 legislation, although at the time it talked about excising certain islands from the migration zone, in fact did not. They remain part of the migration zone, and for all the visas that we have been talking about today—456s, 457s, permanent residence and whatever—those islands remain part of Australia for all purposes apart from people who arrive without authorisation. What that legislation dealt with in 2001 and what the legislation before the House of Representatives seeks to deal with is not excising geographical areas from the zone but, rather, putting in place special arrangements for a certain category of person who arrives without authority. So it goes to the status of the individual, not the status of the territory concerned.

Senator NETTLE—So it is not a geographical concept?

Mr Metcalfe—The migration zone is a geographical concept, and if you look at the Migration Act you will see the migration zone defined, as I just explained, as essentially the Australian mainland and certain territories apart from Norfolk Island, the Antarctic Territory and those sorts of places. I do not think Herd Island is covered. Essentially, Cocos, Christmas and Ashmore islands and the Coral Sea territory are all contained within the migration zone for the purpose of the act. It essentially extends to the land area but includes proclaimed ports and airports. That all exists as a concept and that has never been changed since the migration zone concept was introduced some years ago. What the 2001 changes were and what is proposed in relation to the 2006 bill go to the status of certain individuals arriving in those places—in other words, what applications they can or cannot make and whether or not there were powers to take them to another place, such as an offshore processing centre.

Senator NETTLE—I imagine that there are black-and-white instances where it is clear whether or not someone falls into a category. But, in instances in which someone might arrive not on the coast but at a police station somewhere where they make an application for asylum, or they arrive by plane and are at an airport, would they fall into the designated unauthorised arrivals category?

Mr Metcalfe—No, the bill makes it quite clear on its face that essentially it applies to the existing offshore places for people who arrive by sea or by air. So, for example, if a person arrived today on Christmas Island, regardless of the mode of transport, they would be subject to the legislation, as they have been since 2001. The government decided recently—and this is contained in the bill before the parliament—that for persons who arrive by sea at effectively any place in Australia these arrangements would be applicable to them. The only exception would be if they had made the majority of their journey to Australia by sea but were finally brought to land by air—for example, in the case of a rescue. Let us say that we had a sinking vessel and people were plucked out of the sea by helicopter and brought onto land. They would be regarded as having arrived in those circumstances.

Senator NETTLE—So it is more to do with the method of arrival than where they arrive. So someone who came by boat—

Mr Metcalfe—The changes to the legislation preserve the status quo in relation to the existing offshore islands and extends it to the mainland of Australia, as well as Tasmania, for people who arrive primarily by sea. You are correct in saying that it essentially goes to the status of the arrival. It applies to people who arrive without authority; without a visa. But there are some limited circumstances whereby the bill would suggest that those people would not be subject to removal to an offshore processing centre. For example, if a tourist on a yacht turns up without a visa, the intention is not to send them to Nauru; the intention is to do what we have always done, and that is to regularise their status so that they can have a short holiday in Australia as they circumnavigate the world, or whatever it is that they are doing. Within the bill there is a small series of limitations. There is also a proposed power for the minister to allow applications from other persons, and that power is, like similar powers in the legislation, a non-delegable, non-compellable power for the minister.

Senator NETTLE—What types of visas would people who are successful applicants and who are found to require protection be able to apply for?

Mr Metcalfe—These are persons who have arrived with authority and have then been moved to an offshore place?

Mr Hughes—Obviously, the intention is to resettle such people in another country, and so negotiations would take place once there was such a case load—there is not such a case load at the moment—with a view to finding them long-term resettlement elsewhere. There is a proposal to adjust one of the existing visa categories for resettlement from offshore processing centres should that be necessary.

Senator NETTLE—Sorry; can you explain that again?

Mr Hughes—As you know, quite a number of people who were processed offshore in Nauru were resettled in Australia on three- or five-year temporary visas under relevant visa categories. There is a proposal to adjust one of those visa categories so it could if required cover any people who might fall into this group.

Senator NETTLE—So they could access three- or five-year temporary protection visas? Is that the proposal?

Mr Illingworth—At the moment, with the current legislative arrangements there are two relevant visas. There is a three-year visa for people who are offshore entry people. Those are people who land in an excised place and who are subsequently taken to an offshore processing centre. If they are found to be a refugee and if they are to be brought to Australia, they get that three-year visa. There is a five-year visa which is used for people who do not land in Australia but who, for example, may be rescued at sea and taken directly to an offshore processing place. There have been some of those in the past. If they are brought to Australia, under the existing arrangements they get the five-year visa. The intention is—

Senator NETTLE—Is the distinction whether you land or not?

Mr Illingworth—That is right—it is whether or not the person lands in an excised offshore place. Adapting the visa framework to deal with the new terminology of a designated unauthorised arrival would mean that the three-year visa would be the visa a designated unauthorised arrival would get, because it is the visa that an unauthorised arrival at an excised offshore place would get now if they went through that process.

Senator NETTLE—Why was the distinction made between three years and five years?

Mr Illingworth—There was a decision that there should be greater benefit given to people who, in the context of secondary movement, were coming to Australia but did not complete their journey, because that would also embrace people who decided to enter the international protection arrangements in a transit country. So that five-year visa would be available to a third-country national in Indonesia on the way through towards Australia who decided at some point in Australia to enter the normal international protection framework and seek a determination by the UNHCR and referral to a resettlement country, whereas, if they persisted in coming to Australia, the view was that the duration of the visa should match the temporary protection visa duration.

Senator NETTLE—So it is like rewarding people for not making it to the shore.

Mr Illingworth—It is rewarding people for not persisting. This was developed in the concept of secondary movement considerations, and it was trying to provide some incentive

for people not to pursue to the ultimate end an attempt to travel to a country of migration preference in order to make claims. So, where a person flees a country to seek refugee protection, the idea was that the encouragement was that they should seek that at the earliest opportunity and enter the international arrangements for resettlement at the earliest opportunity. So if a person who fled from their homeland into a neighbouring country where, for example, the UNHCR might be available to make determinations entered the process at that point and the end result was that they were found to be a refugee and referred to Australia, they would get a permanent visa. If they moved on to attempt to find a preferred outcome but did not pursue that all the way to arrival at that destination country—that is, Australia—then they would get a five-year visa. If they pursued that intention to the point of success and landing in Australia, they would get the three-year visa.

Senator NETTLE—I did not realise we had so many levels of discrimination depending on how you come. For refugees who are fleeing persecution by sea to Australia there is no effective or meaningful geographic migration zone, whereas for those people who are fleeing persecution and coming to Australia by air there is a migration zone. Is that correct? It strikes me as a bit illogical but, if you want to explain the logic to us, that is fine—if I have it correct.

Mr Illingworth—The definition of a designated unauthorised arrival does not include air arrivals to mainland Australia but it would include unauthorised boat arrivals to mainland Australia.

Senator NETTLE—That seems to be another level of discrimination on the basis of how you arrive.

CHAIR—Those are statements, Senator Nettle. I am not sure you are expecting the officers to respond.

Senator NETTLE—No. With the resettlement process, is there a time frame? Mr Hughes were talking about there being an intention to be able to settle people in a third country. Is there any time frame built in which is seen to be an acceptable period of time for trying to find a durable solution? If that has not been able to be resolved, might you look at those categories you were talking about?

CHAIR—Is that necessarily a question for the officers? I am not sure.

Senator NETTLE—I thought it was, because it is about explaining the process of the determination, which is this section, rather than the 1.5 bit.

CHAIR—Okay.

Senator NETTLE—Is there a time frame?

Mr Hughes—There is no specific time frame built in. Based on past experience, the people who were found to be refugees on Nauru and Manus in the past were resettled in five countries other than Australia. Generally, by international standards they were resettled pretty quickly. They were resettled within a couple of years. If I make some comparison, many of the refugees that we resettle in Australia under the Offshore Humanitarian Program have waited for six, eight, 10 or more years in camps. I have some figures here about the people who were resettled from Nauru: 41 per cent of them spent less than 12 months there and 81

per cent of them spent less than 24 months there. So by international standards we were able to get people from Nauru resettled relatively quickly.

Senator NETTLE—Is that the kind of time frame that you envisage would continue to operate?

Mr Hughes—As soon as possible is the kind of time frame. There is no formal time frame set.

Senator NETTLE—I have two questions. How do you ensure that there is no refoulement for people who are returned to Papua New Guinea? How do you assess that? And how do you assess whether they have adequate protection if they are returned to or placed in PNG?

Mr Hughes—For those people who transit through Papua New Guinea, and if Papua New Guinea agrees to accept them back under the MOU that we have with them, Papua New Guinea agrees under the MOU to have people's protection needs assessed in accordance with domestic processes and to give protection if that is needed. So there is an explicit undertaking within the memorandum of understanding that that will happen. There is a UNHCR presence in Papua New Guinea, and I think Papua New Guinea is generally accepted to have a good record of giving protection.

Senator NETTLE—But there is no domestic refugee law in Papua New Guinea.

Mr Hughes—My understanding is that Papua New Guinea looks after people needing protection in two ways. One way is through a domestic process by which refugee status determinations are made, and the other way is through a process of permissive residence, by which people are able to stay for a longer period as permissive residents. From my understanding, and certainly from my dealings with UNHCR, I am not aware that there are any complaints about Papua New Guinea's behaviour in terms of giving protection to people who need it.

Senator NETTLE—Could you take that bit on notice, because it is my understanding that there is no domestic refugee law in PNG. If I am wrong about that could you get back to me on it?

Mr Hughes—I will take it on notice, but my understanding is that there is a process, people are put through the process and people are found to be refugees under that process. However, in parallel with that there is a system of long-term permissive residence.

Senator NETTLE—Are you aware of the size of the UNHCR operation in PNG?

Mr Hughes—I am not aware of the exact number of staff in the office there, but I know they have an internationally based representative. I could not say offhand how many other staff are there with the representative.

Senator NETTLE—It is my understanding from the documents that, based in PNG, they have one protection officer—and this is all since 2003; prior to that they were based in Canberra—an admin officer and a driver and they have an annual budget of less than \$500,000, which makes me question the level of protection that people are able to receive. It is one of the poorest countries, I understood there to be no domestic refugee law, and there are such limited resources from UNHCR. That would make me question, and I suppose that is

why I was asking: how do you assess whether that is adequate? By comparison with the standards we talk about regarding protection, it seems to be a starkly different story.

Mr Hughes—The UNHCR is not the body that provides the protection; it is the Papua New Guinea government that provides the protection. The UNHCR's presence is, I guess, simply to work with them and to be satisfied that protection needs are being met in accordance with the convention. My understanding is that, broadly speaking, the UNHCR is satisfied. How many people the UNHCR chooses to have in its office there reflects the degree of priority it gives. I guess if the UNHCR felt that there were a great deal more concerns there, it would have more people. The UNHCR can choose to base people wherever it wants to.

Senator NETTLE—You mentioned that you were not aware of any concerns about the process. The International Commission of Jurists did a report on the situation. It was a little while ago, in 2003, but there is a fair bit of information in that about the process. It may be starting to be updated but that is one place where there are concerns raised.

The other place that I have seen concerns raised is in the Refugee Review Tribunal in the case of a West Papuan asylum seeker who arrived in Australia in 2000. He has gone through quite a long process, and I am not sure if I have his situation 100 per cent clear. He was found by the RRT to require protection but his appeal was rejected because the Papua New Guinean High Commission wrote to say that he could be returned to Papua New Guinea. But he could not renew his certificate of identification in PNG, which led to his bridging visa being cancelled. He could not renew his certificate of identification in PNG because the Papua New Guinean government subsequently said that he had no status in PNG.

So a decision was made not to grant him protection because a letter had been received from the Papua New Guinean High Commission saying that he had permissive residency status but he was not able to have his certificate of identification renewed, so his bridging visa was cancelled and he was placed in Arthur Gorrie corrections facility in Brisbane and then in Baxter. He spent over 12 months there and was released in February this year. To me, that raises concerns about assurances from the Papua New Guinea government about the status of permissive residency, as does the International Commission of Jurists report about what kinds of status people can get.

In the RRT findings of his case, the department was able to view a sample application form for people who were seeking permissive residency status in PNG and, in the RRT ruling, it says that one of the questions was the applicant's views on the Free West Papua Movement. They were asked about that on the form. Is the department aware of whether that is still the case for people who are making applications for permissive residency in PNG?

Mr Hughes—I am not familiar with this particular case. I think it would be useful if you were able to give me details. We could then have a look at it and consider what the implications are.

Senator NETTLE—His name is on the public record. His case was reported in the *Age* in March last year. His name is George Dimara. He has subsequently been found to require protection, and I understand he is in the process of waiting for security clearances. If you are able to find out about the question that was raised in the RRT about the process of application

for permissive residence. That was only one of the conditions on the form for permissive residency. The other conditions relate to restricting freedom of movement, freedom of association and freedom of political activity in PNG or West Papuan politics for people who are seeking that form of protection. So it strikes me as a significantly restricted level of protection to what we would expect in this country, for example. Can you take that question on notice?

Mr Hughes—Yes, we will.

Senator NETTLE—George Dimara's case raises some concerns for me in relation to the three we were talking about before on Horn Island when we looked at the level of assurance that we are able to receive. I will add to the questions on notice about Horn Island whether or not they have been able to receive legal advice and visitors and also the cost of the hotel. The other case that I wanted to go to in looking at this protection is the case of Siti Wainggai that we talked about earlier today. I presume that the department is aware of the details of her case as they have been outlined in the media. I think the indication earlier today was that she had been pressured by Indonesian authorities to make false statements about her daughter and is currently in hiding in PNG. That strikes me as being a strong case for some type of protection. Would she be able to make an application for protection in Australia from PNG?

Mr Hughes—No, because the protection visa regime is related to being onshore. As far as I am aware, she has not approached the Australian government at all about coming to Australia.

Senator NETTLE—I ask you to check that one, because you mentioned that this morning as well. Can you check whether she has made any application not for protection but to come to Australia? If she did do that, is there any capacity for her to be removed from the situation that she is in in PNG if she is perceived as facing danger whilst in PNG? If she is making an application to come to Australia and part of the application is about intimidation by Indonesian officers operating in PNG, could her application be expedited? I heard the comments of the Indonesian foreign minister that the Indonesian officials had not got in contact with her yet, so I am surmising from that comment by the foreign minister that that may be an issue. Is there any capacity to expedite that process if somebody has those sorts of concerns in their application?

Mr Hughes—I think it is probably a bit speculative in that she has not made an application.

Senator NETTLE—I do not mean so much in her case but in that kind of case. Is there a capacity to deal with that?

Mr Hughes—Until she makes a permanent or temporary application where we know what she wants to do, it would just be speculative for me to say the extent to which that could play a part.

Senator NETTLE—I am not asking about her particular case; I am asking if there is a capacity for those sorts of things to be taken into consideration for somebody making a request in that way.

Mr Hughes—In certain circumstances in the offshore humanitarian program there is. Again, I would not want to relate it to her particular circumstances, because the normal circumstances would be quite different.

Senator NETTLE—You were talking before about the memorandum of understanding that was signed at the end of last year that related to IOM doing assessments of potential asylum seekers in PNG.

Mr Hughes—They would not be doing assessments; they would be providing care for people and, through them, the Australian government would be paying for people's upkeep pending voluntary return to another country if they wished to return voluntarily or pending some assessment of their protection needs by the PNG government.

Senator NETTLE—Would she fall into that category?

Mr Hughes—Again, it is speculative of me to say. I do not think so at this stage.

Senator NETTLE—You are describing that as being similar to the program that exists in Lombok. That does not include any assessment of cases? Is it only a care program?

Mr Hughes—IOM's role is only care in Indonesia. Because Indonesia is not a convention signatory country, assessments of protection needs are done by UNHCR. In PNG it would be by the PNG government, possibly in conjunction with UNHCR.

Senator NETTLE—I do not know if all this fits into this category, but I will ask you anyway. There was some reportage in January, after the 43 West Papuan asylum seekers arrived, about an interdepartmental task force being established to address the situation. I wanted to ask about the name of that task force and how often it met. I probably should have done it in general; I am not quite sure where that fits.

Mr Metcalfe—As with any issue associated with unauthorised arrivals by sea, the People Smuggling Taskforce would have met on a number of occasions about that particular incident. It meets as required.

Senator NETTLE—What is the membership of that?

Mr Metcalfe—The People Smuggling Taskforce comprises a number of agencies. It is quite a well-known interdepartmental committee. It comprises our department, the Prime Minister's department, the department of foreign affairs, the Department of Defence, the Australian Defence Force and Customs Coastwatch, and it may comprise other agencies as required from time to time.

Senator NETTLE—Could you take on notice the level of seniority of the officers involved?

Mr Metcalfe—It is quite a senior organisation. It is usually chaired by either our department or the Prime Minister's department at the deputy secretary or division head—first assistant secretary—level, as the situation requires. It is routinely attended by SES level officers from those other agencies.

Senator NETTLE—Can you take on notice a more detailed explanation of that? You do not need to give all of that now—about the level of seniority of the officers. Are they assistant secretaries; are they deputy secretaries—

Mr Metcalfe—It would depend upon the meeting and the availability. If the meeting is called on a Saturday at five o'clock and there are only certain people in town, then the level may vary. So I do not think I could provide anything more useful to you on notice, except to say it is a senior interdepartmental coordination process that deals with issues about potential or actual unauthorised arrivals by sea.

Senator NETTLE—Is it, for instance, from assistant deputy secretaries up? Is that what you mean by 'senior'?

Mr Metcalfe—There are three levels within the senior executive services: assistant secretary, or branch head, as they are known; a first assistant secretary, or division head; and deputy secretary. It would be unusual for it to be completely attended by deputy secretaries; it is occasionally chaired at that level. For example Mr Correll, from this department, has chaired the meeting on occasions, as has Mr McMahon—a division head from this department—depending on issues and availability. Within other departments, attendance may be at the deputy secretary, first assistant secretary or assistant secretary level depending upon the issue, the time and the availability. What it does, though, is ensure senior attendance from those agencies. That is why it is pitched at senior executive service representation.

Senator NETTLE—Do you know how many times that group has met since the arrival of the 43 West Papuans?

Mr Metcalfe—I would have to take that on notice. It would have met around that time and subsequently on that and related issues—such as the arrivals of the three people, for example.

Senator NETTLE—That would be great if you could take that on notice.

Mr Metcalfe—I will take that on notice. I will give you an indication of the number of meetings since 1 January this year.

Senator NETTLE—To whom does it report? What is its process for reporting?

Mr Metcalfe—It is essentially a coordination body to ensure that the facts of the situation are known and understood. It will often agree on actions to be taken—for example search patterns to occur by the coast guard or Coastwatch or whatever it might happen to be—and it will quite often be involved in providing a briefing and advice to ministers on particular issues.

Senator NETTLE—Has it consulted with any representatives of the Indonesian government in relation to the 43 or the three West Papuan asylum seekers?

Mr Metcalfe—The group itself would not as a body consult. Whether individual agencies have consulted, you would need to ask those agencies. You could ask us whether we have consulted, for example.

Senator NETTLE—Have you?

Mr Metcalfe—In relation to the 43, there was absolutely no consultation about decision making. There was some contact from the Indonesian authorities on the issue of whether the group was seeking consular assistance. We advised that those matters needed to be pursued through the people's lawyers. On one occasion, in a meeting that I was having with the Indonesian ambassador, primarily in relation to illegal fishing matters, I mentioned to him that

the group had indicated through their lawyer that they did not wish consular access from Indonesian officials. There may have been other contact, but I would stress that there was no contact that went to seeking reassurances or issues associated with the protection visa decision making process that has occurred. I think that two or three of the individuals have sought consular access, and we have put the appropriate contact in place.

Senator NETTLE—When did that occur?

Mr Metcalfe—I will have to take that on notice.

Senator NETTLE—You said there was no consultation in relation to decision making. Did the department of immigration receive any representations from the Indonesian government or its representatives in Australia in relation to those two—the 43 and the three?

Mr Metcalfe—I will take that on notice, but my understanding is no; there were certainly public comments made in relation to the issue. Whether they were issues addressed to the department of foreign affairs, you would need to ask them.

Senator NETTLE—When did the department of immigration first become aware of the 43 West Papuan asylum seekers heading to Australia?

Mr Metcalfe—We are sort of moving on to 1.3; Madam Chair, I could either ask those officers come to the table—

CHAIR—No, I definitely do not want to do that.

Senator NETTLE—I can save that. Just one more question, while we have still got Mr Hughes: with regard to designated unauthorised arrivals on offshore detention centres, who would be making the representations to third countries? Would it be the department of immigration or would it be the department of foreign affairs?

Mr Hughes—It would be the Australian government, and it might be the department of foreign affairs or the department of immigration, depending on circumstances.

Senator NETTLE—What has been the previous practice in relation to Nauru, that you were talking about?

Mr Hughes—Mainly the department of immigration. UNHCR have also been involved, but in some cases the department of foreign affairs has been involved.

Senator NETTLE—Have the UNHCR been approached to fulfil any particular role in the new model?

Mr Hughes—We have spoken to them on a number of occasions, going right back to the original policy announcement to keep them briefed on what the government's intentions are. In the context of the several meetings that we have had, and allowing for the fact that they were involved in processing some of the original case load that was taken to the offshore processing centres in 2001, we have said to them that the door was open to their involvement if they wished to be involved—without putting any particular conditions on what that involvement might be. To date, they have said that they do not see a particular role for themselves in the arrangements proposed, but they have not entirely closed the door to that either.

Senator NETTLE—Was the request in relation to processing or to finding third countries—or both?

Mr Hughes—All of those possibilities were canvassed.

Senator NETTLE—Are there more beyond those two possibilities—processing and finding third countries?

Mr Hughes—There could be, if they wanted there to be. As I said, we have left the door open in the sense of saying that if there are things that they would like to be involved in, we would be prepared to hear that and consider whether there is something where they could be involved.

Senator NETTLE—You said that so far they have indicated that they do not want to be involved. What were their reservations about being involved?

Mr Hughes—They have not closed the door to further discussion about it. I would not want to verbal them in the sense of giving an account of their reasons. I think they are probably best placed to do that themselves. But certainly they expressed the view that they had been involved in the 2001 process as a one-off and that they did not necessarily want to repeat that this time around. I think it would probably be best if I left it to them to explain their reasons, so far, for not particularly volunteering or suggesting involvement in the process.

CHAIR—I remind the committee that there is a public hearing on this matter in relation to the legislation, at which the UNHCR—amongst a cast of others—is appearing. Senator Nettle, if you have any further questions on 1.2, I would be very grateful if you could put those on notice.

Senator NETTLE—I think I would be moving on to 1.3.

CHAIR—In relation to 1.2, Mr Metcalfe, I can indicate that Senator Hurley has a few questions which we would like to return to at 7.30. I expect that to take, on Senator Hurley's advice, less than half an hour. Then, my colleagues have indicated to me that there are questions on 1.3 and Senator Bartlett has questions in that area. Senator Bartlett indicates he has very brief questions in relation to 1.4—as he usually does. Then both Senator Ludwig and Senator Bartlett, and possibly Senator Nettle, have questions on 1.5 as well. So we do intend to conclude these matters by 11.00 pm.

Proceedings suspended from 6.30 pm to 7.31 pm

CHAIR—We will reconvene because I want to finish those questions in 1.2 as soon as we can and move on to 1.3. I indicated we would start with Senator Hurley's questions in 1.2, ask other senators to put their questions in 1.2 on notice and then we will go on to 1.3.

Senator HURLEY—I want to raise an issue about a humanitarian entrant who was forced to leave his baby behind. He came here with the rest of his family, three children. They were living in the Kakuma refugee camp until their departure to Australia in June 2005. The family were granted a visa in August 2004. The refugee involved is David Lual. His wife gave birth to their fourth child in November that year. He was unable to contact the sponsor in Australia and, fearing that they would lose their visa, he came to Australia with his three children but without the new baby, the fourth child. Despite having photographs of the child from birth and

a birth notification from the Republic of Kenya, the decision was apparently made that the department was not satisfied with the relationship. Mr Lual and his wife have had to, with the assistance of a church charity, get DNA testing to confirm the baby's parentage. I understand from travelling around that this is not a unique story and that other families have had to have DNA testing. Under what circumstances would the department refuse to recognise a birth certificate and testimony from the parents and family?

Mr Metcalfe—I will get Ms Keski-Nummi to answer questions on this matter.

Ms Keski-Nummi—I am aware of the particular case you raise. In this case, I am not aware that we had been provided with a birth certificate for the child by the Republic of Kenya. We were advised that the parents may have registered the child with the UNHCR. We do not have that documentary evidence. We are trying to find out from UNHCR whether there was a registration but, as of today, I could not confirm that.

When our officer visited Kakuma camp and met with the grandmother and the child, the grandmother gave quite different birth dates to the ones that had been provided by the sponsoring parents in Australia. DNA testing is used as a last-resort strategy, but we do use it on occasion, particularly with humanitarian entrants, and it is to establish that there is in fact a direct link between the sponsoring parents here and the child. We have to be extremely careful that we are not unwittingly removing a child from parents who might be in Africa, and in this case there was advice from the grandparent that conflicted with what the parents had claimed in terms of the birth date of the child. The cumulative evidence around that meant that we really needed to make sure that they were in fact the parents of the child.

Senator HURLEY—This seems like a fairly harsh regime. The grandmother, I take it, was not disputing the parentage of the child, just the birth date—and I imagine that the days flit by fairly chaotically in a refugee camp. DNA testing is of course onerously expensive, too expensive for most refugees, so it concerns me that people applying have to pay for their own.

Ms Keski-Nummi—In this case, the parents are proposing under the special humanitarian program. In the case of refugees, we fully fund all DNA testing. But, in the case of proposals under the SHP, we do not as a rule fund DNA testing.

Senator HURLEY—Why the difference?

Ms Keski-Nummi—Refugees are fully funded by the Australian government. Under the SHP program, proposers meet some of the costs of the processing of those applications.

Senator HURLEY—Okay. Should the outcome of the DNA tests confirm the child's legitimacy—obviously, the parents would be distressed that such a long time has passed—would the visa for that baby then be expedited?

Ms Keski-Nummi—Yes.

Senator HURLEY—How long would you reasonably expect that to take?

Ms Keski-Nummi—As soon as we have confirmation of the DNA tests. We would move to issue the visa as quickly as we could after that.

Senator HURLEY—Thank you.

CHAIR—That concludes our questions, as I understand it, in output 1.2, which will enable us to move on to output 1.3. Such rapid progress is quite scary, but I will deal with it! We will start in output 1.3 with Senator Ludwig and then in due course move to Senator Bartlett.

[7.37 pm]

Senator LUDWIG—In answer to question on notice No. 51 back on 13 February, the department provided a table identifying the cost per detainee per day for each detention centre. The cost at Villawood was \$190 per detainee per day and at Christmas Island it was \$2,895. What services and facilities do detainees at these two centres have access to, and could you identify the reasons for the difference in cost? There is a significant disparity. How are the costs calculated?

Mr Correll—Before answering that question, I would just like to refer to the original question on notice.

Senator LUDWIG—Please.

Mr Correll—Yes, I have that question in front of me. The actual cost per day is a calculation which represents the total expenses involved in the centre divided by the total number of detainee days. That means that if you have relatively small numbers of detainees in some centres the unit cost is at a much higher level. It is important to understand that—rather than it being a cost per day based on 100 per cent utilisation of facilities.

Senator LUDWIG—Could you break it down a little further than you have in the table that you have provided so that we can perhaps understand the figures a bit better. For example, what is the number of detainees that a centre like Villawood has, as against Christmas Island? Could you break it down to the operational costs and/or security costs that also impact upon the different figure? Unfortunately, the way it is expressed gives a different view, perhaps, from what you might say the position on the ground is.

Mr Correll—Yes. It is not a fair reflection of a true unit cost for services. We will take that on notice and do the breakdown to the best of our data's ability.

Senator LUDWIG—What about those detainees who are then billed? That is perhaps my expression. You charge them a fee. How is that calculated? What unit cost is used to charge them?

Ms O'Connell—My understanding is that we use an average cost across the network to construct that per day cost.

Senator LUDWIG—Can you provide that per day cost or the average and how you calculate it? Do you draw that average cost from all detention centres? Does it include what we have just been talking about—the \$190 from Villawood and the \$2,895 from Christmas Island—to calculate how that average would then work out? If a person was in Villawood, my guess is that it would be a higher rate than what the actual cost of the detention would be.

Ms O'Connell—We will provide that.

Senator LUDWIG—Or do you take the lowest of the values, depending on where the person was?

Ms O'Connell—The cost that is charged as a detention debt is a standard cost across all centres.

Senator LUDWIG—So it is the same rate. At a certain time?

Ms O'Connell—Yes, that is right.

Senator LUDWIG—When is it updated?

Ms O'Connell—Annually is my understanding.

Senator LUDWIG—Is that 1 June or 30 June or 1 July?

Ms O'Connell—I will have to check when it is. I will provide that.

Senator LUDWIG—If you would not mind, please. Is there a decision made as to who is not billed? Is it those who receive a protection visa or who are turned around in a short time—or is everyone billed?

Ms O'Connell—There are certain categories of people who are not billed. For example, those who receive a protection visa are one group of people who are not billed. I do not have it with me, but I can get you the list of categories of people who are not billed.

Senator LUDWIG—It would be helpful if you could break it down so that I understood it. Obviously, some of these questions have been asked in the past but, if you would not mind, could you update the answers about which categories are billed. Could you let us know if there are any exceptions or waivers to that. In other words, if there is a category where it is usual to bill but there has been a decision to waive, you could perhaps express that as well. I know from experience that on occasion debts are waived.

Ms O'Connell—There is a capacity to waive debts, as well as those that are not billed.

Senator LUDWIG—Could you provide the number that have been waived and at what level the decision is made to waive those debts. I think there is usually a written letter that confirms that.

Ms O'Connell—Yes, that is true.

Senator LUDWIG—Could you indicate whether one was present at that time. Is there an ability for the person receiving the debt to challenge the debt and ask for it to be reconsidered or waived? If my memory serves me correctly, there is not, but it may have changed.

Ms O'Connell—There is, yes.

Senator LUDWIG—But it is not reviewable in any sense; it is only an appeal to the department.

Ms O'Connell—There is an ability to appeal to the department to have the debt reviewed, in the sense of its accuracy, and also to have it waived. There might be another method for possible review or waiver as well.

Ms Gray—I can provide a bit more information on that. Firstly, debt waivers can only be determined by the Minister for Finance and Administration or his delegate. Basically that means all our applications for debt waiver, or those cases which we proactively present to Finance for debt waiver, are determined by the finance minister or his delegate.

Senator LUDWIG—That must be the letter I have seen in the past. Can you confirm how many are provided to the department of finance by the department which are then not waived?

Ms Gray—Yes. We can get that information for you.

Senator LUDWIG—For how many is the decision made not to provide it to the finance minister, or are all of them provided?

Ms Gray—If a person writes to us seeking a waiver, we have to refer that on to Finance. It is a matter of course that we send them on.

Senator LUDWIG—So all of them are.

Ms Gray—If a person writes to us and seeks to have the debt repaid by instalments or what have you, that can be determined by me, as chief financial officer. That is basically assessed on a claim-by-claim basis and administered in that way.

Senator LUDWIG—I will rephrase it: so there are people that write to you who ask for a review of the debt or a method of repayment such as instalments, but not all of them would then ask for a waiver.

Ms Gray—That is right.

Senator LUDWIG—But only those that ask for a waiver will be referred to the department of finance. When they ask for a review of the debt or a change in the method of payment, that can be determined by you.

Ms Gray—There are a number of cases where we, as a matter of course, seek a waiver from the finance minister, and that is largely relating to particular groups or classes of visa. I do not have that list with me, but that is something we could get.

Senator LUDWIG—I am happy for you to provide that on notice.

Ms Gray—They are ones for which people do not ask us to waive the debt; we proactively seek it on their behalf.

Senator LUDWIG—Is there an ongoing cost per year, in total, of maintaining the detention facilities that have been mothballed—I guess that is Woomera and a number of others?

Ms O'Connell—There certainly has been an ongoing cost. I gave the costs for both of those centres at the last hearings.

Senator LUDWIG—Is that broken down by security costs?

Ms O'Connell—No.

Senator LUDWIG—It is just a total?

Ms O'Connell—It was just a total figure and it included the depreciation cost, which is not a fixed, actual cost.

Senator LUDWIG—Perhaps we need to have a greater level of specificity. Could we break that down into some of the lumps—say, security costs, ongoing maintenance costs and depreciation. It does not have to be to the fine lump, but if it were a little bit more disaggregated that would be helpful.

Ms O'Connell—That is for Woomera and—

Senator LUDWIG—The ones that are mothballed.

Ms O'Connell—Okay.

Senator LUDWIG—This will be an update on existing questions that we would have asked last time: is the number of absconders from detention facilities still the same or has it changed?

Ms O'Connell—The total number of absconders has changed in that some of the previous detainees who had absconded have since been redetained.

Senator LUDWIG—It would be helpful if you could update the number.

Ms O'Connell—Okay.

Senator LUDWIG—And then perhaps separate those who have been redetained, if that is the phrase. Have any of those who absconded whom you have then identified been issued with a visa? Perhaps it would be helpful to have that number too, of the people who were not redetained as such but were—would you say re-released or—

Ms O'Connell—Provided with a visa.

Senator LUDWIG—That might be easier. This will also be an update of existing figures. We have usually asked in the past about the detainees who have served the longest in detention, by year. What is the longest at the moment?

Ms O'Connell—I need to refer to one of my colleagues.

Mr Correll—We do not have that information immediately to hand, but we can obtain the information and perhaps pass it to you.

Senator LUDWIG—I am happy to put it on notice. What I did not want to say is for four years, three years and two years, if the shortest is two years. I did not want to give that impression. Did you understand what I am asking for?

Mr Metcalfe—We may be able to provide that through the course of this evening. We will do our best.

Senator LUDWIG—Thank you, that would be helpful. Is there any intention to replicate the reforms that the department agreed to in Palmer, Comrie and the Ombudsman reports regarding detention centres in the offshore processing centres such as Christmas Island, Nauru or Manus Island?

Mr Metcalfe—That is probably an item for 1.5.

Senator LUDWIG—Are you in a position to indicate some of the current mental health initiatives in detention facilities in Australia?

Ms O'Connell—Certainly.

Senator LUDWIG—I mean particularly those that relate to the inquiries. I will call them 'the inquiries' more generally, rather than keep saying Palmer, Comrie and the Ombudsman report.

Mr Metcalfe—We call it Palmer plus, because it is bigger than just Mick Palmer.

Senator LUDWIG—I see. That might be an easier way; thank you.

Mr Metcalfe—I recall that at the previous additional estimates hearings we provided some advice on these issues, and Mr Casey will be able to update you on progress.

Senator LUDWIG—It is more the cost. We are working on the information you provided last time, so I am asking about any new, additional matters that have been addressed since that time. If they are ongoing then I think we will take it as given. Then, if we have not asked for the cost, then what is the cost of those new services—as easily as you can provide those if they are lumps. If they are people lumps then I guess it is a little bit harder, but you can appreciate that. We will see what you provide and I am sure we will see you again.

Mr Casey—By way of update, the model that was described at previous hearings for the Baxter detention facility is now being implemented in Perth, Maribyrnong and Villawood. We have team leaders for the mental health teams in all three centres, and in Perth and Maribyrnong those team leaders are also psychiatric nurses. That would put the staffing in place. We are still awaiting some of the renovations to those facilities, to provide appropriate accommodation, and we are still seeking to employ some additional staff at the Villawood centre. As to the cost of this, I would have to take that on notice.

Senator LUDWIG—That would be helpful; thank you. And then, if the questions relate to the offshore detention facilities, I can ask those at 1.5.

Mr Metcalfe—One of the important initiatives that has been established since the last hearing is the Detention Health Advisory Group. I think it has met twice. We are very determined to ensure that we have access to the relevant medical specialties in that area. Associate Professor Harry Minas, who is also a member of the Immigration Detention Advisory Group, is chair of the health advisory group. We think that that is a positive development in terms of our properly engaging with professional organisations involved in these issues.

Senator LUDWIG—There were soccer fields and sporting facilities at the Baxter detention centre. Were these facilities put out to tender, and was there an objective or purpose that was underpinning the tender? How much did it cost?

Ms O'Connell—The sporting fields at the Baxter detention centre are presently in use. Most of our works do go out to tender. I can come back to you on when that took place and the total value of that.

Senator LUDWIG—I know this is more unusual but do you receive any feedback from the detainees about what they would like if you are going to spend X amount of dollars on sporting facilities and what type of sport is accommodated or catered for? Is there an aim or purpose or do you simply make a decision to build a sporting facility of a certain type?

Ms O'Connell—We have detainee consultative committees in each of the detention centres where matters like that are discussed in terms of activities the detainees et cetera would like to have that they may not presently have access to. Those are useful for us in making decisions not only about facilities but about excursions and other types of activities.

Senator LUDWIG—For long-term detainees, do you make a decision that they need those types of facilities or does the consultative committee simply say, 'We'd like these types of

facilities' and you build them? I cannot imagine that happening, so what sort of oversight do you place on it? Are there upper limits in terms of costs, budget, available space and type of activity requested?

Ms O'Connell—In a sense, we are more than willing for ideas to come forward and, yes, it needs to be considered in terms of whether it is possible, the cost—all of those matters—and we also take external advice.

Senator LUDWIG—But how do you do that? In the consultative committee or outside of that? I expect outside of that—and in what way and who makes that decision? The administrator of the detention facility or is it made up the line?

Ms O'Connell—Usually, a major investment would be made further up the line, but we encourage decisions about excursions and activities that detainees could regularly undertake at a centre to be resolved at the centre.

Senator LUDWIG—The question relates more to capital expenditure or significant outlay such as sporting facilities, soccer fields and that type of thing. Who would make those decisions?

Mr Correll—It needs to be remembered that the Baxter initiatives—and there were a range of initiatives, not just the sporting facilities but to put in improved visiting centres et cetera—came specifically out of the Palmer report recommendations. It was part of our Palmer Plus package to make those measures. It was all about creating a more hospitable environment at Baxter where there was a greater range of activities available for detainees. It was quite a comprehensive package of measures drawn together and it was done through the consultative committee but also in close liaison with the detention service provider.

Senator LUDWIG—Will they be built on Manus Island or Nauru?

Mr Correll—I think that is something we can consider under 1.5.

Senator LUDWIG—Baxter will be closed, as I understand it, in 2008. Is it still scheduled for closure then?

Ms O'Connell—Our current planning is that Baxter would be used from 2007-08 as a contingency facility. That does not mean it would be closed; it would remain as a centre to be used within the network as a contingency facility. The decision about its future use is subject to a review which is scheduled for the end of calendar year 2007.

Senator LUDWIG—What does a contingency facility mean to someone like me?

Ms O'Connell—It means that because of numbers or any other reason that the centre would actively be used. For example, it is foreshadowed that it would quite likely be used for illegal foreign fishers when the northern immigration detention facility might be at its capacity due to peak numbers of illegal foreign fishers being apprehended.

Senator LUDWIG—At some point past 2007, will it have no detainees if there is no requirement—in other words, it will be effectively put on what I would call 'care and maintenance'?

Ms O'Connell—At certain times, yes, but it is also anticipated that it would be used at other times, in particular with the numbers of illegal foreign fishers.

Senator LUDWIG—If there is an unexpected surge—but not otherwise?

Ms O’Connell—It would not be in continuous use; that is correct.

Mr Metcalfe—Senator, I am sure you will recall that one of the great problems the department faced back in 2000-01 was the very large number of unauthorised arrivals, over 8,000 people, when we had very limited facilities—Port Hedland and Curtin. It was for that reason that Woomera was brought into commission at very short notice, and, frankly, in unsatisfactory circumstances, and then of course Port Augusta, Baxter, was developed very rapidly as well. Now we are in a situation where we have far smaller numbers of unauthorised arrivals. But, with a significant and growing caseload of illegal fishers together with ongoing compliance activity, I think that not only do we need to have a regular, proper set of facilities for that small proportion of our total client base who are detained but also we need to have the capacity to manage anything unexpected. I am pleased that the government has agreed to maintain a number of facilities on a contingency or, in some cases, mothballed basis so that, if we ever are under that sort of pressure again, notwithstanding offshore processing and other initiatives that have been undertaken, we are able to manage our clientele in appropriate accommodation. So that is the basis for the decision to operate Baxter as a contingency after Christmas Island becomes available to us. Of course, all of this is in the context of the caseloads that we might or might not see of unauthorised arrivals or illegal foreign fishers.

Senator LUDWIG—By 2007—I think you gave me a date; was it June 2007?

Ms O’Connell—No, the review would be done by the end of the 2007 calendar year.

Senator LUDWIG—So, by the end of 2007, you do not expect there to be detainees at Baxter, unless it were being used for contingency purposes?

Ms O’Connell—On an ongoing active basis, subject to that review, no. That is our current planning.

Senator LUDWIG—In the interim you have spent X dollars on sporting facilities and upgrades. Have you spent any other money in this budget on Baxter—for example, on significant upgrades or new facilities?

Mr Correll—There is an additional \$4.9 million in the current budget for Baxter, and that is to address improvements in catering and medical services. Those are seen as critical to maintaining Baxter in a state in which it can operate effectively in contingency mode. It cannot just be left in a poor state if it is there as a contingency facility.

Senator LUDWIG—Which other facilities are going to be put on a contingency basis, and which will in fact close?

Mr Metcalfe—I think the announcements made in the budget context were that Woomera and Singleton would be returned to the Department of Defence, and that Port Hedland—it is probably not mentioned in the budget—will remain as an available facility if required.

Senator LUDWIG—So Woomera and Singleton will be effectively closed, then?

Mr Metcalfe—Singleton, to my recollection, was never actually used. I think it was the next contingency facility.

Senator LUDWIG—No, I do not remember asking questions about Singleton.

Mr Metcalfe—I remember that we did some works there to prepare it for possible use, but I do not think it was ever used. Woomera, of course, has not been used for some time now and, while it has been mothballed, it was becoming very expensive to maintain it. Because of the completion in a year or so of the Christmas Island centre and the availability of Port Augusta and Port Hedland, it was not seen that those other facilities were necessary.

Senator LUDWIG—So Baxter has been put on ‘care and maintenance’ for contingency purposes, Woomera has been closed and Singleton, which never perhaps opened, has been closed. What about the centres in Brisbane and Melbourne; were they reported as being closed?

Mr Metcalfe—We do not have anything at Brisbane. We have indicated in the budget documents as well that the previous plans for a large detention centre in Brisbane because of the fact that Queensland is a large and growing state with a very busy airport have been abandoned, but we continue to need what we are calling a transit centre, which is designed around the low-security, short-term stay of people ordinarily on their way out of Australia—in the very circumstances that Ms Alvarez found herself in when she was in a motel. Mr Comrie was quite critical of the fact that, as a person being removed, having been detained by the department, she was not given proper institutional admittance and departure from that institution. He pointed to some of the health issues associated with her as being indicative of an institutional arrangement being more preferable. A transit centre is scheduled for construction in Brisbane. In Melbourne, there had been plans for a large centre to replace Maribyrnong. There was a decision in the budget to upgrade and refurbish the existing facility at Maribymong and also to construct a similar transit centre to accommodate small numbers of people for short periods. There is also a similar plan for Adelaide, where we have no facilities at the moment.

Senator LUDWIG—Do you have the locations for the Melbourne, Brisbane and Adelaide transit centres?

Ms O’Connell—We do for the Melbourne one. That will be on the site at Broadmeadows. In fact, it will be using a building that currently exists on the site.

Senator LUDWIG—What about Adelaide and Brisbane?

Ms O’Connell—We have not as yet identified a site in Adelaide. In Brisbane, we do have a site that is near the Brisbane airport.

Senator LUDWIG—Is that the existing site that was proposed?

Ms O’Connell—It is the existing site where a proposed detention centre was going to be built. It will now be the immigration transit accommodation centre, but it will not use the full amount of land; it will only use a smaller proportion of the land.

Senator LUDWIG—Is that the one at Pinkenba?

Ms O’Connell—It is referred to as Pinkenba. It is in the suburb of Brisbane Airport. It is near Pinkenba township.

Senator LUDWIG—How many people will all three of them house?

Ms O'Connell—The Melbourne and Brisbane ones have an occupancy of approximately 30, and we are looking at around 12 for Adelaide.

Senator LUDWIG—What is the cost of each of those?

Ms O'Connell—The Melbourne immigration transit accommodation centre will cost \$2.6 million. Adelaide will also cost \$2.6 million. I remind you that the difference there is that the Melbourne building substantially exists as a building, it just needs some significant work done to it. The Brisbane immigration transit accommodation centre will cost \$5.4 million.

Senator LUDWIG—What are the types of security arrangements that are going to be in place for those three transit centres?

Ms O'Connell—The intention for those transit centres is that they are low security facilities, so there will be appropriately low security arrangements for those centres.

Senator LUDWIG—You might have to help me to understand what that is. I take it high security involves razor wire, so what does low security involve?

Ms O'Connell—These are the budget announcements that have been made. We are about to undertake some consultations to form views as to exactly what that means in terms of security arrangements, but we certainly do not envisage significant fencing or double fencing arrangements, if you like, and those sorts of things.

Senator Vanstone—We are looking at something similar to the residential housing project in Sydney, which I think is sort of on the way, and what will be in Perth—that house will probably be built by now—and Port Augusta, although there is some fencing at Port Augusta and some barbed wire. The barbed wire there is a function, I think, of the caravan park on the other side, not something that we have put up. So it is something that, from the street, would look like normal houses that normal people would live in.

Senator LUDWIG—That is a big call. Will consultation be had with local residents about the facilities?

Ms O'Connell—Yes, and there has already been contact made with representatives of council, or other groups who have an interest, to start arranging this.

Senator LUDWIG—That includes the Brisbane transit centre as well?

Ms O'Connell—It includes Brisbane and Melbourne specifically, but not Adelaide yet, as we have not identified a site.

Senator LUDWIG—In the budget, there was a media release which indicated that there was a saving of \$78 million. How is that \$78 million calculated? Do you include Singleton and the Brisbane site in that, as facilities that were not proceeded with? If so, how much?

Mr Correll—Yes. It is basically calculated against the previous plan, which was reflected in the previous forward estimates. These changes represent a significant redesign of detention services, aligning those services much more closely with different client-servicing requirements, with individuals with different risk profiles and also projections of different scenarios of overall numbers of detainees into the future. That is the basis on which the strategy was determined, but it has effectively replaced previous detention planning that was reflected in the forward estimates. So the savings are against the previous forward estimates.

Senator LUDWIG—Can you then break that up according to the savings per detention centre—Woomera or Singleton or Baxter, Brisbane, Adelaide or Perth if there was any money put into them?

Mr Correll—We can give you that information now.

Ms O'Connell—In terms of the return of the Woomera and Singleton facilities to Defence, the saving there is \$28.5 million over 10 years. Not proceeding with the previous commitments for the Melbourne immigration detention centre is a saving of \$86 million over four years. Not proceeding with the Brisbane IDF is a saving of \$40 million over four years. Upgrades to Villawood immigration detention facility have a cost of \$67 million over four years. Upgrades to the existing Maribyrnong detention centre have a cost of \$2 million over four years. Upgrades to the Perth immigration detention facility have a cost of \$3 million over four years. The expansion of the Northern Immigration Detention Facility in Darwin has a cost of \$5.7 million over four years. The construction of the new immigration transit accommodation centres that we have been talking about at Melbourne, Brisbane and Adelaide has a cost of \$24 million over four years. The upgrades to Baxter have a cost of \$4.9 million over four years.

Senator LUDWIG—If I do a few pluses and minuses on that, do I get to \$78 million in savings?

Ms O'Connell—You do—\$78.1 million in savings over four years.

Senator LUDWIG—Does that include or exclude the land at the Brisbane site? I think it is defence department land, or has it been leased?

Ms O'Connell—It was defence department land and it is now owned by Immigration.

Senator LUDWIG—So you bought it from the defence department?

Ms O'Connell—Yes.

Senator LUDWIG—When was that?

Ms O'Connell—Not recently. I would have to get the date for you. It was a while ago. But there is no change in that, in that we still retain the land.

Senator LUDWIG—What are the dates for the construction—design, implementation and final completion—of those transit centres?

Ms O'Connell—We estimate that the Melbourne immigration transit accommodation centre will be completed in late 2007, the Adelaide centre in 2008 and the Brisbane centre at the end of 2007.

Senator LUDWIG—Are you holding the remaining land that you now own at Brisbane or are you going to resell that back into the stock?

Ms O'Connell—At both Brisbane and Melbourne we have some additional land. At this stage we are retaining that and it is subject to review again in two years time.

Senator LUDWIG—What is the review for? Is it for whether you need to expand the facility?

Ms O'Connell—It is for whether the facilities that we have are meeting the population need and whether we need to retain the land or do anything else.

Senator LUDWIG—So there is no guarantee that you would not then expand the facility by doubling or trebling its capacity with the available land? You could put in a low security facility in today, hold the land and then expand it to a higher security facility if you thought there was a need down the track.

Ms O'Connell—Those options remain at any period in time. The decision at the moment is to build these low security centres.

Senator LUDWIG—And then have a review in two years.

Mr Correll—Senator, you asked for the duration of the longest period in detention. I can give you the answer to that question now. As at the end of April this year, the longest period was 2,404 days. The individual was in residence determination—in detention in the community.

Senator LUDWIG—Going back to the Baxter detention facility, when is the upgrade due to be completed? There was \$4.9 million for sporting and other facilities and I think that wrapped it up. When is that due to be completed?

Ms O'Connell—The sporting facilities are already in existence. They are currently in use. The remainder of the improvements include the kitchen facilities, or the improved catering facilities.

Senator LUDWIG—Both.

Ms O'Connell—Yes. They will be completed this calendar year.

Senator LUDWIG—That is on 30 June?

Ms O'Connell—It will be this calendar year. It will be by the end of December.

Senator LUDWIG—There is additional land at Melbourne, is there not?

Ms O'Connell—That is correct. It is at the Broadmeadows site.

Senator LUDWIG—What will happen to it? Is it on the same basis in that it will be held, reviewed—

Ms O'Connell—It is on the same basis as at Brisbane. We retain the land.

Senator LUDWIG—And you will review it in two years as to whether you need to expand the facility, change the facility or implement another facility?

Ms O'Connell—Or anything else, but the decision at the moment is only to build the immigration transit accommodation centre, the smaller, low security facility.

Senator LUDWIG—So the upgrade of the hospital facilities at Baxter is due to be finished at the end of December this year and it will be put on contingency by December 2007 or earlier?

Ms O'Connell—There will be a review by December 2007 and it would potentially move to contingency after that.

Senator LUDWIG—So a patient could effectively only be there for 12 months, with the new facility?

Ms O'Connell—No. It is envisaged that the Baxter facility will be used and the decisions about the size and the capacity of the northern immigration detention facility in Darwin were made in the knowledge that we had Baxter as a contingency facility to be able to deal with the peaks in terms of illegal foreign fishers. It is foreshadowed that it will be used as a contingency facility for illegal foreign fishers.

Senator LUDWIG—How many illegal foreign fishers—if that is the phrase you want to use—do you expect to come from there?

Mr Correll—That is a very difficult thing to predict. There has been significant growth in the numbers of illegal foreign fishers and we are projecting that they will in the year ahead reach at least half of our total detainee population. But it is a volatile set of numbers and is influenced by a number of factors. It is one of the reasons why we think it is quite critical to have a contingency facility in place and ready to activate quickly for that client group in particular.

Senator LUDWIG—Was there a figure amongst all of that?

Mr Correll—No.

Senator LUDWIG—No, I did not hear one. Do you want to have another go? You must have some idea, or are you going to wave your magic wand and hope that there are not too many?

Mr Correll—No.

Senator LUDWIG—There seems to be a view that, in terms of detaining those people, there will be thousands. How much capacity do you have in the north to detain illegal fishers and what do you expect the surge capacity to be if those figures are realised? How many can you detain in the Northern Territory? When those facilities will get to full capacity in the first year of operation, you must have some idea of how long the turnaround time will be as well. If you do not, I will start to worry.

Mr Correll—To date this financial year—that is, as at 3 May—2,433 illegal foreign fishers have been apprehended and brought to Australia. For 2006-07, we are projecting the figure could be as high as 6,000 illegal foreign fishers.

Senator LUDWIG—With the remainder of this year, there will be 4,000, and there is a projection of another 6,000. What is your capacity in the Northern Territory to maintain a detention facility?

Mr Correll—The issue with the illegal foreign fisher group is that there is relatively high turnover and movement. The illegal foreign fishers spend on average about 20 days in a detention facility, so there is a fairly high turnover of the numbers. We can quickly check the present capacity in the Darwin facility. Whilst that is a large growth in numbers, because of the relatively high turnover it is not such a large growth as it would imply in actual beds, if you see it in those terms, in a facility.

Ms O'Connell—The capacity of the northern immigration detention facility when all the works are completed—it is going through some upgrades at the moment—is for 612. It really is a matter of peaks and troughs in terms of apprehension rates of illegal foreign fishers.

Senator LUDWIG—But I imagine that if you are going to build a facility for 612, if you have an estimation of 4,000 this year and 6,000 next year and an average stay of 20 days, you have some idea of how many you would expect and when that is likely to occur. You probably already have some experience as to when the peaks are likely to be, depending on the fishing seasons, if there are such things—perhaps you could tell me; I am not a fisherperson. You could then expect how many of them will have to be transported to Baxter. Surely you know that. If you do not know that in this short term, when you are expecting 4,000 this year, I will start to worry.

Mr Correll—We have modelled all of that out, including the average numbers involved, in looking at the long-term detention strategy.

Senator LUDWIG—I thought you might have.

Mr Correll—The point we are trying to make is that when you look at numbers like that, it is the potential volatility that is the issue, and the fact that it is critical in that environment for us to have a contingency facility like Baxter available. I am not sure if we have those modelling numbers but it is relatively simple to convert those average times into bed times.

Ms O'Connell—We have done modelling around peak times et cetera which does show that we need to have additional capacity beyond the northern immigration detention facility.

Senator LUDWIG—So you will be able to provide those modelling figures as to how many fishers you expect to detain and how many beds you will have available at Baxter in an overflow capacity?

Ms O'Connell—Yes.

Senator LUDWIG—How many fishers have been detained in the last 12 months?

Mr Correll—I quoted that figure earlier.

Senator LUDWIG—Sorry.

Mr Correll—Up until 3 May this financial year there have been 2,433.

Senator LUDWIG—And the year before that?

Mr Correll—In the year before that for the full financial year it was 1,485.

Senator LUDWIG—In what facilities have they been detained to date?

Mr Correll—A combination of Baxter, Perth and, in more recent times, Darwin.

Senator LUDWIG—Has the committee asked for those figures of detained fishers from, say, 2001? If not, I am happy for you to take that on notice, unless you have them there.

Mr Correll—We can give you those figures. Which financial year were you interested in?

Senator LUDWIG—We can start at 2001.

Mr Correll—For the 2000-01 financial year the figure was 344.

Senator LUDWIG—And the next year?

Mr Correll—Seven hundred and fifty-eight.

Senator LUDWIG—And the next year?

Mr Correll—Nine hundred and eighteen.

Senator LUDWIG—That would make it 2004.

Mr Correll—Yes. The figure for 2003-04 was 937 and the figure for 2004-05 was 1,485—that earlier figure.

Senator LUDWIG—It does seem like an explosion, doesn't it? Have those figures been a warning to you that it has been growing?

Mr Correll—Yes. They have been forming an increasing component of the detention population. As I said, based on our modelling, for the year ahead probably half the detention population will be illegal foreign fishers. That will have significant servicing implications because of the different profile of that client group.

Senator LUDWIG—When did you first start to detect the growth in numbers and start modelling and making contingency plans for that? It seemed to me it was growing from 2001-02 and the warning signs continued in 2003-04. When did you start to put in place the contingency plans for Baxter and building the detention facilities in the north?

Mr Correll—I think it is fair to say that from 2000 there has been a steady growth. But what we have seen in the last 12 months and also projected into the future is a significantly accelerating growth in illegal foreign fisher numbers.

Mr Metcalfe—Senator, as you are aware, the case load is determined by a couple of factors. One is the sheer number of illegal foreign fishers present in Australian waters at any one time, and I think that that number has been increasing steadily in recent years. Also the government's efforts to address the issue through a whole range of measures have led to greater apprehension rates by Customs and the Navy. Ultimately the detention and removal of the people concerned becomes our responsibility. So it is an issue that is determined by the scale of activity but also by the increasing scale of enforcement activity in response to the problem. But, yes, it is certainly a growing part of the case load and our work is clearly an important part of the overall response by Australia to this issue.

Senator LUDWIG—I can see that. So the information that is being provided to you and the information or intelligence that you have been gathering since about 2001 has indicated a steady growth and then an explosion in about the last—I suspect it is more than the last 12 months—18 months. You would think that as well, wouldn't you?

Mr Correll—Yes. It has been over the last 18 months to two years.

Senator LUDWIG—That intelligence has been leading you to model for the surge capacity—my words—or the contingency, I should say, for Baxter and the need for the facility in Darwin. Are they the only facilities that are in plan at the moment or are there others?

Mr Metcalfe—I think there is a facility planned by—is it AFMA or Customs?

Ms O'Connell—AFMA or Customs have other facilities for immediate use.

Senator LUDWIG—I thought they were all going to be run by DIMA.

Mr Metcalfe—No. The responsibility for the fishers is initially Customs' responsibility, I think, and under AFMA direction for about the first seven days or so and then they become our responsibility, pending return overseas. So there are quite a few agencies involved in the response from Defence and the ADF through Customs, Coastwatch, the Australian Fisheries Management Authority and us. It is fair to say that there has been a growing concern about incursions into our water—that has been well documented. There has been a growing response from the government to that and, at this stage, the trend is all upwards.

Senator LUDWIG—Was that the main driver for the use of the Darwin facility? I think the last time I was in Darwin—I do not want to say this—but I recall the facility was there but not in use, which would be some time ago.

Mr Metcalfe—The original driver for the Darwin facility, you may recall from some years ago, was the fact that we never had any facility in Darwin and, should people come ashore there or in that vicinity, the arrangements were for using the local gymnasium and they were not satisfactory—similar to Christmas Island. So the facility was originally conceived with that in mind but the illegal foreign fisher issue has become more pressing in recent times, and so therefore the facility is being expanded and is in use now for that case load.

Senator LUDWIG—There was a point at which it was not used, wasn't there? It was built but not used, if my memory serves me correctly—I could be wrong.

Mr Metcalfe—You may have a greater recollection of that than anyone at the table, Senator.

Senator LUDWIG—It becomes a worry, doesn't it?

Mr Metcalfe—We might ask you a few questions, if that is okay.

Senator LUDWIG—It might have been during your period of absence from the department.

Mr Metcalfe—It may have been.

Senator LUDWIG—Perhaps you could check your records, but my understanding was that it lapsed and was not used for a while and a question was raised about why it was not being used. That is why I say the main driver for it being in use was effectively the intelligence that there was a growth in foreign fishers that would allow the detention facility to be used or needed. Perhaps you could confirm whether I am—

Mr Metcalfe—To the extent that we can confirm your recollection, we will.

Senator LUDWIG—I know the problem.

Mr Correll—In looking at the servicing strategy, the notion of when you have got a high turnover of people in detention facilities, it was more sensible to try and have that achieved through Darwin rather than move it to Baxter.

Senator LUDWIG—Did AFMA talk to you about these emerging trends, did Customs or both AFMA and Customs, or other agencies?

Mr Correll—Both of those agencies. It has been an issue that has been closely examined on a whole-of-government basis.

Senator LUDWIG—When did AFMA and Customs start talking to you?

Mr Correll—For as long as I have been in the department, there has been ongoing dialogue and this has been an issue for the last 18 months plus.

Senator LUDWIG—I am not sure how long you have been in the department.

Mr Metcalfe—Since 18 July last year.

Senator LUDWIG—It is good when your boss knows that date.

Mr Metcalfe—The same day that I started.

Senator LUDWIG—So it is about 18 months. Is it both Customs and AFMA? Do they come together as a joint team or separately?

Mr Correll—No, jointly.

Senator LUDWIG—Did they identify the issue to you—in other words, that there was an explosion in illegal fishers and there would be a need for a detention facility to be expanded—or was it the other way around?

Ms O'Connell—There have been interdepartmental committees, IDCs, running on the cross-government response to illegal foreign fishing and at those we are represented as are AFMA and Customs.

Senator LUDWIG—Who else is on those IDCs?

Ms O'Connell—Prime Minister and Cabinet.

Senator LUDWIG—When were they first formed?

Mr Correll—We would have to check the precise date, but some time ago.

Senator LUDWIG—Is there more than one name provided to that IDC, or is there one?

Mr Correll—To my knowledge there has been one IDC, but we will check those details and come back to you.

Senator LUDWIG—Just one last question in this area. There was a dentist contracted to fly from Melbourne to Sydney on the weekend to attend Villawood detention centre. I am just curious about what that was needed for. That is my information. I was looking at the average time between a request for a consultation and the cost of the dental services provided, travel and accommodation facilities et cetera. You might want to take that on notice.

Ms O'Connell—Certainly, Senator; we will.

Senator LUDWIG—With the IDC, was that the first time 18 months ago, or were there meetings prior to that about illegal fishers? Was the first response by Customs or AFMA to immigration? I would imagine there has been ongoing dialogue over a long period, because you have detained illegal fishers in the past. But more particularly, when it really started to rise from 300 in 2001, did Customs and AFMA start to talk to you at that time about how you were going to detain them, where you were going to detain them, the cost of detention and who pays the cost? There seem to be departmental issues that arise.

Mr Metcalfe—There have been ongoing discussions for quite a long time. To put it bluntly, this is a caseload that we wish we did not have to deal with, because there are people illegally fishing in our waters who were actually brought to Australia by active intervention of the Australian government rather than seeking to come here of their own volition. So they are reluctant clients of the organisation in that sense. AFMA, as you would probably be aware, has operated facilities in Western Australia and, I think in the Northern Territory, for some time. There was always the issue as to firstly, the immigration status of the persons and secondly, the best organisation to be responsible for their detention and removal. I suspect that those discussions predated 2001, in fact, but they have probably accelerated in significance in the last couple of years because of the numbers of people we have been dealing with.

Senator LUDWIG—So probably around 2001 or 2002 you started to talk to them in detail?

Mr Metcalfe—No, I think that there had been detailed discussions for quite a long time. I recall having quite a discussion with fisheries when I was in a previous job—probably the best part of seven or eight years ago—about the issue. So I think it has been ongoing. It is just that the scale has grown very significantly; and the government clearly, over the last couple of years, decided to re-engineer the way that the responsibilities between agencies were involved. Immigration became more involved with detention than it was previously, but the increasing caseload—because of the incursions of foreign fishermen into our waters—has also meant that there has been more regular and focused discussion than when we had only a few people to deal with.

Senator LUDWIG—That point was about when, do you think?

Mr Metcalfe—We can check, but I think that the changes to the arrangements and the focus on that probably go back about the 18 months or so that Mr Correll is talking about. None of us here were actually focusing on that issue at the time, so we will take that on notice and give you more advice.

Senator LUDWIG—Thank you very much. Thank you, Chair.

Senator BARTLETT—Let me know if any of these questions have just been asked. I have been listening to most of it, but a bit of it might have happened while I was distracted. With the detainees who have been in hospitals of late, out at Glenside and places like that, I note that a number recently have been moved up to a private hospital in Brisbane. What is the background to that? Is there a space problem at Glenside? I think one or two of them came out of Villawood. Are we just diversifying, or is that a temporary arrangement, or is there going to be wider use of those private hospitals?

Mr Casey—I think in essence we have used the facilities that are available to us when we have been advised clinically that people are in need of care. The hospital in Brisbane has over the past 12 months agreed to accept voluntary referrals for people who have been identified as needing hospital care. The facilities in South Australia or in any other state mental health system will accept patients when clinically they are deemed to be in need of that care. As you would appreciate, in the public mental health system many of those patients are admitted to hospitals under various state laws as being in need of compulsory admission. Where the facilities are available to us and we are advised by appropriate clinicians that people would

benefit from that care or, in the case of a compulsory admission, that they require that care, we would use those facilities in consultation with clinicians and, of course, if it is a voluntary admission, in consultation with the person who is in detention.

Senator BARTLETT—You say ‘voluntary referrals’. Who actually makes the decision to transfer them from, say, Glenside in Adelaide up to Brisbane? Is it the person themselves or their doctor?

Mr Casey—If we received advice, the doctor would speak to them and say, ‘I believe you would benefit from a period in inpatient care.’ If they declined, they would not go. It is a voluntary admission.

Senator BARTLETT—So the person themselves, the detainee, has the ability or right to decline to be shifted. Is that what you are saying?

Mr Casey—Sorry, I did not quite catch the question.

Senator BARTLETT—Are you saying the detainee has the right to decline to be moved?

Mr Casey—The clinician determines that somebody is in need and, if that is then put to the person in detention and they agree, they accept that referral and we move them to that facility.

Senator BARTLETT—So people would not be moved against the advice of the treating hospital or doctor?

Mr Casey—Correct.

Senator BARTLETT—What is the doctor relationship with each of those sorts of people? I guess I am using them as a bit of an example rather than just asking what has happened in an individual case. The person would have a health professional that would be appointed or at least acknowledged by the department and you would then act in response to assessments by the treating health professional. Is that right?

Mr Casey—No. We act in accordance with the advice received from whatever the service is that the person is under the care of. In the case of our own service providers, they engage clinicians and the advice comes from the service.

Senator BARTLETT—So with people, for example, that get transferred or have been transferred to the hospital in Brisbane, the length of time they would stay there, leaving aside what happens with their visa arrangements or whatever, would be driven by the assessment of the health professional there about whether it was best for them to stay there or to go somewhere else.

Mr Casey—Yes. If we were advised that the person who had been admitted to the hospital was ready for a clinical discharge, we would work with the facility in arranging for that discharge.

Senator BARTLETT—What sort of notification arrangements are made if somebody is going to be switched, say, from Glenside to Brisbane or anywhere else? Many of these people have regular visitors or some sort of agency that provides them with more informal support. Do you normally have liaison arrangements where you notify them that a person is going to be transferred to another town?

Mr Casey—Not necessarily. We would inform their representative, if they had one. That would be the normal process as I would understand it.

Senator BARTLETT—The migration agent or lawyer or whatever.

Mr Casey—Yes. That is what I would expect to happen.

Senator BARTLETT—Thank you for that. The residence determination arrangements are not actually a visa, as I understand it, just a determination. Has there been any review or progress report on how that is going? Are there any changes planned in how that operates?

Mr Correll—Residence determination is a form of detention and has been operating for some time. I might ask my colleague to comment on aspects of detail.

Senator BARTLETT—I might make the question a little bit more precise. The residence determination arrangements have basically been in place now for a little under a year, I think, in their current form. I just want to get an idea of whether any material is available on things like comparative costings—what the cost is of having people in residence determination in a house in the community as opposed to remaining in a place like Villawood or Maribyrnong.

Senator Vanstone—I would be interested in that as well, Senator, although I am not sure that the sort of exact costing you are looking for is available, because some of our costs in facilities like Villawood are fixed—we have got that cost whether someone is in there or not. I am sure economists or someone in Finance have figured out some way to do this.

Senator BARTLETT—I presume, whilst there are always going to be those sorts of difficulties with nailing it down with 100 per cent precision, that you can at least get some sort of idea of which way is costing you more overall, one way or another.

Mr Correll—My recollection is that we answered a question on notice on this matter in the last round. If we can just track that down, we will probably be able—

Senator BARTLETT—That is fine. I guess I am trying to get a sense—because I did not see it in the budget papers in any specific way, not that it necessarily has to be—of whether or not this type of arrangement is one that is likely to expand. It seems a bit ad hoc as to who it will apply to and who it will not. It is obviously aimed towards long-term detainees, but I would like to know whether there is a likelihood of it expanding to a greater number of people if the experiment, if you want to call it that, proves to be successful. As far as I am aware, it seems to be. I am not aware of any major problems with it to date.

Mr Mann—As at 1 May this year, there are a total of 79 persons under the residence determination arrangements. I think there had been allocated funds this year for some \$2.3 million—\$1.9 million in out years. After the first seven months, I think we had received invoices for around \$676,000, so we are probably a little under the expectation in this first year.

As the minister commented, the costs involved in residence determinations are not comparable in a number of ways to detention costs. For example, we fund, principally through the Australian Red Cross, in a lead agency role, a range of expenses, including case worker salaries, medical costs for persons placed in detention arrangements, as well as a range of bills, including rent. So it is pretty hard to try to compare the two types of arrangements. In

terms of their viability or appropriateness for the future, certainly in the forward estimates it is intended to continue to provide for the support of these arrangements.

Senator BARTLETT—In terms of your forward estimates expectations at the moment, would it be a similar number of people? You are not expecting it to dramatically expand, as things stand—to widen out the use of it?

Mr Mann—No. Principally, it was put in place to ensure that women and their children would not be in a detention centre. There have been a number of single adults that have also been placed under residence determinations, but primarily it is a family based arrangement, and that is how we would see it continuing.

Senator BARTLETT—I want to ask a couple of questions about legal cases, court cases et cetera.

Mr Correll—Senator, before we move on, there was a question raised in the last hearings on that very issue of the residential determinations. It was question No. 37, I believe. The response to that question was very much along the lines of Mr Mann's comments. It went on to say that invoices received covering July 2005 to the end of January 2006 totalled \$676,000, but it emphasised that circumstances varied from individual to individual, based on different needs.

Mr Metcalfe—This is a good opportunity to place on the record our thanks to the Red Cross for the very constructive way in which they have partnered with the department on this issue and related issues. It is a good example of cooperation between the not-for-profit sector and the department in trying to provide decent services for people involved in these situations.

Senator BARTLETT—I want to ask a couple of questions in relation to court cases that are still under way, as I understand it. With respect to the Nystrom case, to do with absorbed persons visas, at what stage is that? Is it waiting for a judgment to come down?

Mr Eyers—Yes, that case has been heard by the High Court and judgment has been reserved.

Senator BARTLETT—Do you have any idea when it might appear?

Mr Eyers—Usually the High Court takes approximately six months with its judgments. They usually keep pretty close to that time frame.

Senator BARTLETT—That would take us to when?

Mr Eyers—It was heard on 12 April, so towards October-November.

Senator BARTLETT—I also recall a court case regarding interpretation of article 1F of the refugee convention about people on TPVs who reapply for further protection—a changed circumstances arrangement. Does that ring a bell? I can't think of the name of the case.

Mr Eyers—QAAH, article 1A and article 1C, in the High Court, listed for hearing early next month.

Senator BARTLETT—That might be it—let us ring a bell. I want to ask about another case. There was a High Court decision towards the end of last year, I think, called NAIS v Minister regarding what seemed to be an extraordinarily long timelag for a decision by the RRT. The High Court set the decision aside by the RRT which affirmed the rejection of a PV

application on the grounds that there would be an extraordinary delay amounting to several years in the matter. I might ask the RRT about that but, in regards to findings like that, does it have flow-on effects back down the department with regard to responding to the changes to administrative arrangements and those sorts of things? It might be more of a question for another section of the department rather than the lawyers who fight the cases, I suppose.

Mr Eyers—We provide reports back to the department on the outcomes of cases and their implications for the relevant areas of the department.

Senator BARTLETT—I would assume also to tribunals when appropriate.

Mr Eyers—Particularly, yes.

Senator BARTLETT—I might ask the RRT a bit more about that tomorrow. The other area I want to ask about—I think that was all with the court cases, thank you—is still under enforcement, which is the border protection area: Operation Relex and those sorts of things, which I realise covers Defence and various other people. I would like an idea of the administrative arrangements of that at the moment. Is there an interdepartmental committee or task force? Who is the lead agency and what are the day-to-day arrangements with that?

Mr Correll—There is a people-smuggling task force which is chaired either by DIMA or the Department of the Prime Minister and Cabinet. There are other—

Senator BARTLETT—What do you mean, ‘chaired either by’?

Mr Correll—It depends on the circumstances of particular cases. It is intermittently chaired by either of the two departments.

Mr Metcalfe—I provided some advice on this issue earlier to Senator Nettle. I do not know whether you want to go over the same issues but, essentially, it was about the composition of the task force, which members, what seniority and that sort of thing. You might find that is on the record but, if there is anything that we can help you with, we will.

Senator BARTLETT—No. It is all right. I am always willing to reread *Hansard* and have my own fascinating voyage of discovery.

Senator Vanstone—Have you no hobbies, Senator? Is there nothing in your life but this place? Get help!

Senator BARTLETT—Thank you for the advice, Minister. That previous discussion would probably have been under 1.2, wouldn't it? I do not know. Some of this I could leave until Friday when we have got our hearing on the legislation. I do not really want to double up, so I might even do it then. I will have time to review anything you have said in the morning to save duplication. I think that will do me for the moment.

Senator NETTLE—I will go back to where I left off, which was asking about arrangements for the new legislation and about UNHCR. Have any approaches been made to IOM to ask them to assist in the process?

Mr Correll—Yes, there have been contacts made with IOM in relation to the services they provide on Nauru.

Senator NETTLE—So was the request to provide the same services that they provide on Nauru?

Mr Correll—The contact with IOM was in relation to the nature of the ability to ramp up services on Nauru.

Senator NETTLE—What additional services would you be asking them to provide?

Mr Correll—There are currently facilities on Nauru—a Topside facility and a State House facility—which have been in a mothballed state, largely. The discussions focused on the lead times involved in ramping up those facilities and providing services to a number of potential individuals or unauthorised boat arrivals who may well be referred to them for services.

Senator NETTLE—What do you mean by ramping up?

Mr Metcalfe—We are simply expanding capacity, Senator. This is probably an issue that we would discuss under 1.5.

Senator NETTLE—I was just following on from before, but I can leave it.

Mr Metcalfe—Everything is connected, I know, but certainly the words that Mr Correll uses about ramping up mean that in view of the government's recent decision to amend the law in relation to potential future unauthorised arrivals, we need to make sure that the facilities there are available and able to be used if required. It was that discussion. But if it is okay with you, it is probably best to bring that together in 1.5.

Senator NETTLE—Sure. I have two follow-up questions about Siti Waingai. What would be the process for her if she wanted to make application for protection in Australia? Would it be a process of application to come and then subsequent—

Mr Metcalfe—As Mr Hughes explained earlier, the term 'protection visa' is a term of art, of course, and it is only available to a person who is in Australia and is not a designated offshore person. So were there to be an application from the lady, if in fact she is in PNG, as the media reports seem to indicate, I would encourage her to discuss her issues with the United Nations High Commissioner for Refugees in the first instance, because that is the appropriate authority in relation to those issues. If she is desirous of coming to Australia, she would need to apply for a visa through the Australian High Commission in Port Moresby.

Senator NETTLE—Are you aware of allegations that she has made about individuals in PNG being sent to PNG by the Indonesian or the Australian government in order to take her back to West Papua? As it was reported to me, it included the Australian government and the words used were 'kidnapped to take back'.

Mr Metcalfe—I am not aware of those suggestions. I am aware of the media reporting. I think, from memory, that she was interviewed on an ABC television program. But I have no independent knowledge as to the veracity of those issues.

Senator NETTLE—Can I put it on notice if you want to respond further to those allegations?

Mr Metcalfe—If I have anything further to say, I will—but I don't think I will.

Senator NETTLE—Are there currently any detainees at Glenside?

Mr Casey—Yes, I believe there is one person still a patient at Glenside Hospital.

Senator NETTLE—In a previous estimates hearing I have asked about a \$1.8 million contract paid to Glenside until 30 June this year. I think the answer was about having a specific wing for detainees at Glenside. Is that to be continued? Just the fact that there is only one person there, is that because Glenside is no longer going to be used or is there an intention to continue an ongoing relationship?

Mr Casey—The matter you referred to in the previous estimates was actually an anticipated procurement. We do not have a contract with Glenside per se; we have a memorandum of understanding. We would estimate that that would be the cost in a full year.

Senator NETTLE—There was a tender that went out on the Australian government tender website for \$1.8 million.

Mr Casey—I think it was a procurement. It was an advice of a potential expenditure. Nonetheless, the ward that the hospital had put in place is currently not being used because there are no patients to use it. My understanding is they are not operating that ward at the moment.

Senator NETTLE—But there is an intention to continue to make that ward available?

Mr Casey—That would be a decision for the Glenside mental health campus. We would not make the payments if it was not being used. We would pay on a bed day cost, which is the other method of paying for hospital utilisation.

Senator NETTLE—I thought from previous discussions that normally it was a bed day cost, but there was one figure that I asked about where you said that was for the cost of a ward.

Mr Casey—That was the anticipated cost for the full year period. But if the facility of that ward was not operating for the full year then we would not pay for the period of the year that it was not operating. We would be billed on a bed day cost for the person who is still a patient there.

Senator NETTLE—Certainly when I last went to Glenside there was a lot more than one person there. Where have all the other people been transferred to?

Mr Casey—All of the people, bar the one, who were patients at the Glenside campus have now been discharged from that hospital. I have not got the exact details of where each of those persons you might have seen have gone, but I can tell you in general terms that some have gone to the residential housing centre in Port Augusta; I think two have returned to Baxter; I think one or two went to Villawood, of whom one has been granted a visa and is awaiting security clearance; and two others I believe are on removal pending bridging visas, so they are out of detention. That probably does not add up to all of them. I can give you that information in detail if you would like.

Senator NETTLE—That would be good, thanks. So no-one was transferred from Glenside to the private hospital in Queensland?

Mr Casey—Not directly. I think that probably two of the people who have previously been, and I will have to again check, in hospital in Glenside have also been in hospital in Brisbane.

Senator NETTLE—Subsequently.

Mr Casey—Subsequently.

Senator NETTLE—But not directly.

Mr Casey—Not directly. There were no direct transfers.

Senator NETTLE—Why were those movements made?

Mr Casey—Because they were discharged from the hospital and the decisions on future detention or future immigration detention placements were made for a variety of reasons depending on the individual cases.

Senator NETTLE—Are you aware of the comments of the woman psychiatrist at Glenside who was treating six men—I think they were at Glenside—and made recommendations that they not be transferred back to detention? Are you aware of those recommendations?

Mr Casey—I am aware that amongst some clinicians at Glenside there were particular views that they should not be returned to detention. The discharge recommendations that were eventually made by Glenside hospital, by South Australian health, took into account, and were made with full discussions with the department about, what were the options available in relation to those patients. We followed those. I am aware that within the hospital there were differences of opinion.

Senator NETTLE—In the past we have had discussion about whether health considerations or the considerations under the Migration Act would take precedence. My recollection is that the answer was the health considerations would be met as much as they could be within the requirement to meet the migration requirements.

Mr Casey—Yes.

Senator NETTLE—So are you aware if any of those instances of transferring people out of Glenside involved priority being given to a migration decision which meant that a health recommendation was not followed?

Mr Casey—As I said, all of the discharge reports from Glenside and the subsequent placements were made in accordance with those discharge reports by the medical director from the Glenside campus.

Ms O'Connell—Can I add to that. They were not transferred out of Glenside; they were actually discharged from Glenside. It is not that we were transferring them from one place to another. They were being discharged from Glenside.

Senator NETTLE—Yes. Previously, someone—I am not sure who it was—was talking about how the Brisbane facility was accepting voluntary referrals. Does Glenside not accept voluntary referrals?

Mr Casey—It has taken some patients on a voluntary basis but generally it does not. It is the major state psychiatric hospital, and the majority of people from South Australia who would be admitted to Glenside would be admitted under the South Australian Mental Health Act.

Senator NETTLE—Has a new contractual arrangement been made with the Queensland facility?

Mr Casey—We have in place a billing arrangement with the hospital in Queensland whereby it bills us on a bed-day cost.

Senator NETTLE—With how many other facilities around the country do you have that arrangement?

Mr Casey—At this stage we have no others, but there are two private hospitals in other parts of the country that would consider having discussions with us about whether we could get access to the use of those facilities. Of course, if a clinician makes a finding that somebody needs to be detained under the Mental Health Act then the state mental health system has to at least assess that person with a view to admission.

Senator NETTLE—Are you saying they need to be held in a public facility or they need to be assessed by the public facility?

Mr Casey—If somebody is deemed by a doctor as needing to be admitted to a mental health facility in Australia, under appropriate state legislation, then that hospital has to at least assess them. So the doctor signs an order to take the person to the hospital to have them assessed. They can make a decision to admit or not to admit. In relation to private facilities, there are very few in Australia that would admit people under mental health legislation. There are a couple, but generally they take voluntary patients and generally they would be treating people who have anxiety or depression rather than illnesses within the psychosis range.

Senator NETTLE—Does that mean that you require the option of using either public or private services depending on what the—

Mr Casey—Yes—what the situation is.

Senator NETTLE—Okay. How many detainees are in the Queensland facility; do you know?

Mr Casey—In the Queensland hospital, I believe there are four patients at the moment.

Senator NETTLE—You mentioned that there were two other hospitals you were having discussions with. Whereabouts are they?

Mr Casey—One is in Sydney and one is in Western Australia. At this stage, I would not say that our discussions have got to the stage where I would like to mention them by name, but we are exploring.

Senator NETTLE—If you have a mental health facility like Glenside near a detention facility like Baxter then the capacity to discharge or take people, I imagine, would be easier—because they are closely located. How would that operate in the Queensland situation, where there is no immigration detention facility? Does that create problems? How is that going to be resolved?

Mr Casey—It would be no different from Sydney. If somebody requires a medical assessment then they are taken to hospital. In Sydney, if people were in need of a mental health assessment, we would take them to the local mental health facility to be assessed.

Senator NETTLE—Yes, but because there is no local immigration detention centre in Brisbane, if somebody is discharged from the Queensland hospital they would need to be taken to Sydney. Is that right? Is that how that would work?

Mr Casey—Yes. They would normally return to somewhere else within the network.

Senator NETTLE—Going back to the transfer of people out of Glenside, do you follow the recommendations of the treating doctor or the recommendations of the director of the facility?

Mr Casey—We follow the recommendations of the medical director of the facility, who is the senior clinician in the facility.

Senator NETTLE—I want to ask about the closing of Baxter, to follow up some questions that were being asked before. Why was that decision made?

Ms O'Connell—Senator, Baxter is not closing. It is staying as a contingency facility and we do expect to be using it, but not on a permanent basis.

Senator NETTLE—Why was the decision made to have it as a contingency facility, or to mothball it—whatever language you want to use?

Ms O'Connell—On contingency—reduced occupancy levels. Our expectation of the future long-term use of the Baxter facility is for overflow of illegal foreign fishers when there are peaks, and for other genuine contingency measures.

Senator NETTLE—Did that come out of the strategic review of long-term detention facilities?

Ms O'Connell—That is correct. It was part of looking at that package of measures, and part of the decision about building the immigration transit accommodation centres in the other locations. So the expectations are that once those other locations have a transit accommodation centre there will be a decreased need for Baxter as a centre.

Senator NETTLE—So are the outcomes of that review the decisions we have seen in the budget? I was going to ask whether you could tell me what the outcomes of the review are, but is the answer, 'Everything we have just seen in the budget'?

Ms O'Connell—That is correct. The package of measures is part of the budget.

Senator NETTLE—When was the decision made?

Mr Metcalfe—The decision was made by government in the budget context.

Senator NETTLE—When the decision was made to spend \$4.7 million on the upgrading of Baxter that is going on at the moment, was that made prior to the decision to mothball Baxter? I want to get the timeline.

Mr Correll—All the decisions were made in the budget context.

Senator NETTLE—It strikes me as odd that you would decide to build a new hockey field and new facilities at Baxter and then decide to mothball Baxter. That is why I am asking about the time frame.

Senator Vanstone—To be fair, the Palmer report indicated that there had to be some upgrading there and that there had to be better facilities. The Palmer report did not say, 'And,

by the way, if you think you won't use it after 2008, don't bother doing any of the above.' So it just has to be done.

Senator NETTLE—I think it is a fair enough question to ask.

Senator Vanstone—Yes. I am just making the point that Palmer did not say, 'Look, if you're going to keep this for 20 years, do it.' So it needs to be done.

Senator LUDWIG—He also did not know, with respect, that it was going to be mothballed or put on a contingency basis, either. So I think that is an unfair statement to make. Palmer did not know; he made a report based on the information he had at the time, to be fair.

Senator Vanstone—No, he did not spell out specifically what needed to be done but he said, 'You need better facilities.' We take responsibility for making the decision about what specifically needed to be done.

Senator LUDWIG—Yes, but that is your decision. I will leave it to Senator Nettle, but it is a bit unfair to say that what he did or did not say can lead to a conclusion; that is all.

Mr Metcalfe—Senator, I think it is pretty clear that: (1) Mr Palmer was critical of the facilities, with good reason; (2) the government has decided that the facility will stay in operation for a couple more years and therefore the facilities do need upgrading, given their use; and (3) as we explained earlier in answer to questions, the facility is not being shut at that stage; it is being held as a contingent capability. Therefore, it is certainly within the realms of possibility that it would be used, and if it is to be used it would make sense for it to have been appropriately upgraded.

Senator NETTLE—So the upgrade will continue?

Mr Metcalfe—Yes.

Senator NETTLE—I want to ask about the use of anti-psychotic drugs. I want to ask about two in particular and whether they are being used in Glenside—the facilities that are being used. I will place it on notice.

Ms O'Connell—We would have to go and ask those facilities if they are prescribing those medications.

Senator NETTLE—So it is better to place it on notice. I will leave that one and do it that way. I want to ask about the 43rd West Papuan asylum seeker and where their case is up to. Do I ask that here?

Mr Metcalfe—You probably should have asked it under 1.2, but I am happy, with the chair's agreement, to respond to it.

CHAIR—The chair is reluctant.

Senator NETTLE—Where are we up to with the 43rd—

Mr Metcalfe—The decision is pending.

CHAIR—That is a good answer, Mr Metcalfe.

Mr Metcalfe—I might just say that the reason the decision was separated was that there are different circumstances applicable to that individual, some of which have been canvassed

in the media. There has been some litigation associated with it, which is ongoing, but the department is working to make a decision on that matter in as timely a way as possible.

Senator NETTLE—Is there any expected time it will be resolved?

Mr Metcalfe—I think it will be reasonably soon, but I would not want to put any particular time limit on it.

Senator NETTLE—What is the cost of the litigation so far?

Mr Metcalfe—We would have to take that on notice. The application was brought against the department seeking a writ of mandamus, seeking that a decision be made, so we are respondents to that litigation. We have continued to indicate to the man's legal representatives that we will make a decision in an appropriate and timely manner and that what our costs are to this stage and who will be responsible for paying those costs are issues yet to be established. I think it has been quite preliminary litigation from that point of view.

Senator NETTLE—So you will take that on notice?

Mr Metcalfe—I will take that on notice.

Senator NETTLE—Thanks. The reporting has been that recognition has been accepted of the requirement for protection but that there are other complications in the case. If that reporting is correct—and I will leave you to answer that—can the person in question, in this circumstance or other circumstances, be moved from where they are located whilst the other complications are sorted out? If there is an acceptance that they require protection but there are other complications, can somebody in that circumstance, whether it is this case or not, be granted a residence determination, for example, and be transferred to the mainland whilst the other issues are resolved?

Mr Metcalfe—Anything is possible, but what happens in any particular case will depend on the circumstances. The government has made it clear, up until the recent announcements, that unauthorised arrivals would be transferred to Christmas Island, and that is what occurred with the group of 43. In the future, of course, we would anticipate that they would be returned to whence they have come, in the case of PNG, or processed on Nauru. But I think it is improper of me to speculate about the future handling of this particular individual's matter until that decision has been made.

Senator NETTLE—Okay. They can be, generally, but—

Mr Metcalfe—As I said, anything is possible, but there is a clear policy intention that unauthorised arrivals not come to the Australian mainland.

Senator NETTLE—Has there been any response from the other country involved?

Mr Metcalfe—We have had advice from the other country involved, but I do not want to be led into a series of answers that go to the issues in this particular matter.

Senator NETTLE—I might just ask, while I am there, about the other person on Christmas Island, who arrived at the beginning of April, and where their case is up to.

Mr Metcalfe—I will have to get advice from the officer concerned.

Mr Hughes—Unfortunately the answer is that I will have to take that on notice.

Senator NETTLE—Oh, dear. Why don't I give you some specific bits to take on notice: how their case is being handled—in which category, whether they are an onshore or an offshore—how they arrived, when they arrived and where the case is up to. If there is anything else, I will put it on notice.

The portfolio budget statement on page 91 talks about a bilateral arrangement between ASIO and the department of immigration which operations on a cost-recovery basis. How much did ASIO charge Immigration under this agreement in the last year?

Mr Metcalfe—I think we will have to take that on notice. Essentially, it requires us to, as you know, obtain a security clearance from ASIO. That amount will very much depend upon the volume of applications being handled, so there will probably be a reasonably precise figure. I do not have it, so we will take that on notice.

Senator NETTLE—Can you provide that figure for the last five years?

Mr Metcalfe—We will do our best. I do not know if those arrangements have been in place for all that period of time, though they may have been. We will provide what information we can.

Senator NETTLE—Can that information be broken down in any way or is it a lump sum for the service in regard to the number of detainees?

Mr Metcalfe—To be honest, I am not sure. I suspect that there is a measure in there that goes to volume and whether there is a standard level and then an additional sum or whatever. To the extent that we can provide some information about what that is, we will. Really, it is an internal government charging process. DIMA is funded by the department of finance in relation to the processing of temporary protection visas. Part of our costs clearly needs to be attributed to the work that ASIO does. This is an internal cost-recovery funding mechanism. At the end of the day, the taxpayer pays for everything.

Senator NETTLE—I want to ask about the detainee for whom there was an attempted deportation to a country in the Middle East and who was turned around from Dubai.

Mr Metcalfe—Was this last year some time?

Senator NETTLE—Yes. Where is that case up to?

Senator Vanstone—The person about whom we had not heard from the UN for something like 18 months and then we suddenly heard when they were in Dubai?

Senator NETTLE—And who I understand has subsequently been found to require protection on the basis of that information provided by the UNHCR, as reported in the Ombudsman's report.

Senator Vanstone—That could be right. I will have to check.

Mr Illingworth—That particular individual is awaiting completion of health and character checks.

Senator NETTLE—This has been going on for eight months now.

Mr Illingworth—It has been some time.

Senator NETTLE—Is there any idea about when that process might be completed?

Mr Illingworth—The duration is in the hands of the relevant external agencies.

Senator NETTLE—We have discussed before the varying length of time some of these assessments take. Is there any capacity for people to be on a form of bridging visa or on residence determination whilst that assessment is being completed, particularly in instances where the checking process is taking a long time?

Mr Correll—There is the capacity for that depending on the circumstances, case by case. It would depend, I think, on the nature of the outstanding agency assessments.

Senator NETTLE—Has that capacity been used in the past?

Mr Metcalfe—We will have to take that on notice.

Mr Correll—We would need to check that. Off the top of our heads, we are unable to answer that.

Senator NETTLE—Are such decisions made around the health implications? Is that a consideration in making a decision about whether to allow such a circumstance to occur?

Mr Correll—Both health and security checks.

CHAIR—Senator Nettle, we are at the 30-minute mark and we need to keep moving.

Senator NETTLE—I might ask one or two more and put the rest on notice.

CHAIR—Thank you.

Senator NETTLE—Has there been any compensation claim brought by Mr T?

Mr Metcalfe—Not as yet, no.

Senator NETTLE—Do you make individuals aware of their capacity to make compensation claims?

Mr Metcalfe—We certainly provide advice to individuals as to the availability of the reconnecting package that exists. In relation to Mr T, we have a particular concern, given his mental capacity, and have been in contact with his family and provided advice to him in the presence of a social worker. We were still not satisfied that he fully understands the mistakes that have been made and therefore have been in contact with the appropriate New South Wales instrumentality whose responsibility it is to protect the interests of people who are incapable of doing that for themselves. That body has indicated that it is now taking on responsibility for protecting his interests and pursuing any of those matters. It goes without saying that we will cooperate fully in that matter.

Senator NETTLE—What body is that?

Senator Vanstone—It is the equivalent of a public advocate.

Mr Metcalfe—It is the equivalent of the public trustee. I am told it is the Office of the Protective Commissioner.

Senator NETTLE—I think I can put the rest of my questions on notice.

Senator LUDWIG—I mentioned right at the opening this morning that I wanted to go to this matter. You made some comments about the *Malu Sara*. More particularly, it is really a question of how we progress it. I understand that there are still a number of ongoing inquiries

in respect of that matter. Perhaps you can inform the committee what your understanding of the ongoing inquiries is and what the department's response is to date in respect of that. I know there has been a finalised report from the Australian Transport Safety Bureau. What else?

Mr Metcalfe—That is correct. As far as I am aware, the Commonwealth government's occupational health and safety body, Comcare, is undertaking inquiries and we are certainly expecting that there will be a coronial inquiry in Queensland as well.

Senator LUDWIG—Have the Australian Federal Police been involved?

Mr Metcalfe—The Queensland Police certainly have been; I am not aware of any involvement by the Australian Federal Police. The answer is no.

Senator LUDWIG—I have a couple of questions. Originally it came from a release by Minister Vanstone: 'Minister launches new Torres Strait immigration patrol boats'. The quote is:

My department plays an important role in border integrity by employing 27 officers based on islands who patrol the Strait and report and manage movements.

Apart from monitoring movements, officers use the boats for a number of other tasks including spotting unauthorised boat arrivals.

The six boats have been withdrawn from service, as I understand it.

Mr Metcalfe—They were withdrawn from service more or less immediately upon the loss of the *Malu Sara*.

Senator LUDWIG—That is from roughly the middle of October.

Mr Metcalfe—It was October last year.

Senator LUDWIG—What is proposed to fill the gap in terms of border security?

Mr Metcalfe—We are obviously very concerned about safety issues; hence those vessels being removed from service. The movement monitoring officer network has been in place for many years, and it involves officers employed by the department—local Indigenous officers—to act as our eyes and ears across the very large area of the Torres Strait, and they do a first-class job. The officers are usually located on their home island, whether it is Murray Island, Boigu or Saibai—the list goes on. The original intention was that they would provide a key capability in relation to monitoring the entry and exit of traditional visitors under the Torres Strait Treaty, where there are certain rights for people to come into that very northern tip of Australia because of long established patterns of movement. The officers also provide a very effective set of eyes and ears and intelligence in relation to other unauthorised arrivals. They work very much as part of a team of Australian government officials in border protection agencies, particularly Customs, Coastwatch, Quarantine, the Federal Police and us.

The decision was taken in the late 1990s to give them some mobility, and a number of vessels were purchased at the time. Then the decision was taken a year or two ago to upgrade and provide greater capability for those vessels. Hence the *Malu Sara* and its sister vessels were procured and brought into action. In the absence of those vessels, I firstly want to stress that I do not think the capability of the group to undertake their duties is diminished in any

effective way. We have simply found ways to work around the issue that some of them do not have their own personal transport. We partner very effectively with Customs and Coastwatch, and there are other Australian government vessels present in the strait which can be used to transport our people. There is obviously aerial capability, and the helicopters and fixed-wing aircraft have been upgraded in the Torres Strait in the last few years to give a greater capability there.

We commissioned a former senior departmental officer to undertake a review of our activities in the Torres Strait following this tragic accident. He reported to us some time ago, and certainly the recommendations—such as strengthening our management arrangements and capability—are important responses to this tragedy as well as being important to our wider border protection roles.

I have initiated some discussions with counterpart departments as to whether it makes sense for this department to be in the business of running a small fleet of vessels. It is not our core business. It is the only place that we have undertaken such a function, and it requires a whole set of skills, protocols and capabilities that we could acquire—and we probably have acquired in many respects—but whether or not it is best for us to provide this capability is a question that I want to discuss with Customs, Quarantine and others. So we are now engaged in discussions as to whether there are more effective ways of ensuring that the overall border protection capability is optimised. One of those issues will be whether we should operate our own small fleet of small craft or whether we should partner with other agencies, which is effectively what we are doing at the moment.

Senator LUDWIG—Where did the idea originally come from—to have six boats or a fleet—

Mr Metcalfe—It was back in the late 1990s. I can check and provide more detail, because I do recall it specifically from the time. I think someone thought it would be a good idea to provide some transport capability. Whether that came out of the Torres Strait itself or whether it came out of our Queensland or national offices, I am just not sure.

Senator LUDWIG—You might want to check whether there was a press release or an announcement back then as to the initial decision, because all we have got to go on is the subsequent media announcement by Senator Vanstone, which indicates that it did or does play an important role in border integrity. It states:

Apart from monitoring movements, officers use the boats for a number of other tasks including spotting unauthorised boat arrivals.

They help Customs and Quarantine with search and rescues and joint marine patrols.

It seems to me that there was a case made in that media announcement for the—

Senator Vanstone—These boats were new ones—

Senator LUDWIG—Yes. This is the announcement that you made in relation to these boats.

Senator Vanstone—What I am saying is these boats were, as I understand it, replacements for some other boats.

Senator LUDWIG—Yes, some other boats, and so—

Senator Vanstone—And they were simply going to do the same sort of thing the other boats had done. I ask the secretary what happened to the old boats because, when I went up there for the blessing of these boats, and we got some schoolchildren to pick names for them that reflected their islands and that sort of thing—

Senator LUDWIG—Yes, that is in your press release.

Senator Vanstone—almost every island that had one said: ‘Psst, we hope you’re not going to sell the old boat. We’d like to just keep it.’ I am not sure what happened to those boats.

Mr Metcalfe—I think we were selling them.

Senator LUDWIG—They are under tender for sale, as I understand it. Have they been disposed of at this point in time?

Mr Metcalfe—I will have to check as to whether—

Senator LUDWIG—I am happy for you to take that on notice.

Mr Metcalfe—The minister made an absolutely valid point in her media release at the time that the department was absolutely committed to the use of the vessels, and certainly our experience over the previous six or seven years had been very positive in relation to it. I am sure you know, Senator, that small tinnies, small open-air vessels with outboards on the back, are the normal form of transport. I was interested in reading in the ATSB’s report that there is on average one significant search and rescue operation every week in the Torres Strait. Of course we have all read the extraordinary story of survival of the three gentlemen who were lost at sea for over 20 days and who managed to use a mobile phone that still worked to indicate that they were just near Murray Island. Given the geographic nature and the limit of normal commercial sort of transport, tinnies are very much the accepted way of getting around, and there is a great deal of skill in the local population in navigating those waters.

Everything the minister said was absolutely correct. When you have a vessel go down and five people go missing you obviously have a good, hard look at whether that is the business we should be in. We have not ruled anything in or out at this stage. Certainly what we are interested in is an outcome of strong and effective border protection. Whether that involves the department of immigration running a fleet of small vessels or whether partnering with someone else is the right answer I think is important for us to reconsider.

Senator LUDWIG—That is not what the report says about the accident, though, is it? There was a report commissioned by the department. Is that available?

Mr Metcalfe—Which one?

Senator LUDWIG—It says at 6.1 that DIMA took the following safety actions with respect to the ATSB’s draft recommendations: the department suspended the fleet, the department commissioned a consultant to undertake a review of Torres Strait operations early in 2006—

Mr Metcalfe—That is the report that I indicated earlier had been undertaken. That has not been placed in the public domain. That would be a matter for the minister, I think, as to whether she wishes to put that in the public domain. We could take that on notice and the

minister would be able to consider that issue. It is essentially about the most appropriate way to manage our operations.

Senator LUDWIG—You have been referring to the issue of whether or not you are in that business. Perhaps it is a business for a coast guard.

Mr Metcalfe—Yes. We are certainly in the border protection business. Absolutely we are in the border protection business. Whether we are in the boat business or whether we are passengers on other people's boats is something that we need to determine.

Mr Correll—Our review of operations identified that we needed access to boats as part of our operations. The question of how that is organised is being looked at.

Senator LUDWIG—If you would not mind, I would like you to clarify a couple of points out of the report. I will ask you in the positive. When the six boats were accepted by the immigration department, were they checked as to whether they had been surveyed or, in other words, whether they provided, in terms of the specification, what was actually requested?

Mr Metcalfe—I think the report answers that question.

Senator LUDWIG—I would not mind hearing it from you.

Mr Metcalfe—My understanding is that they were not checked, that essentially the tender and procurement process was appropriate and specified the appropriate Australian standards but, because of rules in place promulgated by the Australian Maritime Safety Authority, there was no requirement for Commonwealth vessels of less than seven metres to be the subject of separate surveying or commissioning upon acceptance. My understanding is that these vessels were around 6½ metres and that there was no process of checking—that essentially the manufacturer's warranty was taken as valid and the compliance plate was accepted as being appropriately affixed to the vessel.

Mr Correll—There was a first prototype boat delivered, and that underwent significant testing and sea trial testing. Based on that testing, there were some minor modifications then undertaken to the subsequent boats. But, as Mr Metcalfe has indicated, when the subsequent boats were delivered, they did not have a process of testing to ensure that all specifications had been met.

Senator LUDWIG—I did have a few more questions in this area but, given the time, I might put them on notice or come back to them at another time. If we had had a spill-over day, I might have been able to utilise that, but—

CHAIR—Happily we are using it for a bill examination. Senator Scullion has some questions on this, though.

Senator SCULLION—Mr Metcalfe, I have examined the contents of the Australian Transport Safety Bureau report. I think we would all have to say it reflects on the nature of tragedies. It starts as a million little seeds and, for some reason, they end up in the wrong place. I would like to take this opportunity to congratulate the department on the way that you dealt with the issue in the Torres Strait during the search. I think the fact that you sent members of the department of Torres Strait Islander background to help families through it and to be there during the search had a significant impact. The feedback I have had from some

of the Torres Strait Islander families I have been directly associated with is that they are very grateful for that. So thank you.

That aside—and I recognise that there are ongoing investigations—I think it can be reasonably said that this report is going to be the report that the coroner will rely almost completely upon. I do not think there is anything else to say. I would not really want to have anything associated with this whole business. It is the most damning report I have read anywhere. I was a member, as you know, of the AMSA advisory committee, the National Marine Safety Committee and Australian Search and Rescue. I have to say, Mr Metcalfe, I do feel a bit sorry for you in that it appears—and perhaps you can correct me—that this entire folly was on the basis of a change of marine orders, part 62, to provide an exemption under the act for every Commonwealth vessel under seven metres so that it simply has to have a maintenance plan and scheduled maintenance operations. In other words, it does not really need to meet any other requirements.

The head of operations on Thursday Island effectively took that and wrote a letter, including his safety operations, which were beyond what was expected. From that point onwards basically he said, ‘These are the standards that I need to meet,’ and then went from there. I guess your opening comments were from your perspective. I do not want to go into those issues; they are for another estimates committee, and I will take them up with the appropriate people in Transport. It seems to be across jurisdictions, whether it be state or territory jurisdictions. Being johnny on the spot and having local knowledge is very important. It appears that we all assumed that the operational manager on TI at the time knew anything at all about boats. Everybody has a boat on TI and they tend to do that. We can look back in hindsight and think, ‘Why did you think this?’ As it says in the report, it was because that is exactly what he was told by the highest Commonwealth authority in the land, the Australian Maritime Safety Authority. They gave him that direction that that is exactly what you need to do, these are the checks you need to go through and that is exactly how you have to do it. He followed the letter of the law and we still had a tragedy.

I was interested in your opening remarks, Mr Metcalfe, and this is where I would like you to make some comment. In 1999 I spent much of my time in a dinghy roaring around the Torres Strait. On most of those islands—I am assuming it is for employment purposes, and it is a very credible process if that is the case—you can look out the front and there is an Immigration dinghy, a Customs dinghy, a Federal Police dinghy, a Quarantine dinghy and, invariably, a state or Commonwealth fisheries, AFMA, dinghy. That is all well and good. Fisheries and Customs, fundamentally, as part of their tasking, have to have a fleet of vessels for specific response needs and border control.

While it is very important to have eyes and ears forward, generally speaking, from my short experience in parliament and in other areas it is my view that both Quarantine and DIMA have more of a processing role. I am not really aware of the relationship between those departments—and it is a very different context in the Torres Strait; I accept that. Could you go through what your relationship with these other departments is at the moment and expand on my notion of employment? While we have such a multiplicity of jurisdictions, it appears, in some places, what scope is there really for better arrangements? Even if the number remained the same in terms of the vessels and the opportunities for border control, would they simply

come under a jurisdiction that is appropriately responsible for those things? Perhaps you could couch your answer in terms of what is possible in those cooperative arrangements.

Mr Metcalfe—Sure. I certainly think that there is strong cooperation between the agencies. I very much agree with your point, Senator, as to whether people need to maintain vessels or simply need to have access to them, as Mr Correll indicated earlier. I think there are distinctions between the role of this department and the roles of the Customs Service and Quarantine. As for a single person being able to do all of that work, if it were all rolled into one role, that is probably asking a lot of an individual. The key issue is: what is the most effective way to deliver services on the ground? Invariably, that is through close cooperation between the various agencies. As I mentioned earlier, the movement monitoring officers are a very important part of the people movement aspect. But I am sure there is close cooperation on the ground so that, if Customs see something unusual and it involves people, we know about it, or if we hear about something involving plant goods or animals then Quarantine will be told. So everyone is looking out for each other and working closely in that regard.

I understand that we are one of the larger employers in the Torres Strait. It is not a ‘make work’ program; they are real jobs right across the Torres Strait. The primary role is in relation to the administration of the treaty and the fact that quite significant numbers of people come from PNG down into the northern parts of the Torres Strait, under the Torres Strait traditional movement arrangements—keeping tabs on that and making sure that is working properly is something that is devolved out to those officers. But they also have a role to play in relation to unusual people. One of the more absurd suggestions you hear occasionally is that there are large amounts of people and various other things coming through the Torres Strait. Well, if there were, I think we would know about it, because of the very strong connections with the Torres Strait community from that point of view.

So the short answer is: whether there should be one border agency or several border agencies has been the subject of political discussion and debate and no doubt will continue to be. At the moment there are a number of border agencies. Customs, Quarantine and we work very closely together at the Canberra end, all around the states and territories and in the Torres Strait. As to how we most effectively deploy our personnel for duty and what transport needs they have are issues that we obviously will keep under review.

I would observe, though, that I think one of the issues in the Torres Strait was that some of our time spent operating this fleet was not in fact spent on Immigration business. The vessels were called into general search and rescue activities and various other things that happened to be taking place. That is certainly not core business from our point of view. We are happy to help if we can, but it is not our core business. We need to get our heads in the right spot as far as what we do well, which is managing people movement issues, and consider whether we should gear up and spend a lot of time and resources acquiring an ability to run a fleet of vessels, which is not core business, and would therefore be expensive. It would also be difficult for us to do it properly, as the standards clearly require, in order to avoid the sort of tragedy we have seen.

Senator SCULLION—Thank you. I want to clarify your response. I want you to understand that I was not indicating at all that I thought that Immigration did not play a specific and independent role in border control. The context of the Torres Strait is unique. It

does not happen anywhere else simply because of the proximity issues and all those things. I would not have thought that a person of unusual interest would be of any less interest to Quarantine, Customs, Immigration or any of them. My question—and I hope your answer—related simply to the mechanism under which we transport those agencies around rather than multiplicity.

Mr Metcalfe—Yes, for sure. Thank you.

Senator SCULLION—I will be taking up the issues with the appropriate estimates committee shortly. Thank you, Mr Metcalfe.

Senator LUDWIG—I think it sounds like you are moving to a single integrated border protection agency.

Mr Metcalfe—No, it does not.

Senator LUDWIG—It did to me.

CHAIR—Wishful thinking, Senator.

Mr Metcalfe—I have seen what has happened in America.

Senator McLUCAS—I have a number of questions on this issue.

CHAIR—Sadly, we do not have time for a number.

Senator McLUCAS—I know, but I wonder if I could flag that I will put a range of questions on notice.

CHAIR—Certainly.

Senator McLUCAS—They go to the question of the way the tender was let, the time delay of the information being known by the DIMA officers being passed on to AMSA and Queensland police, and what training was provided for the MMOs in the Torres Strait. There may be some more, and I am sure we will continue to talk about this at other estimates in the future.

Mr Metcalfe—For sure, but we will certainly respond to those on notice.

Senator McLUCAS—Thank you.

CHAIR—First, the *Malu Sara*.

Senator LUDWIG—We will put the remainder on notice in respect of that.

CHAIR—The remainder of those on notice—does that deal with all matters in 1.3 from your perspective, Senator Ludwig? Senator Kirk?

Senator LUDWIG—The final ones.

Senator KIRK—I have some questions in relation to some of the findings of the ANAO report into detention centre contracts. I am interested in particular in the department's payment of \$5.7 million to ACM. I understand that that was seen to be some kind of completion payment of some description, but it was unclear to me—and I think also to the ANAO—exactly why it was that that payment was made. I would like a few more details in relation to that.

Ms O'Connell—I understand that payment was part of the transition out payments for the previous provider.

Senator KIRK—What exactly is a transition out payment?

Mr Correll—When you are phasing over from one contracted service provider to another it is not just a process of stopping with one and starting with the other. There is a phasing-over period when one is winding out of operations and the other is coming into play. It is to cover the costs associated with that transition period. With the next detention services contract and tender process, we are already planning for a similar type of transition period.

Senator KIRK—What was the length of the transition period?

Mr Correll—We need to take that on notice—it would have been some months.

Senator KIRK—Was there provision made in the contract with ACM for such a transition out payment to be made?

Ms O'Connell—My understanding is, yes, there was provision made for such a form of payment.

Senator KIRK—Was it contemplated in the contract how that would be calculated?

Ms O'Connell—I would have to take on notice what exactly was contemplated but I can provide it.

Senator KIRK—But how was it calculated? How was the figure of \$5.7 million arrived at?

CHAIR—I think Ms O'Connell just said she was going to take that on notice.

Ms O'Connell—Yes.

Senator KIRK—So it wasn't expressly provided for in the contract?

Ms O'Connell—My understanding is that the contract did provide and allow for transition out. I would have to take on notice exactly what that was provided for, whether it was a fixed amount, whether it was some calculations about how that would be arrived at.

Senator KIRK—Who approved the \$5.7 million payment?

Mr Correll—Again, we are going back into some history and looking at that. We would need to check files to determine that. Certainly, as my colleagues indicated, we will take the early question on notice. My experience with contracted transition periods, though, is that normally it would be a negotiated price based on a set of principles built into the contract.

Senator KIRK—I understand that ACM was involved in the tender process for the next contract at the time. Is that correct?

Ms O'Connell—They were, yes.

Senator KIRK—Were there any negotiations between ACM and the department regarding any concerns about the process of the tender at the time that the payment of the \$5.7 million was made?

Ms O'Connell—Not to my knowledge. I think, given the work that the ANAO undertook, that would have been raised had they found any evidence to that extent.

Senator KIRK—It is just that the ANAO described the basis of the department's payment as 'doubtful'. I am assuming that it would have examined this quite closely, including the contracts. So why do you think they formed the conclusion that it was doubtful, if you are saying that there was some provision in the contract for a transition out payment?

Ms O'Connell—I think, as my colleague stated, that there is usually some opportunity in terms of negotiation. ANAO might have a view on that. The JCPAA is holding hearings on the ANAO audit report on 2 June. That would be an opportunity to ask ANAO what their view was in terms of clarifying that.

Senator KIRK—So when does the GSL contract come to an end? I understand that it is some time in 2007. Is that correct?

Ms O'Connell—Correct.

Senator KIRK—Which month?

Ms O'Connell—It is end of August 2007.

Senator KIRK—Can we expect a similar kind of payment to be made to GSL?

Mr Correll—It will depend who is successful through that tender process.

Senator KIRK—So if GSL is successful, then it won't be paid a transition?

Mr Metcalfe—We won't transition out if you don't transition out.

Senator KIRK—Has there been any budget allocation made for such a transition out payment?

Ms O'Connell—Not directly in the upcoming financial year, no. But then again, transition out, if it does occur, is not until August 2007.

Senator KIRK—Right. I was interested as to how many times, if any, the Commonwealth, or the department, has imposed a financial penalty on GSL during the term of this contract for breach of contract if that has occurred.

Ms O'Connell—We certainly have imposed quite a number of penalties.

Senator Vanstone—One very big one.

Senator KIRK—What is the total amount of the financial penalties that have been imposed?

Ms O'Connell—In terms of the total length of contract I would have to take that on notice and come back to you, but it is a significant amount of money.

Senator KIRK—Has the total amount of the financial penalty in any given year ever reached the maximum amount under the contract?

Mr Metcalfe—I think that would be unlikely. That would imply the contractor doing the job for nothing, which would be highly unlikely, I think.

Senator KIRK—It is possible, though, isn't it, if there were significant breaches? It is possible that the financial penalties could meet that amount?

Ms O'Connell—It is possible. I will come back to you, Senator, with a year-by-year breakdown.

Senator KIRK—How many inquiries has the Commonwealth instigated, internal or external, into the performance of GSL or the operation of the GSL contract during the term of the contract?

Mr Correll—I guess there are two types of activities we should comment on there. There have been a series of reviews undertaken relating to particular issues. They might be food issues in a detention facility, or transfer issues in a facility. So there have been a series of those types of reviews and reports.

Senator KIRK—Are these internal or external?

Mr Correll—We draw on an expert panel to undertake those review activities. In addition, there has been a complete review of the detention services contract undertaken by Mr Mick Roche, leading to the developments now occurring with the next purchasing round.

Senator KIRK—Is Mr Roche an external consultant?

Mr Correll—He is a former public servant and is now an external consultant.

Senator Vanstone—He did a lot of contracting work when he was the equivalent of a dep sec in Customs. He did big contracting work—for example, the purchase of eight Bay class vessels, which are quite big. They are patrol boats and would be as long as this room. So he is someone with a lot of practical experience in contracting.

Senator KIRK—What was the cost of Mr Roche's inquiry that you have just referred to?

Mr Correll—We would have to take that on notice.

Senator KIRK—Was the expert panel that you referred to an internal or external panel?

Mr Correll—It is a panel of external providers that has been established to undertake various reviews and provide specialist services in the detention services field.

Senator KIRK—What has been the total cost of their services to date?

Mr Correll—We would need to take that on notice.

Ms O'Connell—Do you want that just for this financial year, Senator?

Senator KIRK—During the course of the contract with GSL.

Ms O'Connell—Okay.

Senator KIRK—You mentioned before that there have been a number of breaches by GSL which have resulted in financial penalties—you said they were quite substantial in some cases. Has the department sought any legal advice as to whether or not these breaches might be sufficient to mount a case for a termination of the contract?

Mr Correll—No, Senator.

Senator KIRK—Why is that?

Mr Correll—We were not of the view that the penalties had reached a point where termination of contract was an appropriate remedy.

Senator KIRK—How significant would the breaches have to be and how numerous would they have to be until you reached a point where you would need to seek advice about possible termination of the contract?

Mr Correll—They would need to be severe recurrent breaches and also where there was demonstrably poor action or inadequate action being taken to correct for inadequate performance.

Senator KIRK—I think I have already asked this: how many times has there been a breach of contract? Did you say you would take that on notice?

Ms O'Connell—Yes, Senator.

Senator KIRK—Have there been any variations to the GSL contract during the course of the contract?

Ms O'Connell—Yes, there have.

Senator KIRK—How many?

Ms O'Connell—There have been two contract variations to date. There is a third contract variation under way at the moment. In accordance with the announcement made on 1 March that the future tendering arrangements would involve a separation of health services from the detention service provider, we have approached our current service provider to make those changes now, in addition to seeking to do that in the new tendering round.

Senator KIRK—What were the other two variations that have already occurred?

Ms O'Connell—A number of them were around distribution of assets—things that were found in earlier ANAO audit reports, such as in detention services contracts, by way of example.

Senator KIRK—When it is proposed to make these sorts of alterations, is external legal advice sought?

Ms O'Connell—Legal advice is certainly sought in making those contractual changes, yes.

Senator KIRK—From the AGS?

Ms O'Connell—Firstly we would go to an internal source. At times they would refer us to AGS for some specific matters.

Senator KIRK—Do you have an estimate of the cost of that legal advice?

Ms O'Connell—No, I do not, but I can provide it to you.

Senator KIRK—Could you take that on notice, please. I will put the remainder of my questions on notice.

CHAIR—My understanding is that that deals with questions from senators present on output group 1.3. I indicate to senators who may not be here that they can put questions on notice if they wish to. In relation to output 1.4, I had advice from Senator Bartlett that he had some very brief questions in this area but, given he is not currently here, I will ask him to put those on notice as well. We will go to output 1.5 directly. My intention, subject to confirmation by my colleagues, is to conclude with output 1.5 at 11 pm and then to start tomorrow morning, as the program advertises, with the MARA at 9 am.

[10.11 pm]

CHAIR—We move now to output 1.5.

Senator KIRK—We were talking before about the proposed change in policy to offshore processing. Has the department projected the cost of this change in policy? Have there been any calculations done as to the cost of such things as contractors, consultants and those types of things?

Mr Correll—At the present stage we are looking particularly at options in terms of facilities at Nauru under the policy change. Based on those various different options, we are looking at costings associated with each of those options.

Senator KIRK—How far down the track are you with the costing process?

Mr Correll—Only to the point at this stage of looking at options, costing those options and providing advice to government.

Senator KIRK—I am wondering how you assess the cost. You must be assuming a certain number of asylum seekers being present and, if so, how many asylum seekers are you basing your costs on?

Mr Metcalfe—There are probably two issues here. One is the actual cost of having an available infrastructure that can be utilised. To a certain extent that can be known, depending on the overall estimations of potential usage of the facility. We do have ongoing information about the fact that people smugglers remain active and that Australia remains an attractive destination, so, although we are not seeing large numbers of unauthorised arrivals right at the moment, certainly it should not be assumed that that will never happen again in the future. I certainly hope it does not, but you cannot assume that that is the case. So there is one set of costs around providing appropriate infrastructure. The figures in the budget essentially were prepared on the basis that we would consolidate the centre to one location and to make it ready so that it could receive visitors at quite short notice. That obviously needs to be revisited now in view of the government's decision that, subject to the passage of the legislation, future arrivals would all be sent to Nauru.

It would also go to the issue of the appropriate accommodation being available on Nauru given the potential family compositions, and the fact that people are not detained—they are accommodated. They are on visas in Nauru and, essentially, the rules and regulations imposed by the government of Nauru determine the ability of people to move around the island. The second aspect of costs is obviously very much dependent upon usage—how many people there are, how many meals, how many medical facilities need to be operated and whatever. So that is a more difficult figure to estimate.

Senator KIRK—In the media release put out by the minister surrounding the budget, there was a figure of \$33.8 million over four years that was an estimate of the saving following the consolidation of the Nauru processing centres. Are you able to give us a breakdown of how that \$33.8 million was arrived at?

Ms Gray—The savings from the closure of one of the sites are estimated at about \$10 million per year, but there are costs of about \$5 million in that first year for closing and remediating the site and consolidating the operations at State House. The total savings are estimated at \$33.8 million over four years and you see that in the budget media documentation.

Senator KIRK—Are they essentially savings and not offset against expenditure measures that might be incurred?

Mr Metcalfe—That is where the budget, which was prepared at a certain point in time, indicated that that was the strategy on the basis of predictions of very few, if any, arrivals, given the government's recent decisions that there might be a wider class of person affected. That is the issue that Mr Correll indicated that we are doing some work on to estimate whether modifications to infrastructure might be required and what the cost of that might be to provide accommodation options in relation to all dimensions of the possible case load. That point is a work in progress.

Senator KIRK—Do the arrangements for offshore processing recently announced include Australia as a possible third country for resettlement of asylum seekers?

Mr Correll—Yes, that is a possibility.

Senator KIRK—Is it the case that Australia will be making a choice as to which asylum seekers it agrees to accept?

Mr Metcalfe—The government has made it very clear that it would certainly be looking to other third countries to be the first priority, but that it would not rule out the fact that Australia might be a country of resettlement from Nauru as it has been in the past.

Senator KIRK—Have the criteria been established that will be applied in determining whether to accept refugees into this country?

Mr Metcalfe—That would depend upon a range of factors. I think one of the criteria would be that there have been no available resettlement places elsewhere.

Senator KIRK—Have the budget projections taken into account that no other third country may be prepared to take these people who are determined to be refugees?

Mr Metcalfe—I think the budget projections there are very much about the cost of operating a facility in the country of Nauru. The aspects about the resettlement of a possible future case load are not estimated in those figures as far as I am aware.

Senator KIRK—Going back to the estimated costs of this change of policy, you say it is a work in progress. Has any consideration been given to tied-aid payments to Nauru—that is, the amount of money which might have to be put in Nauru's direction in order to facilitate this?

Mr Correll—In looking at options, we are obviously looking at the facilities and services that would need to be available on the island. In looking at those, we would be looking at including costings for those in the various options.

Senator KIRK—Has there been any thought given to how long individuals who may be found to be refugees are likely to be held in Nauru at the offshore processing site?

Senator Vanstone—We would hope that we can quite expeditiously have people placed in third countries. It is certainly not our intention to leave people in Nauru, albeit that it is a third country in a sense—well, it is the second one; the third for them, I suppose. This question was in a sense partly answered earlier today. A question was put to Mr Hughes. He rightly pointed

out that we are not in that situation yet, and so we will approach countries as we get in that situation—if in fact that happens. It is our hope that that does not happen.

Senator KIRK—So there have not been any negotiations as yet with third countries in relation to whether or not they are prepared to—

Senator Vanstone—Not that I am aware of, but they would be handled through DFAT anyway. The last advice that I had from the Department of Foreign Affairs and Trade was that that was the sort of negotiation you would have when you found you were in that position. You do not go traipsing around the world saying, ‘By the way, if something happens will you look at taking some people?’ The obvious answer would be, ‘Come and see us when you do.’

Senator KIRK—Sure. But when you are doing a budget, and this is my next question, you would need to take into account the fact that there may well be circumstances where a refugee cannot be relocated and therefore might be in a situation of virtually indefinite detention. That obviously has cost implications.

Senator Vanstone—You would hope that if you did have any further boats arriving in this context that there would be small numbers. I do not know that that would dramatically impact on the costing. We used to go through this when the man with the cat was on Manus Island—Mr Sisalem. Intermittently, some poor shock jock or junior reporter would be short of a headline and they would get the price of keeping Manus Island open and ready for more people, and that became the cost per day for Mr Sisalem and his cat. That was not a proper or fair representation of the cost of him being there at all.

Senator KIRK—Sure. But in this situation, where you have a possible scenario in which individuals cannot be located, there might be a very large number of asylum seekers who have been found to be refugees who cannot be located. Obviously, that is going to have a bearing on cost.

Mr Metcalfe—That is a hypothetical on a hypothetical—it is a hypothetical squared, because, one, there are no people and, two, were there to be people then assumptions would have to be made about how long they might happen to be there. It is an area of funding which is essentially demand driven. We are not funded for something that does not happen; if something happens we get funded for it on an agreed basis with the Department of Finance and Administration.

Senator KIRK—So it would just be funded on a needs basis, rather than through any projections? Is that what you are saying?

Mr Metcalfe—Yes.

Senator KIRK—Just on another matter, I am wondering what happens if an unlawful non-citizen arrives in Australia by boat and claims asylum. They have no identification on them and yet they are in Australia. How can they travel to another country—say Nauru in this example—if they do not have any travel documents?

Mr Metcalfe—That travel is usually provided by the Australian government.

Senator KIRK—On what sort of documentation?

Mr Metcalfe—We would discuss with the government of Nauru the appropriate identification material, whether a certificate of identity or some other type of identity documentation, that should be provided to that person.

Senator KIRK—Where would this certificate of identity come from or be generated from? Would it be by the Australian government?

Mr Okely—In the past when people have been taken to Nauru for processing, my recollection is that it has been done on the basis of a manifest identifying the people who are going and the government of Nauru then issues a visa. It is not a separate visa for each person, but a visa for all the people on the list. It is not on the basis of a certificate of identity, a passport or anything like that. It is actually a document which is accepted by the government of Nauru as sufficient identification for the people we are asking to be allowed to go to Nauru lawfully.

Senator KIRK—Are saying the people as a group rather than as individuals?

Mr Okely—That is right.

Senator KIRK—So there is no attempt to identify the individuals in any manner?

Mr Okely—My understanding is that there is every attempt to identify the individual; but at a particular point in time when people are being transferred to Nauru, if the best information that is available at the time is acceptable to the government of Nauru and they are prepared to issue a visa on that basis, then the transfer goes ahead.

Senator KIRK—You say that this is something which has occurred in the past. Has Nauru ever refused to accept any individuals into their country on the basis that they cannot be identified?

Mr Okely—My recollection is that the government of Nauru has not.

Senator KIRK—So they are pretty easy about it.

Mr Okely—They have been reasonably confident of the information that has been provided.

Senator KIRK—But you have not really provided any information. All you are saying is: ‘This group of individuals is coming. We do not know who they are, but here they are.’

Senator Vanstone—No, I think Mr Okely said that they get names where they can, they have a manifest with a list of names. I see the point you are making. You are going to the level of robustness of whatever document is passed over and forms the basis of entitlement to stay granted by the Nauruan government. I understand that. But your person is going nowhere with a PV claim if they cannot even say who they are and where they are from. A PV claim is based on an assertion that says ‘I am so-and-so; this is where I come from and these are my circumstances.’ We are sort of drawing—

Senator KIRK—It is a bit of a fudge though, isn’t it, when you are transferring people to another country—

Senator Vanstone—a long bow. You do not say to them that it is a bit of a fudge to roll up and not tell us who they are, do you? It cuts both ways.

Mr Metcalfe—I do not think there is any suggestion that we are not acting properly in relation to the government of Nauru. From what Mr Okely has indicated, there is an agreement that the travel will be on the basis of a manifest. That manifest would be based upon the best advice available to us from any inquiries that we have been able to undertake and the information that the people were able or willing to provide to us. On that basis, the travel occurs. As the minister has indicated, if the people make claims for refugee status then issues of identity are obviously germane to that process.

Senator KIRK—If the Australian government is prepared to transfer people to Nauru when they do not have any effective travel documents, does the government ever deport people or remove people from Australia to other countries without any valid travel documents?

Mr Metcalfe—We have to satisfy the appropriate airline authorities and ultimately their final destination as to who they are and their ability to travel there.

Senator KIRK—So the answer is ‘yes, in some circumstances.’

Mr Metcalfe—The answer is that I am not aware of a circumstance where a person would be removed from Australia, other than on a document that was acceptable to international travel authorities and the final destination country.

Senator KIRK—So there are actually the two stages: satisfying the airline and then—

Mr Metcalfe—The airline will not usually put someone on unless they know they are going to get off at the other end.

Senator KIRK—What would be enough to satisfy an airline then? Some sort of certificate of identification or what?

Mr Metcalfe—Most usually the person travels on their own passport; or, if they do not have a passport, then it is possible for them to be issued with some sort of document—a certificate of identity or some type of document that is provided for the purpose of that travel.

Senator KIRK—Why would an airline be satisfied with merely a certificate of identity? It is not a passport. How can they be sure that the person will in fact be able to get off at the other end?

Senator Vanstone—A certificate of identity issued by a government is an identity document in the same way that a passport is. They both carry the gravitas of being issued by a government with the best information possible by the government. But we cannot issue passports from other countries. So if someone comes from Sri Lanka and they do not have a Sri Lankan passport, we cannot issue them with one, and we cannot always make people apply for a passport to which they are entitled. But we can say that we believe we know who this person is, and that is who we think they are, and give them a certificate of identity.

My husband once travelled back from Papua New Guinea on a certificate of identity because the rascals stole his luggage and passport about 20 minutes before getting on the plane.

Senator KIRK—Thank you, Minister.

Senator Vanstone—I knew you would be happy to know that! But it is an official identity document.

Senator KIRK—I just wanted to establish whether or not the government does that in relation to countries other than Nauru; apparently it does.

Mr Metcalfe—Our preference is obviously to use the best form of travel document we have, but where that is unavailable because the person does not have the documents, is unwilling to provide the document, has lost the document or never had a document, we work closely with the travel authorities and the destination authorities to make sure there is an acceptable arrangement.

Senator KIRK—I do not think these questions have been covered by anybody else: I am interested to know about the mental health care that will be provided to detainees on Nauru.

Mr Okely—Senator, do you have a particular question or do you just want to know generally how they are?

Senator KIRK—No, I am thinking more prospectively, as to whether or not anything is going to change, whether or not any thought has been given to the way that mental health services will be provided to asylum seekers.

Mr Okely—Are you talking about the two people that are there presently or are you talking prospectively about people who will arrive?

Senator KIRK—What I had in mind was prospectively, but I would be interested to know whether it is going to change from what it is currently.

Mr Okely—The centres in Nauru are run or managed by the International Organisation for Migration. They have done that for the past five years. They have done it extremely professionally and extremely well. Part of what they do provide is a very comprehensive and professional medical facility. It is well staffed by expatriate doctors and nurses, and it does include a mental health unit within that medical complex. So the mental health of people in the processing centres is well cared for. In addition, there is presently a mental health capacity within the Government of Nauru Hospital.

Senator KIRK—Is that being factored in as part of the costing of this new policy that the government is proposing?

Mr Okely—It is a standard part of the operating costs of the processing centres, yes, and always has been.

Senator KIRK—That is the mental health services being provided for by Nauru rather than by the IOM?

Mr Okely—The mental health services being provided by Nauru at present are being funded by the Australian government, particularly for the two people who are presently in Nauru, the two Iraqi men, because they are the responsibility of the Department of Immigration and Multicultural Affairs, not the IOM. So the people of Nauru are effectively benefiting from that mental health capacity.

Senator KIRK—How are they benefiting—in terms of the service being paid for?

Mr Okely—The mental health nurse is established at the Nauru hospital. That particular nurse is available to the two gentlemen concerned at all times, but he has the capacity to provide services to Nauru nationals. Similarly, the visiting psychiatrist who goes in once a month also is able to provide some services to Nauru nationals.

Senator KIRK—Is it proposed that future detainees will have case managers?

Mr Okely—There certainly will not be detainees. They are people who are being processed. They are in Nauru legally. They are not in detention. We do intend to take a case management approach to any future people who are there for refugee processing.

Senator KIRK—The same approach that occurs now here on the mainland—a case management approach?

Mr Correll—Case management arrangements that occur for some clients, not all clients.

Senator KIRK—I will ask just a couple more questions. Will the individuals who may end up on Nauru in future have access to the Commonwealth Ombudsman?

Mr Okely—My understanding from the past is that the Commonwealth Ombudsman does not have jurisdiction in Nauru. He has jurisdiction only in respect of Commonwealth employees, and so the operations of the processing centres, which are managed by the International Organisation for Migration, have been outside his jurisdiction.

Senator KIRK—So it is not proposed that there will be any Commonwealth officers running that.

Mr Okely—So long as that arrangement continues, I think the same issues would apply.

Senator KIRK—Has any thought been given to whether or not there may need to be Commonwealth officers on Nauru?

Mr Okely—There are Commonwealth officers on Nauru. There are two Immigration staff there and there are a number of agencies represented in Nauru. The Commonwealth Ombudsman would have jurisdiction in respect of all of those employees.

Mr Correll—There is no change envisaged to the role of the Ombudsman.

Senator KIRK—So if there were to be a complaint made against a Commonwealth officer then there would be jurisdiction.

Mr Okely—That is correct.

Senator KIRK—What about in relation to such matters as legal advice? Under the proposal, will future asylum seekers, if I can call them that, have access to legal advice—and from where?

Mr Hughes—Under the current model, the process that we use for asylum claims—refugee status determination—on Nauru has not in the past required legal advice but it has been open to people to have the assistance of advisers. So, quite often, people who have applied for refugee status there have had the assistance of Australian advisers, particularly in the later stages of consideration of the group—when we open cases to further re-examinations.

Senator KIRK—How would they access that legal advice? Is it a matter of making a phone call? Obviously lawyers are not travelling there on a regular basis.

Mr Hughes—They have on some occasions travelled there. Some advisers have taken up cases in the past and have been to Nauru and assisted people with presentation of their cases.

Senator KIRK—It is a long way to travel.

Mr Hughes—Nevertheless, it has happened.

Senator KIRK—And it is quite easy for these lawyers to get a visa?

Mr Hughes—They were not necessarily lawyers; they were immigration advisers. I could not say that all of them were lawyers. At least one of the advisers who have assisted people in the past was not. I am not aware that people who wanted to give advice had difficulty in getting to Nauru to give that advice, apart from going through the normal visa processes.

Senator KIRK—Thank you. I am happy to defer to other colleagues if they wish to ask questions.

Senator BARTLETT—On that point, for starters, you may or may not be aware of this. Certainly some lawyers and advisers on cases that were actually before the legal authorities in Nauru—Julian Burnside being one, as I recall—were prevented by the Nauru government from entering the country during that period of time. Obviously, those decisions are, at the end of the day, a matter for the Nauru government. They are an independent sovereign nation. Now we all know how it has worked and how it has panned out over the last four or more years and those sorts of events—the example you just gave of the adviser that was able to enter was after a number of years. At least in my perception and, I would think from comments, in that of immigration officials as well, that was actually very helpful from your perspective, let alone everyone else's. Have requests been made to the Nauru government, for example, that for the visits of people such as this, particularly if they already have authorisation from a client, there be a reasonable guarantee that they would be allowed into the country unless there were some compelling circumstances otherwise?

Mr Hughes—I might clarify my answer to the earlier question in the light of what you said. When I said that I was not aware of anyone having difficulty in going to Nauru and gaining access to Nauru to be an adviser, I meant in relation to refugee status determinations. I did not rule out that other people going for other purposes might have had difficulty. I am not sure whether any broad brush representations have been made to the Nauru government. One of my colleagues might be able to help me on that.

Mr Okely—The government, as you know, has been in power now for close on 2½ or three years. During that time the number of people in the processing centres in Nauru has been declining. I am not sure that the present government's attitude towards that issue in relation to refugee determination has really been tested. I think it would be foolish to conjecture.

Senator BARTLETT—I am a little reluctant to trawl over stuff that we will probably trawl over on Friday anyway, although I am aware that presumably we will only have limited time on Friday also. I can take from your answer at least that it has not been raised as yet. Is that a fair enough assumption?

Mr Okely—It is not a matter that we would necessarily raise. As you pointed out yourself, it is up to the government of Nauru to determine who can and cannot enter. The basis on which they would make their decisions is entirely their own.

Senator BARTLETT—I appreciate that, but we are here before a Senate committee of the Parliament of Australia discussing matters that presumably have some role in Australia, or else you would not be here answering questions on them, and it will be a decision of your department to send people to this country. The question I would ask is not so much whether they will let in people like me; people like Senator Nettle, who they did not let in, although I am sure that was inappropriate timing rather than any character judgment; and even people like Father Frank Brennan, who again I think was there more as a general advocate. I am fairly sure that, at least in the Julian Burnside example, it was that he was running a case for some people there in regard to a local court case that may have not had to do with their refugee determination—I can remember—but certainly had to do with their detention. Again, I think it is pretty widely accepted that the immigration agent that went there and cooperated with all of you folks as well was immensely helpful in resolving situations.

From all perspectives, regardless of what you think of the policy issue, surely we should be able to at least raise the issue of being able to ensure that, as much as possible with another government, they would at least give an undertaking that they would look favourably on requests from people who are identified as agents for refugee claimants to go in. There was a real problem—we all know that—for a long time in that people could not get in there and that, when they did, things moved rather more quickly. It would seem to me from a taxpayers' money point of view, a humanitarian point of view or whatever point of view, that we would be in a reasonable position in all the negotiations we have to at least ask that there be some favourable consideration given towards that type of thing, appreciating that nobody can ever give absolute guarantees.

Mr Hughes—Perhaps the short answer to that question is that, in the debate that is taking place on the implementation of the arrangements, I think the question of the role that advisers could play in future with any future caseload is a very valid one to be looked into, and I am sure we will be doing that.

Senator BARTLETT—I would appreciate that; it would be helpful. I want to ask a little more about the two that are still there currently—Messrs Faisal and Sagar; I think their names are sufficiently around the world that we can talk about them as human beings with names. My understanding is they are living out in the community. They are not in the State House camp or whatever; they are living out in a house somewhere in the community. Is that correct?

Mr Okely—They presently reside within the State House centre purely and simply as a matter of convenience and, in fact, their preference at the present time. They are our responsibility; they are not the responsibility of IOM. They can move about the community during the daytime. We are negotiating with the government of Nauru for changes to their visa conditions which would enable them to move after dark if they wished, although both of them assured me that they have no interest in moving around after dark. They are presently, as I said, within the State House centre. Arrangements are being made for them to move to an area contiguous with the centre, and accommodation will be built for them on that particular site.

They will have pretty much all the services they have within the centre. They will be able to eat within the centre if they wish or prepare their own food in their own accommodation.

Senator BARTLETT—Regarding food preparation, are they being given some sort of food allowance?

Mr Okely—They will be given an allowance which will enable them to purchase food and other requisites.

Senator BARTLETT—Can you tell me how much that will be?

Mr Okely—The figure we were talking about with them was \$200 a fortnight, I think.

Senator BARTLETT—Do they have access to a phone lines: incoming and outgoing phone calls?

Mr Okely—They have access to telephone lines, internet and satellite television.

Senator BARTLETT—They can receive phone calls as well as make them.

Mr Okely—Yes. There is provision for phone calls—in other words, they would have pretty good conditions outside the centre.

Senator BARTLETT—Meals are still being made for them should they wish.

Mr Okely—Meals are still being produced within the centre for the staff of the centre and for the hospital. They can partake of those meals anytime they like.

Senator BARTLETT—IOM is not there at the moment—is that right?

Mr Okely—IOM is there.

Senator BARTLETT—So they are still managing that facility.

Mr Okely—They are still managing the facility. The contractors, ESS and Chubb, are still engaged in the centre.

Senator BARTLETT—IOM has day-to-day duty of care, immediate responsibility for the two Iraqi men or is it you?

Mr Okely—They do not have a responsibility to them. They provide some facilities for them but, at the end of day, they are not IOM's responsibility; they are our responsibility.

Senator BARTLETT—At this stage, it is anticipated the same number of IOM staff will stay on Nauru.

Mr Okely—With the reactivation of the State House centre and its preparation to be ready to take a number of people at any time, the IOM expatriate staffing will increase. It had dropped down to a very small number. That will now increase and they will be ready to take people. However, the medical staff and the psychiatric staff who will be there will not treat the two Iraqi men because that would imply a responsibility and a duty of care.

Senator BARTLETT—How is medical assistance provided?

Mr Okely—The medical assistance is provided through the government of Nauru hospital.

Senator BARTLETT—I think I heard you saying earlier that there is a mental health nurse.

Mr Okely—There is a full-time mental health nurse resident in Nauru. He would see the two men—if the two men wish to see him, of course—at any time. Certainly, one of them engages with him quite frequently. He is responsible for administration of medication and the psychiatrist visits one week in four. They take an interpreter with them and they are able to have several sessions during the week.

Senator BARTLETT—Is the mental health nurse paid for by DIMA or the Australian government?

Mr Okely—We are funding both the visiting psychiatrist and the nurse, because we have a duty of care.

Senator BARTLETT—If those two people found somewhere else to go and others were not there then there would no longer be a mental health nurse or a psychiatrist on the island.

Mr Okely—That is correct.

Senator BARTLETT—You mentioned an interpreter for the psychiatrist. My recollection was that one of them was not too flash with English and one of them was pretty good, so one was using the other as volunteer interpreter.

Mr Okely—That situation has pertained for some time. It is not a very satisfactory situation and certainly Mr Faisal, whose English is much less proficient than that of Mr Sagar, asked that an interpreter be provided. We provided services through the Translator Interpreting Service in Australia for medical visits and instances like that. However, in the light of experience, we have decided that it is best to put a full-time interpreter into Nauru, particularly in anticipation that there may another caseload arriving in Nauru at some time in the future, to facilitate the interface between that caseload and the Iraqis.

Senator BARTLETT—So you are saying that there is an interpreter on their way?

Mr Okely—The recruitment action is under way. We are pretty confident that we have got someone there for a period of about three months.

Senator BARTLETT—With another caseload potentially coming, they are not likely to be fluent in whatever language they speak in Iraq, Farsi or something, are they?

Mr Okely—I think it is probably in the area of hypotheticals again. I do not know. They are unlikely to speak Arabic, I would have thought.

Senator BARTLETT—What is the situation with getting into Nauru now? Do they have a regular flight in, having lost that plane, or do you have to charter?

Mr Okely—Air Nauru has been operating weekly charters for a number of months following the repossession of their aircraft. That has been a fairly expensive and difficult exercise. My understanding is that that particular service will cease on 10 June. There is a very strong possibility that Air Nauru will declare bankruptcy. My colleagues in foreign affairs and trade are working very closely with the government of Nauru to put in place a subregional arrangement to provide Nauru with an air service on a regular basis. But it appears, at this juncture anyway, that Air Nauru will not survive.

Senator BARTLETT—That solves the issue of whether or not advisers can get in, I suppose, if there is no plane. You say that the chartering is expensive, and I imagine it would be. Is your department contributing to that or is foreign affairs?

Mr Okely—The government of Australia has not been contributing at all to the charter air services.

Senator BARTLETT—But there have still been DIMA officials flying backwards and forwards from time to time.

Mr Okely—That is on a commercial basis.

Senator BARTLETT—Does that mean the fares have gone up a lot from what they were?

Mr Okely—The fares are very much the same as they were before.

Senator BARTLETT—Not that they were exactly cheap before, from memory.

Mr Okely—They were never very cheap.

Senator NETTLE—How is the process of finding a country for the two men left on Nauru going?

Mr Hughes—Both UNHCR and the Australian government have been making some efforts to do so. So far, all of these efforts have fallen through. I understand that UNHCR are still pursuing a particular option.

Senator NETTLE—So all of the countries the Australian government has approached—

Mr Hughes—All the countries that UNHCR and the Australian government have approached have declined accepting them.

Senator NETTLE—You just mentioned there was one country UNHCR were still pursuing.

Mr Hughes—That is correct. That is my understanding.

Senator NETTLE—How many countries have been approached?

Mr Hughes—I cannot be sure, because I do not know all of the ones that UNHCR have approached. It is a relatively small number. The issue has been, of course, the adverse security assessments of the men; they are problematic for most countries that might resettle people.

Senator NETTLE—Can you take on notice how many countries the Australian government has approached?

Mr Hughes—Yes.

Senator NETTLE—Does the department have a view on how long a stay on Nauru for these two men is acceptable? Is there a time after which you might look at other arrangements and seek to have them located in Australia or elsewhere?

Mr Hughes—I do not know that there is a specific time frame. It is related to both their circumstances on Nauru and what options are available to pursue for their resettlement elsewhere. But I do not know that anyone has put a specific time frame on that.

Senator NETTLE—So is there a view on how long it would be acceptable for them to remain on Nauru?

Mr Hughes—As I said, I do not think any specific time frame has been put on it, as to the right length of time.

Senator NETTLE—Is it acceptable for them to remain on Nauru indefinitely?

Mr Hughes—I think that also has to do with the extent to which they are happy with their lot on Nauru. I think the department, as Mr Okely has explained, has tried to make their stay there as acceptable to them as it can, but I do not think there is any particular time frame. We and UNHCR are looking at what options are available to find them a home elsewhere.

Senator NETTLE—In discussions with ASIO or others, have you looked at the option of bringing them to Australia?

Mr Hughes—I think that is really a matter for Mr Okely.

Mr Metcalfe—There are adverse security assessments in place in relation to the individuals. We are precluded from granting a visa in those circumstances. So, while it remains ASIO's view that they pose a security risk to Australians, we cannot do anything about bringing them to Australia, should that be the wish of the government.

Senator NETTLE—Does that mean the options for them are to find another country or remain on Nauru indefinitely?

Mr Metcalfe—They are certainly the options being pursued at the moment.

Senator NETTLE—They are the two options for these two people?

Mr Metcalfe—That is correct—unless there were some change in circumstances which led ASIO to reconsider its position, but I have no information that that is likely to occur.

Senator NETTLE—Has that ever been the case for other detainees—that there was a new security assessment?

Mr Metcalfe—These men are not detainees.

Senator NETTLE—People seeking protection in Australia.

Mr Metcalfe—I do not know off the top of my head whether or not that has occurred in the past, but that is an issue that you probably should ask ASIO about.

Senator NETTLE—Has the department of immigration asked ASIO to reconsider the cases of these two men?

Mr Metcalfe—We have had dialogue with ASIO about the men's circumstances, and ASIO have reconfirmed that their view remains as is.

Senator Vanstone—It has been carefully looked at, Senator, I can assure you of that.

Senator NETTLE—Does that mean that there has been a request?

Mr Metcalfe—We have not requested that they do anything. We have reconfirmed with them that their position remains the same.

Senator NETTLE—Right. Can you take on notice the cost of the monthly visits by the psychiatrist?

Mr Metcalfe—Yes.

Senator NETTLE—And the cost of the community housing—I do not know if that is a cost yet, given they have not moved.

Mr Okely—That is a prospective cost. But certainly, once we know, I can provide that to you.

Senator NETTLE—I do have other questions, which were allocated to this section, that go to the new procedures and how they would work.

CHAIR—Senator Nettle, you will have to place those questions on notice, it being 11 o'clock. For the benefit of the officers, do those questions relate to output 1.5?

Senator NETTLE—Yes, and I will have some on notice from most of today's outputs.

CHAIR—I understand that. That concludes our examination of outcome 1. All officers in connection with that outcome will not have to join us tomorrow. However, officers in connection with outcome 2 will have that special opportunity. We will commence at 9 o'clock with the MARA, followed by the MRT and the RRT. I have some indication from my colleagues as to how long that might take, but I am acutely aware of the dynamic nature of estimates and I am concerned that if they were to not take as long as estimated and officers from outcome 2 were not here, then the committee process would not work as smoothly as I might hope. The indication is that it will take until at least 11 am on the MARA and the tribunals. Perhaps the appropriate officers for outcome 2 could be here sometime after 10 am and then they would not waste as much time waiting as they might otherwise do.

Mr Metcalfe—They have plenty of other stuff to do. We will ask them to be here at 10 am, unless there is an indication from you at that time that they are not required. There is about a 20-minute drive here from the office and getting a park here is always an interesting issue, so I would rather they were here a little earlier than not here.

CHAIR—Indeed. I appreciate that. Thank you, colleagues, Minister and Mr Metcalfe and your officers. We will adjourn for the evening and resume at 9 o'clock tomorrow morning.

Committee adjourned at 11.01 pm